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New Jersey Court of Errors and Appeals

Writ of Error to Supreme Court

(Filed April 8, 1917)

New Jersey, ss:

The State of New Jersey to the Chief Jus-
(L. S.) tice and Associate Justices of the Supreme Court of the State of New Jersey:

Because in the record and proceedings, and also in the giving of judgment of the said Supreme 20a
Court, affirming the conviction in the Court of Oyer and Terminer of the County of Essex, upon a certain indictment against John H. Young, late of the Town of Montclair, in the County of Essex, on the fifteenth day of February, in the year of Our Lord, One thousand nine hundred and sixteen, with force and arms, at the Town aforesaid, in the County aforesaid, and within the jurisdiction of this Court, one Emma C. Truesdell, in the peace of God and of this State then and there 30a
being, feloniously did kill and slay, whereof before you he hath been indicted, and is thereof convicted by a certain jury of the said County taken between the said State of New Jersey and the said John H. Young, as it is said, manifest error hath intervened to the great damage of the said John H. Young, as from his complaint we have received information, we being willing in this behalf to correct the error in due manner and form, if any there be, and that speedy justice be 40a

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done to him, the said John H. Young, in this behalf, do command you that if judgment be thereupon given, then that you distinctly and openly send under your seal the record and proceedings aforesaid before you
10b in the said case, with all things touching the same, to our Court of Errors and Appeals in the last resort in all causes, to be holden at Trenton on the thirtieth day of March instant, and this writ, that the record and proceedings aforesaid being inspected, we may further cause to be done thereupon for correcting that error, what of right and according to the laws and customs of New Jersey ought to be done.

WITNESS, EDWIN ROBERT WALKER, Chancellor of
20b the said State of New Jersey, and President Judge of the said Court of Errors and Appeals, in the last resort in all causes, at Trenton aforesaid, this twelfth day of March, nineteen hundred and seventeen.

THOMAS F. MARTIN,
Clerk.

McCarter & English,
Attorneys of Plaintiff-in-error.

30b

Return to Writ

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

WM. S. GUMMERE,
40b C. J.

Supreme Court

OF THE

State of New Jersey

Writ of Error

New Jersey, ss:

The State of New Jersey to William P. Martin, Esquire, Judge of the Court (Seal.) of Quarter Sessions of the County of Essex.

Because in the record and proceedings, and also in the giving of judgment upon a certain indictment against John H. Young, of the Town of Montclair, in the County of Essex, for manslaughter, whereof before you he, the said John H. Young, has been indicted, and is thereof convicted by a certain jury of the County, taken between the State of New Jersey and the said John H. Young, as it is said, manifest error hath intervened to the great damage of the said John H. Young, as from his complaint we have received information, we being willing in this behalf to correct the error in due manner, if any there shall be, and that speedy justice be done to him, the said John H. Young, command you that if judgment be thereon given then that you distinctly and openly send, under your seal, the record and proceedings aforesaid with all things touching the same, to our Justices of our Supreme Court of the State of New Jersey, on the fifteenth

day of July next, and this writ that the record and proceedings aforesaid being inspected we may further cause to be done thereupon, for correcting that error, what of right and according to the law ought to be done.

WITNESS, William S. Gummere, Esquire, Chief Justice of our said Court at Trenton, this twenty-sixth day of June, in the year of our Lord, One thousand nine hundred and sixteen.

McCARTER & ENGLISH,
Attorneys for Plaintiff in Error.

Wm. C. Gebhardt,
Clerk.

Return to Writ

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

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

In Witness Whereof, I have hereunto set my hand and the official seal of said Court and County at Newark, N. J., this 25th day of July, A. D. 1916.

(Seal.)

WM. P. MARTIN,
P. J.

Judgment Record

(*Endorsement.*)

NEW JERSEY SUPREME COURT

THE STATE
Defendant-in-error,
vs.
JOHN H. YOUNG,
Plaintiff-in-error.

WRIT OF ERROR

Returnable July 15th, 1916.

McCARTER & ENGLISH,
Attorneys for Plaintiff-in-error,
765 Broad Street,
Newark, N. J.

Presented in open Court this 26th day of June, A. D., 1916.

WM. P. MARTIN,
President Judge, Essex County Court of Quarter Sessions.

Judgment Record

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

Be it remembered that at a Court of Oyer and Terminer, holden at Newark, in and for the County of Essex on the second Tuesday of December,

in the year of our Lord, One thousand nine hundred and fifteen, by the Honorable William S. Gummere, Chief Justice of the Supreme Court of Judicature, of the State of New Jersey, and holding the said Court of Oyer and Terminer, in and for the County of Essex, New Jersey, by the oath of Austin H. McGregor, W. Albert Banister, Franklin L. Lewi, Fred F. Schaedel, Isaac J. Casey, Francis S. Green, Ralph W. Smith, Herman P. Vonder Heide, Edward M. Slocumb, Henry F. Hilfers, Charles Moos, William Umstadter, David B. Nathan, Emil Waldman, Gustave Hanke, Gustave A. Wiedenmayer, William P. O'Rourke, August A. Sippel, Sol Berla, Abraham Steiner, Michael Higgins, Martin G. Bross, Frank Devlin, good and lawful men of the said County of Essex, duly commissioned and then and there duly sworn and charged to enquire in behalf of the State of New Jersey, in and for the said County of Essex, it is presented in manner and form following, to wit:

Indictment.

Essex Oyer and Terminer.

December Term A. D., 1915.

Essex County, to wit: The Grand Jurors of the State of New Jersey, in and for the body of the County of Essex, upon their oath Present that John H. Young, late of the Town of Montclair, in the County of Essex aforesaid, on the fifteenth day of February in the year of our Lord one thousand nine hundred and sixteen with force and arms at the town aforesaid, in the County aforesaid, and within the jurisdiction of this Court one Emma C. Truesdell in the peace of God

and of this State, then and there being, feloniously did kill and slay contrary to the form of the statute in such case made and provided, and against the peace of this state, the government and dignity of the same.

FREDERICK F. GUILD,
Prosecutor of the Pleas.

On the twenty-first day of March 1916, on which day the said Indictment was presented by the Grand Jury aforesaid, to the said Court of Oyer and Terminer, and the said Justice did then and there order the said indictment to be handed down to the Court of General Quarter Sessions, and to be delivered to the Clerk of the Court of General Quarter Sessions, in and for said County of Essex, and then and there the said indictment was duly delivered and duly filed by the Clerk of said Court and an entry of such order and delivery and filing was there and then made in the minutes of said Court at the same time pursuant to the statute in such case made and provided.

And afterwards, that is to say, on the twenty-second day of March, A. D., Nineteen hundred and sixteen, at a Court of General Quarter Sessions, holden at Newark, in and for the County of Essex, before the Honorable William P. Martin, Presiding Judge of the Court of Common Pleas, John H. Young in the custody of Ralph B. Schmidt, Sheriff of the County of Essex aforesaid, and the said John H. Young being brought before the bar in his own proper person and forth-

with being demanded of and concerning the premises in the above indictment specified and charged upon him, how he would acquit himself thereof, say that he is not guilty thereof, and therefore for good and evil he puts himself upon the country, etc., and Frederick F. Guild, Prosecutor of the Pleas of said State, for said County of Essex in this behalf doth the like.

Therefore, let a Jury thereupon come before the Court of General Quarter Sessions to be holden at Newark, in and for the County of Essex, on the eighth day of May, A. D. nineteen hundred and sixteen, then next ensuing twelve free and lawful men, each of whom shall be a citizen of this State and resident within the County of Essex aforesaid, above the age of twenty-one years and under the age of sixty-five years, by whom the truth of the matter may be better known and who are not of kin to the said John H. Young to recognize upon their oath whether the said John H. Young is guilty of the premises in the said indictment specified or not guilty because the said Frederick F. Guild, Esquire, Prosecutor, &c., as the said John H. Young puts himself upon the jury and the same time is given to the parties aforesaid at the same place.

And afterwards, that is to say, at the same session of the Court of General Quarter Sessions, holden before the Honorable William P. Martin, Judge of the Court of Common Pleas, come the said Frederick F. Guild, Esq., who prosecutes as aforesaid, and the said John H. Young and the jury of whom mention is before made, and by Ralph B. Schmidt, Sheriff of the County of Essex, for this purpose empanelled and returned to wit:

(After the following challenges were exhausted) By the State, 5, by the defendant, 10, Eugene H. Clancy, Joseph P. Gmeiner, Horace B. Osgood, Thomas Conklin, Fred Hartman, Harry Gardner, Thomas Dodge, Robert J. Emory, John T. Palmer Levi D. Elliott, Frank Eichhorn, Sidney H. Eastabrook being called were sworn upon that jury who to speak the truth of and concerning the premises and thereupon the trial of said issue was commenced and continued, until the twelve day of May, A. D. nineteen hundred and sixteen when the jury returned into Court in charge of the officer sworn to attend them, and then and there in the presence of the Prosecutor, defendant and Court do say upon their oath they find the said defendant John H. Young guilty with Mercy and so say they all.

Judgment.

Judgment signed Wm. P. Martin, Judge. June 26, 1916.

Whereupon all and singular, the premises being seen and by the Court now here fully understood it is on this twenty-sixth day of June, A. D., Nineteen hundred and sixteen.

Ordered and adjudged that the said John H. Young be committed to the County Penitentiary for one year at hard labor and pay a fine of One Thousand dollars, and pay the costs which said costs are taxed by the Clerk at the sum of One hundred and twenty-four dollars and sixty-one cents, and stand committed until such costs and fine be paid.

Stipulation as to Return

NEW JERSEY SUPREME COURT

THE STATE OF NEW JERSEY, Defendant-in-error, vs. JOHN H. YOUNG, Plaintiff-in-error.	On Error to Essex County Court of Quarter Sessions.

It is hereby stipulated and agreed by and between the parties hereto, that the plaintiff-in-error have until Saturday, the 12th day of August, 1916 to return the writ of error herein.

Dated, Newark, N. J., July 31st 1916.

WILBUR A. MOTT,
Attorney of Defendant-in-error.
McCARTER & ENGLISH,
Attorneys of Plaintiff-in-error.

Testimony

ESSEX COUNTY COURT OF OYER AND TERMINER

May 8, 1916.

STATE, vs. JOHN H. YOUNG.	Indictment No. 12. Manslaughter.

Transcript of shorthand notes of testimony taken in the above entitled cause before his Honor

William P. Martin, Judge and a jury, at the Court House, in the City of Newark, New Jersey, in the presence of Wilbur A. Mott, Esq., Assistant Prosecutor of the Pleas, for the State, and Robert H. McCarter, Esq., for the defendant.

Mr. Mott opened for the State.

DR. PAUL E. TRUESDELL, sworn for the State:

Direct-examination by Mr. Mott:

Q. Where do you live, Mr. Truesdell? A. At the present time at 45 Orange Road, Montclair.

Q. And where was your place of residence on the 15th of February, last? A. Seventy-one Valley Road, same town.

Q. What is your occupation? A. Dentist.

Q. And were you then a dentist in the active practice of your profession? A. I was.

Q. In February last? A. Yes, sir.

Q. Were you the husband of Emma C. Truesdell? A. I was.

Q. Do you know the defendant, Dr. Young? A. I do.

Q. How long have you known him? A. About, I should imagine seven or eight years.

Q. What was your wife's maiden name? A. Emma C. Wolf.

Q Where did she live before your marriage? A Three hundred eighteen Elm Street, Newark.

Q. How old was she? A. When she was married?

Q. No, at the time of her death? A. Twenty-one.

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

Q. Did Dr John H. Young perform an operation on your wife on the 15th of February last? A He did.

Q. Whereabouts did he perform that operation? A. It was in the kitchen.

Q Of your home? A. Yes, sir.

Q Who was present at the time—just before and at the time of the operation? A In the operating room?

Q. In the operating room? A. There were three nurses, Dr. Young and I present at the beginning.

Q And you? A. I beg pardon, Mr. Mott, there were two nurses.

Q. Two nurses at the beginning? A. Yes, sir.

Q. What time did the operation commence? A. Why, as near as I can say at half-past twelve or about that time.

Q. And what do you mean by the commencement of the operation? A. Why, at the time of the administration of the ether—the beginning of the ether.

Q. Were you present when the ether was administered to her? A. Yes, sir.

Q. Where were you during that time? A. You mean—the ether was administered through the whole operation, so far as I know. You mean at the beginning?

Q. At the beginning. A. I was holding my wife's hand, standing at her side, to encourage her.

Q. How long did it take to get her under the effect of the ether? A. Why, I should say—I didn't have a watch—but I should say about five minutes; four or five minutes.

Q. And who administered the ether? A. Miss Cox.

Q. One of the nurses? A. Yes, sir.

Q. Brought there by whom? A. Dr. Young.

Q. Did you leave the room, the kitchen? A. Later, yes, sir.

Q. What was the situation when you first went out of the room? A. What do you mean by that, Mr. Mott?

Q. I mean was your wife completely under the influence of the ether? A. Yes, sir.

Q. Had Dr. Young commenced— A. Yes, sir.

Q. —the operation? How long had Dr. Young been working on her at the time you left the room? A. Why, I should say that I was in the operating room about fifteen minutes—fifteen or twenty minutes. I am not sure of the exact time, Mr. Mott.

Q. Now, what was Dr. Young doing to her so far as you could see? A. Why, do you mean in the beginning, from the first?

Q. From the first? A. Why, a strap was put around the shoulder and the legs were brought up and fastened, kept that way by the strap and he had put on his rubber gloves, sterile gloves and prepared himself while Miss Cox was giving the ether and right before it, and he used—he put an instrument with a lip around—Dr. Washington has told me it was called a speculum—

Mr. McCarter: Never mind what Dr. Washington said.

Witness: I don't know the name of the instrument.

The Court: Describe it.

Witness: Well, it was bent, rounded like and nickle and shiny.

Q. Where did he use that instrument? A. He

put that in the vagina at the bottom, made it larger like.

Q. Did he use more than one instrument? A. Yes, sir; after he put that in he used a blunt—sort of wire sort of instrument—looked blunt like, with a little knob on it, and put that in the vagina, and worked it around like, as I saw it, and then he—seemed to be a larger one—there seemed to be a larger one; and then a little later he put in what seemed to be a pair of forceps like or pinchers like, blunt end, and he went up in and pulled out a tube.

Q. You say "tube." What do you mean by tube? A. Why, it was—looked like a tube about the size of my little finger and it was pulled out about that far (indicating) in a loop like—the two ends were in the body and this one loop was out, protruding.

Q. What did it look like? A. Why, it was white or reddish white and appeared to be about the size of my finger.

Q. And what did it look like? What did you take it to be? What did it look like.

Mr. McCarter: Let him describe it.

A. Well, I don't know what it might have been. It might have been anything.

Mr. McCarter: Never mind what it might have been. I do not think this witness ought to undertake to tell what it might have been.

The Court: No.

Witness: I don't know what it was, Mr. Mott.

The Court: What did it look like? Was it flesh or blood or what?

Witness: Oh, it was like—flesh like—might have been intestine but I never have seen intestines but pictures; it might be intestines.

Mr. McCarter: I move that that be stricken out, your Honor. It is not what it might have been, it is what it looked like.

The Court: Have you ever seen any intestines?

Witness: I have not; no, sir.

Mr. McCarter: Then how can he say it looked like that?

Q. Have you studied anatomy? A. I have.

Q. Where did you study anatomy? A. In the New York College of Dentistry.

Q. How long did you study anatomy? A. Three years.

Q. And during your study of anatomy did you have occasion to examine and look at pictures—diagrams of the human body? A. Yes, sir.

Q. What? A. Yes, sir.

Mr. McCarter: I move to strike it out.

The Court: Granted.

Q. Not what it might have been, but what did it look like, so far as referring to anything you saw or used while you were studying anatomy?

Mr. McCarter: He says he never saw intestines.

Mr. Mott: I did not ask him that.

The Court: He says he has seen pictures of them.

(Question read.)

Witness: Is that the question, Mr. Mott?

Mr. Mott: Yes.

Witness: Will you read that again, please.

Q. (Question read.) A. Well, it was a tube of whitish flesh; seemed to be oval like. It was not

a round tube. It was about the size—as I remember it—about the size of my little finger and collapsed or flattened like. It looked that way as I remember it. It is a hard thing to describe.

Q. I am asking you what it looked like referring to the things you used while you were studying anatomy, pictures you used or instruments you used or anything? A. I can't think of anything it ever looked like. I can't remember seeing anything that looked like that. I can see it in my mind but I can't seem to describe it that way. It looked something like my finger, only it was soft—seemed to be soft and flexible.

Q. What did you mean when you said it looked like a picture you had seen? A. Why, in anatomy there are pictures of intestines colored—

Q. I am asking you what this looked like? A. It looked like a piece of intestine, from what I saw in those pictures.

Q. About how long would you say the portion of the loop that you saw was? A. You mean—

Q. From end to end? What you saw? A. It protruded about that much (indicating).

Q. That is about how much? A. About like that, (indicating) oh, I should say, seven or eight inches; it was eight inches that would be sixteen inches.

Q. You have said that Dr. Young used forceps, didn't you? A. What seemed to be forceps.

Q. What seemed to be forceps. Did he use those forceps before or after you saw this loop? A. Why, he used them before in going up—like grabbed these and pulled them down.

Q. After he began using the forceps how soon did you see the loop? A. Why, almost immediately.

Q. When you saw this loop, what did you do? A. I was pretty well shaken up and I simply couldn't look any more and I went out of the room.

Q. Did you return at any time to the operating room after that? A. Why, I walked back and forth and came to the door and once I went through to fix the—I went down—I thought the furnace would need fixing and went down to put coal on the furnace.

Q. When you went through to go to the furnace on what was your vision fixed? A. Why, I couldn't look at it—my little wife—I looked away as I passed through. I couldn't stand looking at it. Just didn't want to see her because it affected me too strongly.

Q. When you went through to go to the furnace did you look at your wife and did you see anything that was being done at that time? A. No; I couldn't see, Mr. Mott.

Q. And you purposely looked the other way? A. The other way, yes, sir.

Q. You have said, "Your little wife." How large a woman was your wife? A. Why, she was very small. When I married her she weighed 80 pounds and she—I never measured her.

Q. At the time of her death what did she weigh? A. She weighed 110 pounds, about.

Q. Do you know how tall she was? A. Pardon me?

Q. How tall she was? A. Not in feet and inches, no. She was up just a little above my shoulders. I am five feet eight; she was possibly five feet tall.

Q. How long did the operation last? A. Why I wasn't in the room, but from the time that the operation started until the time I heard my wife was dead, was about from half past twelve until about two o'clock. I say "about" because that is all I can say—is the approximate time.

Q. In what room did your wife die? A. In the kitchen—in the operating room so far as—that is what I have been told. I did not see her die.

Q. What did Dr. Young do besides operating on your wife? A. I don't know.

Q. Well, did he send for anybody? A. Why, you mean in reference to what he asked me to do?

Q. Yes. A. Why, one time when I went in the kitchen—out towards the kitchen—I was by the door—he asked me—he said he wished some lady, and asked if Mrs. Wolf would be any good—that is my mother—my wife's mother—I asked her and she said she couldn't stand it any more than I could, so I told Dr. Young that and he asked me to call up the Mountainside Hospital and ask for another nurse immediately, and when I called the Mountainside Hospital they said they didn't have any nurses—extra nurses they could send.

Q. Did you get your nurse there? A. Yes, sir.

Q. You got one? A. Yes, sir.

Q. What was her name? A. Miss Speicher.

Q. Did she come? A. Yes, sir.

Q. About what time did she get there? I do not expect you can be exact, but approximate? A. Why, I don't know. I should say about twenty minutes to half past one; I should say that.

Q. Did Dr. Young send for anyone else? A. Why I heard him call up for Dr. Bunn.

Q. Yes. A. Very soon after Dr. Bunn came.

Q. You mean you heard him call up—you heard him call on the telephone? A. On the telephone, yes, sir.

Q. Dr. Bunn came? A. Yes, sir. I didn't know —I didn't hear him say Dr. Bunn, but he called up a telephone number and Dr. Bunn— I was introduced to him as being Dr. Bunn.

Q. Who introduced you? A. Dr. Young.

Q. What did Dr. Bunn do when he got there? A. He went in the kitchen.

Q. How long was he there? A. Just a little while—five minutes or so, I should say.

Q. And then came out? A. And then he told me that my wife had died.

Q. Dr. Bunn told you? A. Yes, sir.

Q. And then what did Dr. Bunn do, stay or go away? A. Why, I went to pieces, I don't know what happened. I simply fainted away—was almost dead, and I know that he went away. He surely is not there yet. He must have gone away.

Q. How long did Dr. Young stay? A. Why, he stayed most of the afternoon. He called up Dr. —he asked me if I could—if I would object to having an autopsy, and of course I did not object and he, I understand, called up Dr. Simmons.

Q. Did Dr. Simmons come? A. Yes, sir.

Q. Dr. Simmons is the Deputy County physician? A. I understand he is, yes, sir.

Q. About what time was it when Dr. Simmons got there? A. Why, I don't know. Mrs. Wolf asked one of the nurses to call up Fred Wolf—

Mr. McCarter: Do not say that.

The Court: Where was Dr. Young, was he there?

Witness: He was there; yes, sir, the whole time.

The Court: He heard Mrs. Wolf make the request?

Mr. McCarter: The telephone was not in that room.

The Court: I don't know anything about it. I will grant the motion.

Mr. Mott: I am just asking him to tell me when Dr. Simmons got there.

Witness: Fred Wolf was called up and it took him at least forty-five minutes to get there and Dr. Simmons came after him.

Q. What is that? A. Fred Wolf must have taken at least forty-five minutes to come up and Dr. Simmons came after him.

Q. About what time did Dr. Simmons get there? A. Say an hour.

Q. That would make it about what time when he got there? A. Around three o'clock. I should say between three and half past three.

Q. Do you know of your own knowledge anything that was done by Dr. Simmons and Dr. Young? A. I do not.

Q. Of your own knowledge? A. No.

Q. How long did Dr. Simmons stay as near as you can estimate? A. No—I was all in pieces; it was hard to say, possibly fifteen minutes, possibly twenty.

Q. Who was the undertaker who buried your wife? A. Mr. Maier. I think it is August Maier.

Q. On what day was your wife buried? A. You mean interred?

Q. Interred? A. Saturday; I think it was the 19th.

Q. It was on Saturday? A. Yes, sir.

Q. What day of the week was the operation? A. On Tuesday.

Q. Where was your wife buried? A. In what cemetery?

Q. Yes. A. Fairmount cemetery.

Q. Here in Newark? A. Yes, sir.

Q Do you know in what lot? A In—I was told it was in Mrs. Wolf's lot.

The Court: Q. Were you there when she was buried? Did you attend the interment?

Witness: Surely; yes, sir.

The Court: She was buried in a lot? You don't know who owned it?

Witness: I can only say—

The Court: You really do not know?

Witness: No. I haven't looked it up and I don't know except that—

Mr. McCarter: I think that better go out.

The Court: Strike it out.

Mr. McCarter: I will not move to strike it out.

The Court: It will be restored by consent.

Mr. McCarter: I did not understand your Honor had stricken it out.

The Court: I did, on your motion. Now, I understand you consent to it being restored?

Mr. McCarter: I did not understand it had been stricken out. It doesn't make any difference either way.

The Court: It is only a question of identity I suppose?

Mr. McCarter: Yes, sir.

CROSS-EXAMINATION by Mr. McCarter:

Q. When did you first conclude that your wife was pregnant? A. Why, I suspected it in September; not in the first part, because my wife had appendicitis in the first of September, and she had missed her August period and she asked the physician who was attending her at that time, Dr. Richmond, whether there was any signs of pregnancy and he said there was not.

Q. Do not go into a long rigamarol, please, Dr. Truesdell. I ask you again to answer my question and that alone. When did you first suspect or conclude that your wife was pregnant? A. Why in September.

Mr. Mott: I object to the question because it is alternative, suspect or conclude; which do you mean?

Mr. McCarter: Suspect first.

Witness: Why, naturally when she missed that August period, in September.

Q. In September? A. Yes.

Q. What time in September? A. What day?

Q. Well, was it the first, fifth or twentieth or— A. Why, the first part I couldn't have suspected it because I was advised—

The Court: Do not answer so much.

Q. Can't you answer that question, Doctor? A. Well, the middle of September.

Q. Middle of September? A. Yes, sir.

Q. Now what September are you talking about? A. September, 1915.

Q. Did you consult Dr. Young about it? A. In October, yes, sir.

Q. October; do you remember when?

Mr. Mott: I object.

A. First part.

Mr. Mott: As not cross-examination. I asked this witness nothing about this and no conversation and his testimony was confined entirely to the operation; no events of any kind previous to the day of the operation.

The Court: That is ordinarily true, Judge Mott, but the difficulty is that this may be proper cross-examination on the theory of bias.

Mr. Mott: I simply suggest to the Court that there is no foundation for any suggestion of bias and nothing in the examination justifies this because it is not cross-examination. Consulting with the doctor is no indication of bias.

The Court: How do you vindicate this testimony of last September and October when the direct-examination was confined absolutely to the events of February, 1915, and the succeeding interment?

Mr. McCarter: Well, I should think that the events of 1915 would have a great significance to previous events and that the responsibility of Dr. Young for what occurred on February 15th must be measured largely by what he had been told by this man or his wife or both with reference to her condition. It would be improper and unfair to chisel out of this witness the narrow course of affairs that occurred on the 15th without giving us an opportunity to show by him on cross-examination what lead up to the 15th, what knowledge Dr. Young had of this lady's condition and

what he was doing when he was operating.

The Court: That is part of your case. If your cross-examination relates to credibility or bias it is proper.

Mr. McCarter: I haven't any desire to discredit Dr. Truesdell. I do not think he is an incredible person at all.

The Court: Now, that you have stated the purpose of it I do not think it is cross-examination. You can make him your own witness.

Defendant's counsel prays an exception to this ruling of the Court.

The Same is allowed and signed and sealed accordingly.

WM. P. MARTIN, (Seal).
Judge.

Q. You knew, I suppose, Dr. Truesdell, the purpose of this operation that the doctor was undertaking? A. I did, yes, sir.

Q. What was that purpose? A. Why, removal of a dead fetus.

Q. When had you been told by him that he had concluded that the fetus was dead? A. On the 3d of February, 1915—1916.

Q. And the operation took place on the 15th of that month? A. On the 15th of that month.

Q. On the 3d of February did he give any reason for not performing the operation then? A. Yes, sir.

Q. What was that? A. He said—in the month before she had a flow and he wanted to wait and see if in that corresponding period of February that she would not pass this off naturally.

Q. Yes; he was waiting then for the menstrual period to come around to see if nature would not itself exude this dead fetus? A. Yes, sir.

Q. That was it. That information in reference to the fact that the fetus was dead was given on the 3d of February? A. Yes.

Q. After an examination? A. Yes, sir.

Q. In his office? A. Yes, sir.

Q. Pretty elaborate examination? A Why, we were down—

Q. She was prepared for an examination? A. Yes, sir.

Q. Draped and all that, wasn't she? A. Yes, sir.

Q. Well, how did the doctor happen to come to your house on the day the operation was performed? A. Why, because after the 12th of the month when that didn't come on I was worried—I was worried during the whole time anyway.

Q. Answer the question. Never mind that. A. Will you repeat that question?

Q. How did the doctor happen to come?

Mr. Mott: Now, he may go on and state anything that caused his coming, I suppose?

Witness: On the day before her death she was acting differently, peculiar.

Q. Did you send for him? That is the point I am driving at. Did you telephone the doctor? A. I telephoned the doctor the night before and told him her condition.

Q. Did she have pains? A. Yes, sir.

Q. And did he give you any directions or instructions? A. Yes, sir.

Q. What did he say? A. Yes, sir; he said that if

the pain increased that—to call him up whatever time of night it was and have him up there and if it decreased and she had a comfortable night to call him up in the morning.

Q. Did you call him in the morning? A. Yes, sir.

Q. She had a comfortable night, didn't she? A. Yes, sir; so far as I know.

Q. So far as you know. So that the pain decreased? A. Yes, sir; subsided entirely. She didn't have any pain in the morning.

Q. What time did you call him in the morning? A. Why, about eight o'clock. His office hours are from eight to nine.

Q. And told him of the subsidence of the pain? A. Yes, sir.

Q. And he said he would come around? A. Yes, sir. The night before he said she better have the operation. If this pain subsided that they would have the operation.

Q. He had already said that the night before? A. Yes, sir.

Q. He said if the pain subsided you better have the operation. Well, you reported that the pain had subsided? A. Yes, sir.

Q. So he said he would come at what hour for the operation? A. Why, he said he would send the nurse around and she would prepare everything and that he would come around in the morning.

Q. Yes; what time, do you know, that the nurse got there? A. Why, I don't know. I was at my office. I had two patients before the operation. I was away. I don't know. It must have been after nine, though, because I left before nine.

Q. What time did you reach your home? A. My own home after I had been at my office?

Q. Yes. A. Approximately ten o'clock.

Q. Was the nurse there? A. Yes, sir.

Q. Preparing your wife for the operation? A. Yes, sir; preparing the room.

Q. Miss Regan? A. Yes, sir; Miss Regan.

Q. What time did Dr. Young get there? A. Why, he came once at about—I should say half-past eleven—and Miss Cox came with him then and he brought valises and things and then he went away.

Q. Brought what? A. Valises.

Q. Then he went away? A. Then he went away.

Q. Miss Cox remained there? A Yes, sir.

Q. And they still continued preparations? A. Yes, sir.

Q. And what time did the Doctor return? A. Why—oh, he must have been away three-quarters of an hour—half to three-quarters of an hour. That would make it that he got back a little after twelve.

Q. Miss Cox is Dr. Young's assistant? A. I understand she is.

Q. She is the one who administered the anesthetic? A. Yes, sir.

Q. Now, the doctor got there about twelve? A. He got there a little before that, I think.

Q. And the ether was administered and the work prepared. Now, your wife was draped for the operation? A. Pardon me?

Q. Your wife was draped for the operation? A. What do you mean by that?

Q. Sheet put around her? A. Yes, sir; oh, yes.

Q. And the anesthetist, Miss Cox sat or stood where? A. At her head.

Q. Where was Miss Regan? A. Why, she was

on my wife's left hand side and my wife was lying down on the side.

Q. She was on your wife's left as she lay there? A. Yes, sir.

Q. And you were on the other side? A. Yes, sir.

Q. Were you engaged in endeavoring to relieve the strain of this shoulder strap you spoke of by holding her limbs? A. I think I did; yes, sir, for awhile after I had let go of the hand, that was when the operation started.

Q. Until your wife became thoroughly anesthetized you held her hand? A. Yes, sir.

Q. You did that to cheer her up? A. Yes, sir.

Q. As soon as she became unconscious you dropped her hand and thought to relieve this strap by holding the leg, is that right? A. Holding it up; yes, sir.

Q. The purpose being to relieve the pressure around the shoulder to prevent the circulation from stopping in the leg, as you understood it? A. As I understood it; yes, sir.

Q. Had you ever attended at an operation before in your life? A. Why, once.

Q. Yes. Well, you began to feel a little faint, didn't you Doctor? A. Pardon me, a little what?

Q. You began to feel a little faint? A. Yes, sir. It wasn't that I was fainting away but I just simply couldn't stand to see it.

Q. Yes. And Dr. Young asked you if Mrs. Wolf could relieve you? A. A little later. That is after I had gone out and after a little while.

Q. And you went to see if she could relieve you because you felt so poorly? A. Yes, sir.

Q. Eh? A. Yes, sir.

Q. You found that you did not like that kind of thing? Your nature rather revolted from that sort of performance? A. Well, on my wife, yes, sir.

Q. Yes. Quite naturally. And you found that Mrs. Wolf didn't feel that she could? A. She says, "When I see the way you are," she said, "I never could stand it."

Q. You were pretty well demoralized at that time? A. Yes, sir.

Q. Now, the doctor had on his gloves, you said? A. Yes, sir.

Q. Did you see him wash out the parts before he introduced the instruments you spoke of, or sterilize them? A. Yes, sir, he did. He took a pair of forceps or pinchers and had a swab on it and swabbed it out. I do remember that.

Q. Yellow liquid? A. I think it was; yes, sir.

Q. Iodine? A. I can't say what it was. I had some lysol. Lysol is the same color. It might have been lysol.

Q. And there was a leather or rubber apron extended from the top of the table under your wife's body down to about the end of the table to a pail? A. Why, I know that was put there before she—

Q. You saw that? A. Yes, sir; I saw that put there; yes, sir, before my wife got on the table.

Q. And that was there as long as you remained in the room, wasn't it? A. Yes, sir.

Q. There was a pail there? A. Yes, sir.

Q. What kind of a pail? A. Galvanized pail.

Q. Look at the pail which my assistant is handling and see if you recognize the pail? A. Yes, sir; it was a pail that size.

Q. That kind? A. Yes, sir; just like that.

Q. And where did that pail stand with reference to the bottom of that rubber apron that came down from the foot of the table? A. As I—why, I saw it—I saw Dr. Young put it there; just put it down under.

Q. So that if I may take Mr. McDermitt's hat, and that is the rubber curtain (indicating)—A. It would drain in there; yes, sir.

Q. Drain in there like that (indicating)? A. Yes, sir.

Q. Now, Dr. Young was at the end of the table? A. Yes, sir.

Q. And your wife's head was away from him and her feet or legs were this direction, towards him? A. Yes, sir.

Q. And you were over there, (indicating)? A. No.

Q. There (indicating)? A. No; I was holding that right leg.

Q. Yes; you were here at the right leg? A. Yes, sir.

The Court: Indicating the right hand side of the table.

Witness: Right-hand side of my wife as she was lying there.

Q. And Miss Regan was over on the other side? A. Opposite side; yes, sir.

Q. And Miss Cox was on which side of the table or was she at the head of it? A. Well, as I remember it she was at the head of the table.

Q. Head of the table? A. Yes, sir.

Q. This was a broad table? A. Yes, sir.

Q. Up against the light? A. Yes, sir; they arranged it—Miss Regan arranged it before. My wife and I helped pull it up just so there would

be room enough for the doctor there so that the full light of the window would shine on the table.

Q. Do you remember an inquiry as to whether there was sufficient light in there before it was concluded to have the operation there? A. Why, Miss Regan said that the bathroom was tiled and that would make a much better room but that there wasn't light enough.

Q. Yes; I see. Now, you saw Dr. Young use—I understood you to say—two instruments? A. Why, yes; he put one down—

Q. Answer the question, please. A. They looked like two instruments. I saw him use four instruments altogether. You mean—is that what you mean, during the whole time that he was in there.

Q. I only understood you to describe two. I mean two instruments that he inserted in your wife. How many did you see him actually use inside of the vagina? A. Why, he used two instruments, looked to be about the same, only one seemed to be a little bigger than the other. Then he used these others—what seemed to be forceps, after that.

Q. Yes. Do you know what a dilator is? A. No; I do not.

Q. First he used two instruments? A. Not at one time. He used one and then he used another larger one.

Q. Then after he got done with that, what did he do if you saw him? A. Why, he put one down and then picked up the other and put that down and then he picked up these—every now and then he would use that antiseptic—I didn't—

Q. The antiseptic? A. Yes, sir.

Q. Well, at any rate, was the operating region plain to your eye from where you stood? A. Yes, sir.

Q. And were you—A. I couldn't look into the vagina, but I could look right down.

Q. Outside? A. Yes, sir.

Q. And were you watching all the time? A. Yes, sir.

Q. Until you got sick? A. Yes, sir.

Q. Or faint? A. Yes, sir.

Q. Now, after he had inserted the larger instrument there you saw this piece—flesh that you speak of—protruding down, is that right? A. Why pardon me again. Would you repeat that exactly?

Q. I will change it a little bit. You observed this piece of flesh, the two ends of which were in but the loop of which hung down? A. Yes, sir.

Q. And you said that was about the size of your little finger, as I remember it. A. I didn't have any calipers there or rulers or anything.

Q. From the picture that was about the size? A. Yes, sir.

Q. In diameter? A. Yes, sir.

Q. You said it was flat? A. Why, it was oval like—it wasn't flat.

Q. Flat was the word you used on your direct-examination, as I recall it, is that right? A. Well, it was just as if you had taken a tube and it kind of collapsed a little bit.

Q. It was like flesh? A. Well, it was soft like flesh. It wasn't just as if you had cut your hand and saw the flesh; no; it didn't look that way.

Q. I am using your language—you said it looked like flesh. Did it look like flesh?—your lan-

guage on your direct-examination. A. Well, it was whitish red. Looked—

Q. Did it glisten or was it dull? A. I didn't notice that, Mr. McCarter; I couldn't say.

Q. Was it free or was it attached to anything? A. Two ends were attached.

Q. Inside. A. I don't know whether they were attached but they were protruding from the inside.

Q. The two ends protruded or did the loop end protrude? A. The loop end protruded.

Q. That is what I thought. Now, was the ends that hung down free or attached to anything or was it all by itself? A. It was all by itself. It seemed clean like.

Q. As to dull or glistening you did not notice. A. I didn't notice; no.

Q. Was it bloody? A. No; it was clean like, just as if it had been washed.

Q. Did you notice any blood vessels in it? A. I don't know, no; I didn't notice any, no. Couldn't see blood vessels, things that looked like blood vessels. It was just reddish white tint, more on the white.

Q. Now, you have said that you have studied medicine? A. I didn't study medicine.

Q. Studied for dentistry?

Mr. Mott: Anatomy is what he said.

Q. And in the course of your study for dentistry you did study anatomy of the body, didn't you? A. Yes, sir.

Q. Did you ever perform a dissection of the abdomen? A. No.

Q. Never saw an abdomen cut open? A. No.

Q. Did you ever perform an autopsy of an abdomen? A. No.

Q. Do you know what the mesentery is? A. No. The name is familiar but I cannot recall. I haven't had any anatomy in over five years and I have forgotten about it.

The Court: When did you graduate from the New York College of Dentistry?

Witness: Nineteen eleven.

Q. Well, you remember enough of your anatomy to recall the fact that attached to the intestines of the body—human body—my body or your body is a thing known as a mesentery whose function is to hold the intestines in place and to supply them with blood? A. I do recall that now, Mr. McCarter, now that you tell me.

Q. And that that is attached to the intestines? A. Yes, sir.

Q. Quite a broad thing? A. Yes, sir. I only know it from description from the books.

Q. Yes. How soon after you observed this loop hanging down was it that you left the room, almost immediately? A. Right away, yes, sir; a little bit after.

Q. And you didn't see another thing connected with the operation? A. No, I cannot recall anything that I saw.

Q. By this time you had become thoroughly demoralized, laid down and were almost hopeless, were you not? A. Well, I hadn't got—I hadn't got quite that bad.

Q. When you left the room you laid down, didn't you? A. To be candid, I fell on the floor; yes, sir.

Q. Fell on the floor? A. Not immediately, but I was— just got worrying so.

Q. Never mind. You have answered the question.

The Court: When did you fall on the floor, when you left the room?

Witness: Not immediately after; it was after the operation went on I got more and more worried and it was afterwards.

Q. You don't know what occurred in the room after you left? A. No, sir.

Q. And you fell on the floor in another room? A. Yes, sir.

Q. To which you had gone. Did Miss Speicher —A. I fell on the floor in prayer. I had not been a praying man for a long while—

Q. I don't care whether you are a praying man or not.

The Court: Just a moment. That is a proper answer to make. The question is did you fall on the floor.

Witness: Not from weakness.

The Court: I presume that means from physical weakness. If he got on his knees that isn't falling on the floor within the meaning of the question. Which did you do?

Mr. McCarter: He brought out falling on the floor. I didn't ask him that.

The Court: He said he did.

Q. After you had fallen on the floor either in prayer or otherwise you did lie down on the sofa, didn't you, or on the bed? A. Why, that was after Dr. Bunn had come; yes, sir.

Q. Where were you when Miss Speicher arriv-

ed? A. Why, I went downstairs to met her—to answer the bell and let her in.

Q. Were you still in the operating room when she arrived or had you gone out? A. I didn't go in; I sent her in. I said in the back room, don't bother to get ready, just go in.

Q. Never mind what she said. Then she arrived after you left the operation room for the last time except when you passed through to go to the furnace? A. She hadn't come yet when I passed through to go to the furnace.

Q. She had not? A. No, sir; she hadn't come yet, no.

Pail marked Exhibit D-1 for identification.

Q. Now, how long was it, if you can remember, between the time you left the room first and the time that you passed through to go to the furnace? A. Why, I walked up and down—I was nervous like, and I called up—

Q. Please answer the question.

The Court: Not what you did but how long was it?

Witness: Why, in talking that way I wanted to try and place in my own mind what—

The Court: Do not do your reasoning out loud.

Q. Do your thinking first and then tell us.

The Court: Do not tell your reasoning out loud. Just answer the question. How long was it? That is the question.

Mr. Mott: You may take your time thinking it over before you answer.

Witness: I should say fifteen or twenty minutes. That is conservative.

Q. Pardon me? A. That is conservative.

Q. What had you been doing in the meantime? A. Why, I had all my afternoon appointments arranged because I expected the operation—

Q. What had you been doing in the meantime? A. I telephoned over to my office to have the appointments set aside and then I telephoned to another patient to ask her to tell another one of my appointments not to come in that afternoon.

Q. That is two telephones? A. Yes, sir.

Q. Now, what more did you do? A. Then, I telephoned for Miss Speicher—pardon me—I telephoned to the hospital first, then Miss Speicher, and I got the wrong number first in my excitement and had to call up again.

Q. Yes. And you telephoned for another nurse to take your place, did you not, by the side of your wife? A. Yes, sir.

Q. To take the place that you felt and the doctor felt you were incapable of filling? A. Yes, sir.

Q. Then, what did you do if you can recall, before you went back into the room? A. Went back into the operating room?

Q. Yes. A. Why, I didn't go back in there. I just stood at the door and told the doctor.

Q. I thought you said you passed through to go to the furnace? A. It was after that.

Q. Did you do anything more besides these four telephones? A. I cannot recall anything else.

Q. That occupied the interum then? A. Yes, sir;

Q. Then you went through to go to the furnace? A. Yes, sir.

Q. And what they were doing you don't know? A. No; I couldn't stand to look at them, no.

Q. Did you look at them at all? A. No.

Q. Were they there? A. Why, I presume they

were there. I didn't see them go out. I saw, of course, figures, but I mean to say I looked away from my wife.

Q. Looked away? Did you see Dr. Simmons there? A. I saw him at the house, yes, sir.

Q. Did you give him information on the death certificate? A. No, sir; I didn't say anything to him, no.

Q. Sure about that? A. I am sure. He simply asked —the only conversation I had with Dr. Simmons was when he left. He asked me if I wanted to ask any questions.

Q. You talked with him, did you? A. Yes, sir. I said only—

Q. You talked with him? A. Yes, sir.

Q. And you said your wife was buried from her mother's home on Elm Street, this City? A. Yes, sir.

Q. When was the body removed? A. She died—my wife died on Tuesday and it was removed Wednesday morning.

Q. About what time? A. Why I should say about nine or possibly a little before.

Q. Were you there at the time? A. The doors were shut so that I could not see the embalmers.

Q. Were you there at the time? A. Yes, sir; in the house; yes, sir. Mr. Spowers was with me at that time.

Q. Where did you spend that night? A. In my home there, 71 Valley Road.

Q. What time did the undertaker get there? A. Why, I imagine about seven o'clock; I can't say exactly.

Q. Do you know who it was that embalmed your

wife's body? A. I don't know. I left that to my brother-in-law to take care of that,

Q. Mr. Wolf? A. Frederick Wolf.

Q. When you spoke of somebody coming there about seven o'clock you refer to the man who did the embalming? A. I don't know whether he did or not. They said they were the undertakers.

Q. I mean that evening? A. Yes, sir.

Q. Did you see any of the nurses leave? A. Yes, sir. I saw them all go because I remember saying something to them.

Q. Who left first? A. Why, I only saw Miss Speicher and Miss Regan leave.

Q. What time of the day did they quit? A. I imagine it must have been four o'clock or around that time; possibly a little earlier.

Q. You don't know? A. I don't know. I couldn't place the time.

Q. Did you see Miss Cox leave? A. No.

Q. Dr. Young remained there how long? It was after Simmons came? A. Yes, sir; he stayed until after Dr. Simmons left.

Q. And that was about how late, Dr. Young remained there? A. I should say about five o'clock.

Q. Did you see Dr. Bunn? A. Yes, sir.

Q. How soon did he get there after Miss Speicher got there, pretty promptly, didn't he? A. I don't know; it was after.

Q. What? A. It was after.

Q. You didn't go out, I suppose that afternoon or evening? A. You mean out of the house?

Q. Out. A. Why, about—sometime that evening—I have forgotten just when it was. I went around the front and went around the back—I

didn't want to go through where my wife was—and I fixed the furnace.

Q. Who was there besides you after Dr. Young left before the embalmers arrived? A. Mrs. Wolf, Frederick Wolf, my mother came over—

Q. Your mother? A. Yes, sir.

Q. Anybody else or was that all? A. Why, sometime the other two brothers came up, I don't know just when they came.

Q. What time did the embalmers or undertakers leave? A. I don't know. I didn't see them leave, not that I recall. I may have instinctively seen them but I don't remember anything.

Q. Did your mother-in-law and brother-in-law remain all night or did they go home? A. One of my brother-in-laws stayed all night and my mother-in-law.

Q. And your own mother, did she go away? A. She went home to her own home.

Q. You slept home? A. No, I slept at 71 Valley Road, that at that time was my home.

Q. You spent the night there? A. Yes, sir.

Q. Do you recall any inquiries made by Fred Wolf to you concerning Dr. Young's automobile? A. Yes, sir.

Q. When was that made? A. That was made while Dr. Simmons was there.

Q. And Dr. Young and Dr. Simmons were in the room? A. They were in the—they were out in where the body was.

Q. What is that? A. They were out in the back room— in the kitchen.

Q. And where were you and Fred Wolf? A. In the front room.

Q. What did he say? A. Why, he asked me if

that was Dr. Young's automobile and he asked me if he had a big practice and whether that was his house.

Q. Whether what? A. If he owned his house.

Q. This was while Dr. Simmons and Dr. Young were still in the death chamber? A. Yes, sir.

Q. Did you know at that time that your wife was dead? A. Yes, sir.

Q. And Fred knew it? A. Yes, sir.

Q. Do you remember anything more that Mr. Wolf said along that line we have just referred to?

Mr. Mott: I object.

The Court: How is this competent?

Mr. McCarter: It is one of the transactions of that afternoon.

The Court: That doesn't make it competent; unless it is a part of the direct-examination.

RE-DIRECT:

Q. Mr. Truesdell, did you fall to the floor at any time? A. Yes, sir. As I say, it wasn't that I fell from physical weakness at that time, except after my wife—after my wife died and after I was told that I stumbled into the—

Q. Before you heard the fact that your wife was dead did you fall to the floor? A. Yes, sir.

Q. Did you fall from weakness or did you fall for another purpose? A. Why, I fell not from weakness no, I had been walking around before and I—

Q. It was not from weakness? A. No.

Q. How did you come to go to the floor? A.

Why, the operation had gone on quite a little while and I was naturally worried.

Q. How did you come—A. I was worried and I fell in prayer.

Q. You were asked whether you dropped on the sofa or lounge, do you remember that? A. Yes, sir.

Q. Do you remember that? A. Yes, sir.

Q. At one time, did you? A. Yes, sir.

Q. Did you do that before or after you heard of the fact that your wife was dead? A. It was just before. When Dr. Bunn came, I knew that something serious had taken place and I simply went to pieces.

Q. And at that time was the time you fell to the floor or when you dropped on the couch? A. Yes, sir.

Q. Did you go anywhere with your wife on Saturday night previous to this operation?

The Court: That is not re-direct.

Mr. Mott: That is true, it is not.

The Court: You object because it is not re-direct?

Mr. McCarter: Yes.

The Court: You offer it as opening new matter?

Mr. Mott: Yes.

The Court: Go ahead.

Q. Did you go any place Saturday night previous with your wife? A. Yes, sir; I took her to New York.

Q. Alone or in company? A. I went over alone; just she and I together, of course, and I took her to the Hippodrome, then we went uptown and had dinner at Pabst, 125th Street and went to the

moving pictures and then came down town and met some others.

Q. You met some friends? A. Yes, sir.

Q. Who were they? A. Friends of my wife. One was Miss Thubel, one was Mr. Atwater; one was Miss Gertrude Thubel, and one was Miss Elsie Thubel. O don't know—there was another fellow—I don't recall his name.

Q. What was her physical condition that night? A. Why, she was very well that day and she was acting well.

Q. Do you know whether or not your wife had anything to eat on the day of the operation? A. She didn't have anything to eat, no, because Dr.—

The Court: Never mind that. How could he say that? He has got to say where he was and what he did. If he went to work at his office and was away from the house he cannot say whether she ate anything or not.

Q. Were you home at breakfast? A. She didn't eat anything at breakfast. She usually had three meals a day.

The Court: Were you out of the house in the morning and out of her company?

Witness: Yes, sir.

The Court: During what time?

Witness: From just before nine until around ten—a little after ten.

The Court: While you were there she did not eat anything?

Witness: No.

The Court: You have referred to something, Doctor, which you have described as a loop, and you said it was round and perhaps like a tube that

was collapsed and possibly eliptical in shape, and it was the size of your little finger. Now, was it continuously throughout its whole length of the same diameter or were parts of it smaller or larger?

Witness: Why, as I remember it, your Honor, it was the same throughout.

The Court: It was the same length—throughout the whole length, the same diameter?

Witness: Same general appearance, yes, sir.

The Court: I think before the doctor goes there ought to be something on the record as to the size of his little finger. Little fingers differ. Towards the end of your little finger?

Witness: As I say, your Honor it was about that size; about the same all the way through.

The Court: What do you say that is, about three-eighths of an inch?

Witness: About half an inch.

The Court: Don't measure it around, measure it in diameter.

Witness: Eight-sixteenths. It is a full half inch, your Honor.

ANNA WOLF sworn for the State.

Direct-examination by Mr. Mott:

Q. Mrs. Wolf, where do you live? A. Where do I live? Three hundred Elm Street, Newark.

Q. You were the mother of Emma C. Truesdell? A. Yes, sir.

Q. Were you present at Dr. Truesdell's house

on the day the operation was performed, 15th of February, last? A. My daughter's home?

Q. Yes. A. Yes, sir.

Q. What time did you get there, Mrs. Wolf? A. Eleven o'clock.

Q. And what did you see to be the condition of affairs when you got there? A. Well, my daughter seemed to be well.

Q. That was before the operation began? A. Before the operation began, yes, sir.

Q. You saw your daughter? A. I spoke to her.

Q. You saw her? A. Yes, sir.

Q. And talked with her? A. Yes, sir.

Q. And her physical condition seemed to be what? A. Good.

Q. Well, now, you were not present at any time during the operation; were you in the kitchen? A. No.

Q. You saw nothing of it? A. Saw nothing.

Q. Before the operation—just before the operation what was Emma doing? A. Why, she was talking about the dance on Monday she was supposed to go to and she got up and she played the piano.

Q. How long did you stay there at her house that day? A. Why, I stayed—I was there all day and all night.

Q. You saw the body of Emma that night, did you or didn't you? A. Yes, sir; I did.

Q. When did you first see the body of Emma after the operation? A. After the undertakers were through with it.

Q. Where was the funeral held? A. At my home 318 Elm Street.

Q. You saw her body there? A. Yes, sir.

Q. Where was she buried? A. Fairmount Cemetery.

Q. In what lot? A. In our own private lot.

Q. "Our;" you mean what? A. Our plot.

Q. You mean the Wolf? A. Wolf plot, yes, sir.

Q. Do you know in which part of your lot she was buried, can you tell us at all? A. To the left of her father.

CROSS-EXAMINATION by Mr. McCarter:

Q. Where did the undertakers prepare the body? A. At her home in Montclair.

Q. In what room? A. Kitchen.

Q. Did you see the undertaker? A. Why, I seen the assistant.

Q. What is that? A. The assistant.

Q. The assistant? A. Yes, sir.

Q. What is his name? A. I couldn't tell you.

Q. Don't know. Were there two men there? A. Yes, sir; I believe there were. I am not sure.

Q. Who summoned them? A. Why, Mr. Truesdell told my son to attend to it.

Q. Your son summoned them? A. Yes, sir.

Q. Which one? A. Fred.

Q. And at what time did the undertakers arrive? A. Well, I believe it must have been near five or after five. I know it was late in the afternoon, very late.

Q. Well, it was later than five o'clock; wasn't it? A. Oh, yes; I believe it was.

Q. Dr. Young had left? A. Yes, sir.

Q. Some time hadn't he? A. Yes, sir.

Q. Was your son there when the undertakers arrived? A. Yes, sir.

Q. Did he remain while they were there? A. Yes, sir.

Q. Did he go in the room with them? A. No, sir.

Q. You are sure about that? A. I am sure about that.

Q. He was with you all the time? A. Yes, sir.

Q. Do you know where your son was all the afternoon? A. All the afternoon, why he was at his office until I called him up.

Q. After he came there? A. Oh, he was up with me.

AUGUST MAIER sworn for the State:

Direct-examination by Mr. Mott:

Q. Where do you live? A. Thirty-one William Street.

Q. And your business is what? A. Funeral director.

Q. Did you conduct the funeral of Emma C. Truesdell? A. I conducted the funeral, yes, sir.

Q. Were you present at the—where was the funeral held? A. Three hundred eighteen Elm Street Newark.

Q. Where was the body when you first saw it or had anything to do with it? A. At the house in Montclair.

Q. Did you go up there the next morning and get the body? A. I went up the next morning? My assistant attended—

Q. Did you go up there the next morning and get the body? A. Yes, sir.

Q. Where did you take the body? A. Three hundred eighteen or three hundred sixteen—I don't know just what it is—three hundred eighteen Elm Street, Mrs. Wolf's house.

Q. Did you have anything to do with the burial of the body? A. I buried the remains.

Q. Where did you take them to? A. Fairmount cemetery.

Q. Do you know whereabouts? A. On Mr. Henry Wolf's lot.

Q. Do you remember on what part of the plot? A. To the left of her father.

CROSS-EXAMINATION by Mr. McCarter:

Q. Who was the assistant that prepared the body? A. Mr. Julius Roemmele.

Q. Who else? A. And Edward Adler, the assistant.

JOHN W. GOOD, sworn for the State:

Direct-examination by Mr. Mott:

Q. Mr. Good, where do you live? A. Four hundred fifty-three South Orange Avenue.

Q. What is your business? A. Superintendent of Fairmount cemetery.

Q. Did you have anything to do with the burial of the body of Emma C. Truesdell in the Fairmount cemetery? A. Had the grave to open.

Q. Did you open the grave? A. Yes, sir.

Q. Whereabouts was the grave that was opened for her body? A. On lot six.

Q. Six, in what lot? A. In Henry Wolf's lot.

Q. Whereabouts in Henry Wolf's lot? A. Front right corner.

Q. Do you know next to anything? A. It was in the corner of the lot. It wasn't next to any grave particularly—no.

Q. Did you have anything to do with taking up that body? A. Yes, sir.

Q. What was that? A. We removed the body.

Q. What body did you remove subsequently? A. Emma Truesdell's body.

Q. When was her body disinterred? A. On the 3d of March.

Q. And where, if you know, was it taken after it was disinterred? A. They said it went to Mullin's Morgue.

Q. Then you should have said you didn't know. Do you know who received the body at the cemetery? A. A wagon from Mullin's morgue.

Q. At the time it was disinterred—that is you took it up—and I suppose they took coffin and all away, is that what was done? A. Yes, sir.

CROSS-EXAMINATION by Mr. McCarter:

Q. Mr. Good, I just want to ask you one question. Do you remember what kind of a casket it was? A. It was a white casket.

Q. Wood or metal? A. No, it was brocade cloth —plush cover.

Q. You don't know what material it was made? A. No, sir; I presume it was wood.

WILLIAM A. LANG, sworn for the State:

Direct-examination by Mr. Mott:

Q. Where do you live? A. 18 Norfolk Street.

Q. What is your business? A. Undertaker's assistant.

Q. For whom are you undertaker's assistant? A. Joseph J. Mullin.

Q. On the 3d of March, last, did you go in your capacity as an undertaker to the Fairmount Cemetery? A. Yes, sir.

Q. What did you do there? A. I went up and got the remains of Emma C. Truesdell.

Q. Where did you take them? A. Down to Mullin's morgue on Washington Street.

Q. And where were they placed in Mullin's morgue? A. In the parlor.

No cross-examination.

DR. M. HERBERT SIMMONS, sworn for the State:

Direct-examination by Mr. Mott:

Q. You are the Deputy County Physician, are you? A. Yes, sir.

Q. On the 15th of February last were you called to the Truesdell house in Montclair? A. Yes, sir.

Q. About what time did you get your summons to go? A. Why, there was a message came about three o'clock probably—I couldn't say exactly—but around three o'clock to call up Dr. Young.

Q. To call up who? A. Dr. Young—gave the number—the telephone number. I didn't get in

until nearly four and I went over there immediately.

Q. You went over where? A. Montclair.

Q. Where? A. 71 Valley Way or Valley Road.

Q. That was the Truesdell home? A. Yes, sir.

Q. Whom did you find when you got there—or about what time was it when you got there? A. Why, I think it was about 4:40. I took the trolley over and it took me some time on account I didn't go with my machine—the weather—going was bad. I think it was about that time. It took me at least a half hour to get over there by trolley.

Q. Who did you find there? A. Why, Dr. Young met me at the head of the stairs.

Q. And then what did you and Dr. Young do? A. We went into the kitchen where the body was and there were two nurses there.

Q. Do you know who they were? A. Why one was Miss Spiker, I believe, and the other one I have forgotten the name. I heard it at the time. But there were two anyway.

Mr. McCarter: Was the name of the other Miss Regan?

Witness: Yes, sir; I imagine—I think so.

Q. Well, after you got into the kitchen what did you do—what was done? A. Dr. Young said that he had the permission from the husband to hold an autopsy, and he was dressed for the occasion and he asked me if he should make the incision. I told him he could.

Q. Well, did he? A. Yes, sir.

Q. What did he do? A. Why he cut down over the uterus and exposed the uterus.

Q. Where did he make the incision, Doctor, on the head? A. In the abdominal cavity.

Q. Tell us where the incision was made. A. Yes, sir.

Q. Where was it made? A. Over the uterus in the abdominal cavity.

The Court: Front or back or where?

Witness: Front.

Q. How much of an incision was made? A. Why, I should imagine five—six—seven inches. I didn't measure it.

Q. And after the incision was made what was done? A. There was a little blood wiped up with some cotton.

Q. Blood where? A. In the abdominal cavity.

Q. Who did that? A. Dr. Young.

Q. What else was done? A. He opened the laceration in the uterus and exposed a large gaping wound. He exposed the uterus and the laceration which showed a tear across the top and down the side of the uterus, with a piece of gauze in the uterus—in the neck of the uterus.

Q. Well, what else did you two men do there? A. As soon as that was done he asked if he should sew up the wound and I said yes and he sewed it up.

Q. And then what was done? A. That was all. After he had sewed it up he followed me out into a room just at the head of the stairs and we talked there a few minutes and I went home.

Q. Did you or he at that time remove anything from the body? A. Absolutely nothing.

Recess.

Q. Doctor, before the body was opened and incision made by Dr. Young did he say anything

to you? A. Why, he said he thought he had ruptured the uterus.

Q. And what else? A. That was about all. That was all he said. That was all he said at that time.

Q. Did he at any other time say anything?

Mr. McCarter: When?

Q. Right there at the time of the autopsy? A. No, sir.

Q. Nothing said as to the—what was removed? A. Absolutely nothing. Well, I asked him if he got anything out of the uterus and he said very little.

Q. When the incision was made did you look at the body at all—examine it? A. Certainly I looked at it.

Q. What did you see? A. I saw the uterus.

Q. Anything else? A. Looked at the uterus and ovaries, that is all.

Q. That is all you examined? A. That is all I examined.

CROSS-EXAMINATION by Mr. McCarter:

Q. How long have you been Assistant County Physician, Dr. Simmons? A. Five or six years—six or seven—five or six—I don't know just how long.

Q. Where did you receive your medical knowledge? A. In Albany.

Q. What school? A. Albany Medical College.

Q. How long have you practiced medicine? A. Over thirty years.

Q. In this County? A. No, sir.

Q. Before you came here where were you? A. In New York State.

Q. How long have you been in this county? A. Twenty-five years, I guess.

Q. Practice all that time? A. Yes, sir.

Q. Had a good general practice? A. Yes, sir.

Q. You conduct autopsies, yourself? A. No, sir; not complete autopsies.

Q. Well, incomplete autopsies? A. Why, the only work that I have is accidents—trolley accidents, fractured skulls, bones but complete autopsies I never do.

Q. I suppose you have made complete autopsies? A. No, sir.

Q. Never have, eh? A. I don't remember ever making a complete autopsy.

Q. Now, I understood you to say that while you were out that day attending to business, on the 15th of February, word came to your house, as you understood it, that you should at once ring up Dr. Young? A. Yes, sir.

Q. And that you did not get in until about four o'clock? A. I think it was about four o'clock.

Q. And whom did you then ring up? A. Why, I rang up the number he gave at 71 Valley Road.

Q. And that turned out to be this place? A. Yes, sir.

Q. And he asked you to come right up there? A. Yes, sir.

Q. And told you that he had had a death? A. Accident or death.

Q. You knew before you got there that the party was dead? A. Why, I surmised so, yes, sir.

Q. When you reached there you say he met you at the head of the stairs and told you that he had the husband's permission to perform an autopsy? A. Yes, sir.

Q. So that that had been procured before you reached there? A. Yes, sir.

Q. And you then went right into the room? A. Yes, sir.

Q. Who were in the room? A. The doctor—Dr. Young—and the two nurses.

Q. When you say "and two nurses," Miss Spiker and Miss Regan? A. Yes, sir.

Q. Do you remember examining the instruments? A. He showed them to me. I did not examine them.

Q. You looked at them? A. Yes, sir.

Q. And thought they were proper instruments for such an operation that he was performing? A. No, sir; I didn't think anything about it.

Q. What? A. I didn't think anything about that. He showed me the Whiley dilater and the curet.

Q. Did you learn what the operation was supposed to be? A. He said—

Q. Will you answer my question. Did you learn what he had started in to operate for? A. Yes. sir.

Q. What was it? A. Removal of a dead fetus.

Q. Dead fetus. Well, do you know what instruments he had to use in a case of that kind? A. Well, that depends upon who is doing it. There is a difference of opinion. One man may use one thing and another man may use another.

Q. Very good. Now, as I understand it, you suggested that he should make the incision in her abdomen? A. He asked if he should make the incision and I said he could.

Q. You watched him? A. Yes, sir.

Q. And you told him to make it larger, did you not? A. Yes, sir.

Q. Where was the incision? Between what points did the incision go? A. Why, the pubis, that is the pelvis, over the bladder or uterus up to somewhere around the navel.

Q. The what? A. The navel.

Q. Was it all the distance between the pubis and the navel? A. Why, I wouldn't say it was all the distance but I didn't measure it.

Q. Do you remember asking him to make it larger than he first did? A. He made it slightly larger, yes, sir.

Q. At your request? A. Yes, sir.

Q. About how long was this incision as finally made? A. I don't know.

Q. Oh, well,— A. It may have been five or six inches.

Q. And after he made it did he throw back the skin? A. I don't remember that he did.

Q. Well, could you see in without throwing back the skin? A. It was pulled apart.

Q. Pulled apart. How far did he pull it apart? A. Pulled apart over the uterus.

Q. How far did he pull it apart? A. I don't know how far; he pulled it apart enough to expose the uterus.

Q. How far is that? A. Well, three or four inches.

Q. Three or four inches. Three or four inches then of this incision—three or four inches were pulled away from the opening, is that right? A. Yes, sir.

Q. Did you examine in there? A. No, sir.

Q. Eh? A. No, sir.

Q. Didn't look in there? A. I looked in there but I didn't touch the parts.

Q. I didn't ask you if you touched—you looked in? A. I looked in.

Q. Did you see anything but the uterus? A. Saw tissue, yes, sir.

Q. What? A. I saw tissue, yes, sir.

Q. What tissue do you mean? A. Well, peritoneum.

Q. Yes. What else? A. I didn't see anything else. I didn't notice anything else. I wasn't looking for intestines.

Q. You did not look for the intestines? A. No, sir.

Q. Well, could you see the uterus without seeing the intestines? A. Yes, sir.

Q. Because the body was— A. It was tilted up.

Q. What? A. It was tilted up.

Q. That would throw the intestines back, is that your idea? A. Why, naturally.

Q. You didn't look back then to see if the intestines were there, did you? A. No, sir.

Q. No. If the body were horizontal and the intestines were there, you could not have seen the uterus without seeing the intestines, could you? A. Not very well.

Q. If you did see the uterus and did not observe the intestines they may have been shoved back by the fact that the feet were elevated? A. Well they were not elevated very much, not enough to throw them back that distance.

Q. Well, you do not say you did not see the intestines, do you? A. I didn't observe the intestines, no, sir.

Q. Did you look for them? A. I don't know that I did. That was—

Q. No, no. You say that a little blood was

wiped up with cotton. Won't you describe what you mean by that? A. He took some cotton and put it in the cavity and soaked up some blood.

Q. The cavity wasn't full of blood, was it? A. No, sir.

Q. The only blood that you saw was on the piece of cotton that you put into the orifice that he opened and brought out on the cotton that he brought out? A. Yes, sir.

Q. Just a little soaking of that piece of cotton? A. Yes, sir.

Q. That is all the blood that you saw? A. Yes, sir.

Q. Who touched the uterus? A. He did. He opened the uterus.

Q. Who, doctor? A. He drew it apart where it was torn.

Q. Did he remove the uterus? A. No, sir.

Q. In its location? A. No, sir.

Q. He simply did what? A. Just opened the tear so that I could look into the uterus and see cotton in there.

Q. So that you saw the cotton through the opening that he— A. Yes, sir.

Q. Eh? A. Yes, sir; through the tear.

Q. Through the tear? A. Or gauze, rather; it wasn't cotton.

Q. You felt satisfied with the extent of the so-called autopsy? A. Well, as I say, I don't make—

Q. Did you feel satisfied? A. At that time; yes, sir.

Q. You told him to sew up the orifice? A. Yes, sir.

Q. Did you see him sew it up? A. Yes, sir.

Q. He did it in the regular way? A. Yes sir.

Q. Continuous stitch? A. Yes, sir.

Q. The nurses were there? A. Yes, sir.

Q. Now, you went down to the Chief of Police's office after you left this house, didn't you? A. Yes, sir.

Q. And do you remember telling the Chief—talking to the Chief about this thing? A. Yes, sir.

Mr. Mott: Which Chief is this?

Mr. McCarter: Chief of Police of Montclair, Gallagher.

Q. And do you remember telling Chief Gallagher on that occasion that there was a break in the uterus but that you were glad to say there was no blood in the abdomen? A. No, sir.

Q. You deny that you said that? A. I don't remember saying it. I may have said it. I don't remember.

Q. It was true, wasn't it? A. I guess so.

The Court: Do not guess, Doctor. State your best recollection. You already said there was some blood in the abdominal cavity.

Witness: Oh, yes, some.

The Court: Now, you have said there wasn't.

Q. I ask you now if you told Chief Gallagher on the occasion in question there was no blood in the abdomen and that the absence of blood looked good for Dr. Young? A. No, sir.

Q. Sir? A. No; I don't remember saying that.

Q. Will you say you didn't? A. I don't remember saying it.

Q. Well, you told us to-day the extent of the blood that you did observe? A. Yes, sir.

Q. Now, you signed a death certificate, didn't you? A. Yes, sir.

Q. And as cause of death you stated "Hypodermic of H. M. C., four ounces of ether and shock," did you not? A. Yes, sir.

Q. Did you mean that to be correct? A. As far as—

Q. Did you mean that to be correct? Will you answer my question? A. Practically, I thought so.

Q. Practically or unpractically? A. I thought it was correct.

Q. You thought it was correct? A. Yes, sir.

Q. It was part of your duty to make that certificate, wasn't it? A. Yes, sir.

Q. You have made out a great many certificates? A. Yes, sir.

Q. You know what is on the back of them? A. Yes, sir.

Q. You are familiar with the fact that for violent deaths you are required to state the means of injury and qualify as to accident, suicidal or homicidal or probably such, if impossible to determine? You knew that, didn't you? A. Yes, sir.

Q. And with that knowledge you made the certificate which reads "The cause of death was as follows: Hypodermic of H. M. C., four ounces of ether and shock"? A. Yes, sir.

Q. Yes. You further say, as a contributory cause, "Rupture of uterus and injury to the soft parts from curetting," don't you? A. Yes, sir.

Q. That is correct too? A. Yes, sir.

Q. Curetting means scraping the inside of the womb doesn't it? A. Yes, sir.

Q. And the soft parts you refer to were the soft parts inside of the womb? A. Yes, sir.

Q. So that in your opinion, after that autopsy, the primary cause of this woman's death were hypodermic injection of H. M. C., four ounces of ether and shock, is that correct? A. Yes, sir.

Q. And the contributory causes were, rupture of the uterus and injury to the soft parts of the uterus from curetting? A. Yes, sir.

Q. Can you tell us how the uterus lay as the doctor and you examined it? A. In a normal condition.

Q. Yes, and that is what, Doctor? A. In the cavity.

Q. I don't suppose it was in the head. Well, lay down in the cavity where it belongs.

Q. How did it lie there? How did it lie? A. Well, I would like to have you explain.

Q. What? A. I would like to have you explain what you mean by that? It was in the normal condition.

Q. These twelve men on this jury are not doctors and I am not a doctor and the Judge isn't a doctor and Mr. Mott isn't. We are not as used to these things as you are. I want to know how that uterus or womb lay when you observed it? A. Well it laid in a horizontal position.

Q. Yes. A. And down in—the neck of course in the vagina and the body of it up in the peritoneal cavity.

Q. Where was the tear? A. At the top of the fundus, extending down to the side.

Q. This uterus was about how big? A. I don't know. I did not measure it.

Q. You saw the uterus, didn't you? A. It may have been three and a half to four inches long.

Q. And it was—which side of the uterus was torn? A. It was torn at the top.

Q. What shape? A. Pear shape.

Q. Left side or right side as it lay exposed? A. Right side—well, both sides.

Q. Both sides? A. Yes, sir; it was torn over both sides—over the top.

Q. I am trying to find this tear. Here is a pear shape body that is round like a pear (indicating)? A. The larger part of it was torn.

Q. That lies with the larger part up or down? A. Up.

Q. Up. Now, it lay there like a pear, the larger part up. Which side of the pear as you looked at it had the rupture? A. I think it was the right. I am not—I wouldn't be positive. It was the top at the right more particularly, I think.

Q. The top and the right? A. I think so. I wouldn't be sure about that.

Q. Sure about that? A. I wouldn't be sure about that.

Q. Why aren't you sure? A. I think so.

Q. How did you look into this uterus? A. Why, he opened it.

Q. What? A. He pulled up the top of it,—took hold of the top of the tear and pulled it up.

Q. Lay it aside? A. Drawed it apart.

Q. Did he lay it aside the way he laid aside the body? A. No; just took hold the top of it and just raised up the top that was torn, separated.

Q. Pulled up the top that was torn? A. Yes, sir.

Q. With what? A. With his hand,—fingers.

Q. And then you saw what? A. The gauze in the neck of the uterus.

Q. In the neck of the uterus? A. Neck of the womb. Piece of gauze.

Q. In the neck of the womb? A. Yes, sir. It extended out into the body of it.

Q. Where were your eyes at this time? A. It extended out into the body—

Q. Where were your eyes at that time? A. I was looking right at it.

Q. And you say you could see when the thing was not open? A. When it was open. When it was opened and when he opened it I saw the gauze.

Q. Did he stretch the parts apart? A. Pulled the top of it up that was torn.

Q. The uterus was closed first, wasn't it? A. Yes, sir.

Q. And muscularly it stays closed unless you open it, don't it? A. Yes, sir.

Q. You say by raising one side up, one lip up, you can see in? A. He raised the top of it up—the top of the uterus—the upper part of it.

Q. How did he take hold of it? A. Why, took hold of the tear and raised it up so that you could see the gauze in it.

Q. Well, do you mean to say that he tore it before you? A. No, sir.

Q. He made no further tear? A. No, sir.

Q. Now, here is a little thing about as big as a pear, you say, with a cut in the top. A. I said it was pear shaped.

Q. How big is it, three or four inches? A. Oh, yes; three or four inches.

Q. With a cut on which side? A. Extending, I think, down the right side.

Q. How long was the cut? A. Why, it may have been three or four inches long.

Q. How long? A. Three or four inches it might have been.

Q. Was it? A. I should imagine so.

Q. I am not asking you what you imagine. I am asking you what you remember. A. I didn't measure it but I should think it was three or four inches long.

The Court: Was it a cut or a tear?

Witness: It was a ragged tear.

Q. A ragged tear? A. Yes, sir.

Q. Well, you think by pulling up one side of the tear— A. The upper part, not the side—the upper part.

Q. Upper part? A. Yes, sir.

Q. That is one side of the tear, isn't it? A. Yes, sir.

Q. You think by pulling up the upper side of a tear in a thing that remains mechanically shut you can look right through that thing? A. You didn't have to look through it. You can look into it certainly, by opening the tear you could look into it.

Q. You say he didn't stretch it apart? A. Why, he drew up the top of it.

Q. Drew up the top. Did you ever see in your life, in the course of your professional career, at an autopsy, a body completely eviscerated? A. No, sir.

Q. If this body had been completely eviscerated, that is all its intestines been taken out and you had known it, you would have said so on the certificate, wouldn't you, Doctor? A. Why, if I had seen it, yes, sir.

Q. Yes. That would have been as absolute a cause for her death as you could imagine wouldn't it? A. Yes, sir.

RE-DIRECT-EXAMINATION by Mr. Mott:

Q. In making this observation of the body there how far were you guided by Dr. Young's statement that he had taken little or nothing out of the uterus? A. Entirely.

Mr. McCarter: One moment. I object.

The Court: Objection sustained. The Doctor may, however, of course, state upon what he based his certificate of death. But this question is altogether too leading and assumes something that has not been stated, that he relied upon the Doctor at all.

Q. In making your observations there did you rely upon Dr. Young's statement that he had taken nothing or little out of the uterus?

Mr. McCarter: I object to the question as leading.

The Court: Objection sustained. It does not appear that the doctor has said that.

Mr. Mott: Dr. Simmons has testified to that.

The Court: I do not so understand it. I understand that Dr. Simmons testified that Dr. Young told him that he punctured the uterus. I do not understand that Dr. Simmons has said that Dr. Young told him that he had taken nothing out. If he did so state then I am in error.

Q. Did you so state, Doctor? A. Yes, sir.

The Court: That is the fact, is it?

Witness: Yes, sir.

Mr. Mott: May I repeat my question?

The Court: The objection is sustained on the ground that it is leading. He did not say he had taken nothing out. He said he

got very little out according to my notes. Anyway the question is highly objectionable because it is leading.

Q. You in your certificate of death mentioned "H. M. C."? A. Yes, sir.

Q. What is H. M. C.? A. Why, the H. stands for hyoscin the M for morphine and the C is for cactoid.

Q. From what source did you get the information that caused you to include H. M. C. in the death certificate as one of the causes of death? A. He said—when I asked what had been given he said he had used the full dose of H. M. C.

Q. Mr. McCarter read to you from what he said was the back of the certificate about cause of death regulations relating to violent death. Do you class death on the operating table at the hands of a regularly liscensed physician as violent death? A. No, sir.

The Court: He may state upon what he did base his statement as to the causes of death, but he cannot be lead as to that.

Q. Upon what did you base your statement of the cause of death? A. Well, from the fact that the doctor told me that he got very little out of the uterus, that he had used the H.M.C. and that I did not see blood enough to cause hemorrhage.

Mr. McCarter: What?

Witness: Blood enough to cause death. I didn't think there was enough that you could attribute it to hemorrhage; and what the doctor said.

RE-CROSS-EXAMINATION by Mr. McCarter:

Q. Well, now, the doctor told you that previous to the anesthetizing of this patient he had had

a hypodermic of H.M.C. administered because, from a previous experience with her, she resisted ether didn't he? A. He didn't say anything about previous experience. He said she was highly excited and for that reason he used it.

Q. Have you ever used H.M.C.? A. No, sir; never used it.

Q. Do you know what it means? A. I know what it means.

Q. What is the medical term? A. Hyoscin 1.120 of a grain, morphine, quarter of a grain, cactoid,—I have forgotten the amount of that. It is a stimulent.

Q. It is a remedy well known? A. Yes, sir.

Q. Not fatal? A. Not that fatal, no, not the cactoid.

Q. You didn't see blood enough to cause death, did you? A. I didn't see it, no, sir.

Q. No. I suppose that when the body was cut into in your presence there was necessarily some flow of blood? A. There wasn't any flow of blood.

Q. Leakage of blood? A. No, sir.

Q. Would be no leakage? A. There was no leakage only what he wiped up with the cotton but that didn't leak out.

Q. What? A. That didn't leak out.

Q. Did you see him wipe it up? A. Yes, sir.

Q. Where did he wipe it up? A. In the cavity that he had opened.

Q. You saw him do it? A. Saw him put his hand in there and saturated the cotton with it and throw it in the pail.

Q. Saw what? A. Saw him saturate the cotton with it and throw it in a pail.

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Q. How do you know where the blood came from? A. I don't know where it came from.

Q. No. And do you mean this jury to understand that an incision six inches long into a human body so soon after death as this occurred could occur without exposing blood? A. Certainly.

Q. What? A. Certainly.

Q. Have you ever conducted an autopsy of the abdomen? A. Why, I—

Q. Have you ever conducted an autopsy of the abdomen? A. I don't remember, no.

WILLIAM H. HICKS, sworn for the State:

Direct-examination by Mr. Mott:

Q. Doctor Hicks, you are a practicing physician? A. I am.

Q. Are you a general practitioner or have you a specialty? A. Specialty.

Q. What are your specialties? A. Nervous and mental diseases.

Q. And besides that? A. At the hospital I was pathologist which lead me to make a great many autopsies and do a great deal of microscopic work.

Q. What experience have you had in microscopic work and pathological work? A. For fifteen years I did that work at the County Asylum; made a good many hundred autopsies and thousands of slides of the tissues of the body.

The Court: Which County Hospital was it, Doctor?

Witness: Essex County Hospital.

Q. Were you present at an autopsy performed on the body that—(I had expected to call Dr. Richman, who personally knew the deceased and was present at the autopsy to prove whose body it was.)—

Mr. McCarter: We have no reason to doubt that that was her body. Do not take up any more time on that.

The Court: Do you concede it or do you want the promise to be made that it will be proved? It is conceded unless the concession is subsequently retracted.

Mr. McCarter: Yes.

Mr. Mott: I will put Dr. Richman on and will ask him that question.

Q. Were you present at an autopsy performed at Mullin's morgue on the body of Emma C. Truesdell? A. I was.

Q. Who was present besides yourself, as physicians? A. Dr. Washington and Dr. Richman.

Q. When was this autopsy performed? A. On the 4th of March.

Q. After the autopsy was over did you take any of the organs away for further inspection and further examination? A. I did.

Q. What did you take? A. I took the uterus and its appendages, the bladder and a portion of the rectum.

Mr. McCarter: We cannot hear you.

Witness: I took the uterus and its appendages and the bladder and a bit of the rectum, a bit of the heart and kidneys.

Q. Where did you take these organs? A. I took the uterus and appendages and bladder and piece of rectum to the City Hospital to Dr. Martland.

Q. Since that time have you in connection with Dr. Martland made an examination of the uterus? A. We have.

Q. What examination did you and Dr. Martland make? A. Well, the doctor clipped out small pieces of tissues from the inside of the uterus, made frozen sections, stained them and mounted them for microscopic examination and we made such microscopic examinations.

Q. And what did that microscopic examination disclose? A. Disclosed evidence of pregnancy, in the form of decidual cells.

Q. From the presence of those decidual cells were you able to diagnose with certainty a condition of pregnancy? A. Yes, sir.

Q. Did you find other evidence of pregnancy beside the decidual cells? A. Well the corpus luteum was there but there was a little doubt about it.

Q. What is the corpus luteum? A. Well, it is the body that remains after the ovum has escaped from the ovary, after which it grows and develops with the formation of it—fairly characteristic—corpus luteum of pregnancy, but it may or may not—there is some little doubt about this being absolute, but there is no doubt about the cells.

Q. From your examination are you able to state whether or not this was a pregnant uterus? A. Yes, sir.

Q. It was? A. It was a pregnant uterus.

Q. Did you make an examination of the uterine walls? A. Yes, sir.

Q. How was that examination made? A. Why, sections were made of the uterine walls and examined microscopically.

Q. And what did that examination disclose as to the condition of the uterus? A. It showed that the decidual cells had penetrated the walls of the uterus.

Q. Did your examination disclose anything as to the condition of the uterine muscles? A. They seem to be some what hypertrophied.

Q. What does that mean? A. Little larger than normal, expanded with the enlargement of the pregnancy.

Q. I mean as to their condition of health or disease. A. Why, they seemed to be in health—they were healthy as far as I could see.

Q. Did you find anything wrong with the uterus when you examined it—I mean was it injured in any way? A. Yes, sir.

Q. Describe that. A. It had a lateral tear reaching from the left side of the cervix including the cervix,—the whole of the left side of the uterus and a part of the top or fundus of the uterus; it also had four small punctures—round holes—punctures in it.

Q. How long was this tear, Doctor? A. Why, it extended the entire length of the uterus and cervix and a part of the top of the uterus. The measurement of the uterus was four and a half inches, so that that tear was that whole length and a half an inch besides on the top.

Q. From your examination were you able to determine whether or not that tear was inflicted before of after death? A. It was before death.

Q. Why do you say that? A. Because there were hemorrhages in the edges of the wound.

Q. You examined the bladder too? A. I did.

Q. Did you find any injuries to that? A. There were punctures in the bladder.

Q. How many? A. Seven.

Q. How large? A. They were small punctures, I should think of about a quarter of an inch in diameter and there were two side by side at equi-distances apart—that is there were three tears, or punctures, and the third puncture was between two of those tears, forming a triangle of almost equi-distances.

Mr. Mott: That is all now, but I am going to recall Dr. Hicks a little later as to what occurred at the autopsy. I say that so you can have your cross-examination in whole or as you wish.

The Court: Going to recall him for what purpose?

Mr. Mott: To testify what was done at that autopsy and what the autopsy disclosed. I prefer to call another witness on that. The purpose of calling him at this time was to lay a foundation for certain testimony to be derived from the condition of the walls of the uterus.

Mr. McCarter: I think that I will make but one cross-examination.

HARRISON S. MARTLAND, sworn for the State:

Direct-examination by Mr. Mott:

Q. Doctor, you are a practicing physician of this county, are you? A. I am licensed to practice in this county, but I do not practice in the ordinary sense of the word.

Q. What position do you hold? A. Pathologist at the City Hospital.

Q. What experience have you had in the study and practice of pathology? A. I have devoted the last nine or ten years practically to pathology and nothing else. During that time I have done over 2,000 autopsies and made numerous microscopical examinations of all tissues from operation and autopsies; made numerous blood tests as well as the Waterman test—some six or seven thousand tests for syphilis and numerous blood tests for other conditions.

Q. That is your experience. What study did you have previous to that? A. I graduated from Columbia University in 1905 and had an internship at the City Hospital in New York and from there was connected with the Russell Sage Institute of Pathology and for the last six years have been connected with the City Hospital in Newark.

Q. Did you in connection with Dr. Hicks make a pathological or other examination of the organs of Emma Truesdell? A. I examined a specimen with Dr. Hicks last Monday night—a specimen containing the uterus, tubes and ovaries and bladder and portion of the rectum. I do not know—really I do not know the name from which this specimen came. I examined the specimen that Dr. Hicks brought to me.

Q. Will you state, Doctor, as fully as is necessary what your examination disclosed, and state both what you found from the naked eye and the use of the microscope and other instruments that you used? A. The specimen was contained in a jar containing, as Dr. Hicks told me, four per cent formalin.

Mr. McCarter: I object as to what the doctor told him.

The Court: You move to strike out the word "containing" and everything thereafter?

Mr. McCarter: Unless you know what it contained. Do you, Doctor?

Witness: The solution in the jar in which this specimen was contained was a watery solution, the color of ordinary water, and smelled strongly of formaldehyd.

The Court: Strike out the word "contained" and everything that follows it as to what the doctor told him. His own description of the liquid may remain.

Q. Doctor, is it at all necessary in your testimony to have the facts established as to what there was in the jar, what the prescription was—the solution was? A. I think it would be very important to establish the exact percentage of formaldehyd in the solution.

(Witness withdrawn.)

WILLIAM H. HICKS resumed the stand for further direct-examination:

By Mr. Mott: Q. The parts of the uterus and the other parts that you say you examined with Dr. Martland were contained in what? A. Contained in a glass jar.

Q. And was there anything in the jar besides the parts? A. Yes, sir; a solution of formaldehyd formalin.

Q. Do you know the per cent? A. Four per cent.

CROSS-EXAMINATION by Mr. McCarter:

Q. Did you put that in yourself, doctor? You put the formaldehyd in the jar yourself? A. Yes, sir.

RE-DIRECT:

Q. And did you tell that fact to Dr. Martland? A. I did.

The Court: I think that better go out, even though counsel do not object to it, because it does not make any difference whether he told it to him or not unless the doctor's action of some character is based on the information.

Mr. Mott: The doctor says it was important for him to know what the solution consisted of.

The Court: Go on.

Mr. Mott: Does it go out?

The Court: There seems to be no objection to your having it in.

HARRISON S. MARTLAND resumed the stand for further examination:

By Mr. Martland: Q. Now, doctor, assuming that the jar contained the solution that Dr. Hicks told you was there will you tell us what you did—what your examination disclosed, both from the use of the naked eye and from the use of the

microscope? A. I took the specimen out of the jar containing this solution and placed it on several sheets of clean paper and started to examine it with the naked eye, before doing anything else. The front part of the specimen contained the small bladder—the entire bladder of the woman—on opening this bladder there was a small opening made in the bladder, but on further opening the bladder and examining the inside of the bladder I was able to see that the mucous membrane of the bladder, the inner lining of the bladder, was everywheres normal, free and clear, as far as you could see with the naked eye. There were two or three—I think two— I know, in fact, of two small punctured wounds at the top of the bladder.

Mr. McCarter: Some what?

Witness: Small punctured wounds at the top of the bladder. These wounds were about a quarter of an inch in diameter. They were shaped like slits. The edges of these wounds contained no blood and I was quite positive that these wounds were made after death and I suggested to the doctor that—

Mr. McCarter: Never mind.

The Court: Never mind what you said to Dr. Hicks.

A. (Continuing) I took these wounds to be made by a trocar such as embalmers use in embalming a body—abdominal embalming—as the edges of the wounds contained no free blood, which is evidence that they were made after death. The bladder then being free and clear, I examined the uterus behind—lying behind the bladder. The womb measured four centimeters across the top,

that is from the beginning of one fallopian tube to the beginning of the other fallopian tube.

Q. Four centimeters, what is that in our language? A. Four centimeters is—just a minute—a little under two inches.

The Court: That is the dimension of what?

Witness: That is the width of the top of the uterus from the beginning of the fallopian tube to the beginning of the opposite fallopian tube. That is the width of the uterus at the fundus. In measuring the uterus from the top to the bottom or the cervix, that part of the womb which dips into the vagina, there was a measurement of six centimeters; that would be a little over two inches—two inches and a half.

Mr. McCarter: What?

Witness: Over two inches. On examining the vagina, or a portion of the upper part of the vagina that was cut off and still left attached to the womb, I found that on the posterior wall of the vagina there was a tear or separation in the mucous membrane—not entirely through the old vaginal wall—but a tear in the inner part of the vagina up next to the neck of the womb, about three centimeters in length—that again, three centimeters is a little over an inch—this superfical tear lead up to the cervix and the cervix was torn laterally on the left side, so that in the neck of the womb there was a left lateral tear. This tear extended up the left side of the womb going into the broad ligaments on the left side. The tear reached the top of the uterus going the entire left length of the uterus—extended to the top of the uterus and as it reached the top it became widened out, so that the left anterior

wall of the uterus—of the womb—at its summit—at the fundus—was practically torn out—or there was a wide gaping tear there. The fallopian tubes on each side of the womb, which go from the womb to the ovaries, were, under the naked eye, apparently normal. The ovaries—the right ovary measured 3.5 centimeters by 2.5 by 1.5; in other words that would be a little over an inch by an inch by a little less than an inch in thickness. This is within the normal size of the ovary of menstruating women. The left ovary was slightly smaller. On sectioning both ovaries with a knife, the right ovary contained a corpus luteum cist with a yellow border, the border being somewhat bleached by the solution in which the specimen had been kept. The corpus luteum cist measured a little over a centimeter in diameter and was slightly reddish in the center. I next took the inside of the uterus, which was well hardened by—the whole uterus was well hardened by the hardening solution in which it had been kept—I took the inside of the uterus and examined it for any rough shags or pieces in which I could make a microscopic section to establish—prove that the uterus or womb was pregnant. The uterus was quite smooth but in places a little roughened, and at the top of the uterus—at the top of the uterus and near the top of the tear which was in the uterus I took a small piece of tissue which would include the inside of the womb and the muscle thickness of the womb and the coat of peritoneum over the womb and on microscopic examination it showed from this small section there that the muscle there of the uterus—the thick part of the womb—

composed of small muscle tissue—muscle fibres—were quite distinct and evidently hypertrophied—that is they were larger and more distinct and going in better bundles—having a better bundle arrangement than is seen in the non pregnant uterus. That is one microscopical feature a little in favor of pregnancy, although from the hardening of the specimen and so forth, I did not place much value on that. On the inner side of this microscopic section we found that the endometrium, or the inner lining of the womb, was entirely gone, so that we had nothing but pale muscle tissue on the inside of the womb. In about the middle of the muscular layer of the womb I found situated near the large vein a bundle of decidual cells—cells which were polyhedral in shape, which had large viscicular poor staining nuclei, and which showed a dark staining cytoplasma; these cells, some 60 or 70 were bunched in a mass deep in the muscular coat of the uterus. This very small group of cells lead me to state positively that this uterus is—has been recently pregnant. Further sections made from the edge of the tear in the womb all showed that the muscle coat of the uterus was in good condition; that is, there was no indication of any previous inflammation of the womb, although that is a little difficult to state because the inner lining of the womb, which is commonly inflamed first, was not there—however the edges of this tear in the womb showed the presence of red blood cells. In this ragged tear everywhere, at the edge of the tear, practically, where we made a section, that was evident. Also in the peritoneum over the top of the uterus there was a sub peritoneal hemorrhagic extravasation.

Mr. McCarter: That is too much for me.

Witness: That means that there was blood underneath the outer coat of the womb where it had sort of infiltrated from the tear in the womb. This proved to me that this tear in the left half of the womb running its entire length from the neck of the womb up to the top of the womb was made before death.

CROSS-EXAMINATION by Mr. McCarter:

The Court: I think you have told us about the uterus, tubes and the ovaries. Whether or not you found anything about the rectum, did you say?

Witness: In the specimen there was only a small piece of rectum attached to the specimen and as far as I am able, from the naked eye appearance, it was all right, that small piece of rectum that was attached to the back of the specimen.

Q. You found even in the small specimen that you had in your possession evidence that the undertaker had been at work, didn't you? A. I did—that is it was my opinion.

Q. Exactly. For instance you found the bladder affected with punctures that indicated to you the use of the trocar? A. I did.

Q. The trocar is an instrument the undertaker, in embalming the body or preparing the body for embalment, inserts it to take off the liquid, is that right? A. It is.

Q. Now, did you also find some evidence of the trocar in the uterus itself? A. I forgot to say that at the top of the uterus there looked like two similar perforations to me, and near the top of this large tear in the uterus—

Q. Yes, on the left or right side? A. On the top, about the middle.

Q. About the middle on top? A. Yes, sir; running perhaps to the right or left of the mid line.

Q. Now, won't you compare in length the tears that you found in the uterus, exclusive now of the trocar holes, on the right and left side? A. The tear in the uterus was practically only on the left side. At the top of the uterus it went over—crossed over to about the middle line of the uterus and there stopped, perhaps going just a trifle beyond the mid line of the uterus. That is it came up the left side of the uterus and at the top went over the top.

Q. Right angle tear? A. What is that?

Q. A right angle tear? A. It might be assumed somewhat the shape of right angle, not exactly.

Q. In other words it went up the left side and around the top to the center line? A. At the top it crossed over a little.

Q. You found no evidence then of a tear on the right side of the uterus—right of the center line? A. This tear on the top of the uterus may have passed just a trifle beyond the right line, but practically speaking it was all left side and the left half of the summit—of the top of the uterus.

Q. Now, what was the thickness of the walls of the uterus? A. The thickness of the wall of the uterus was about—I should say one centimeter. It varied in thickness. It is one and a little under one centimeter.

Q. Well, as to the specimen you examined under the microscope, that was how thick? A. That was practically the same thickness because it went entirely through that layer.

Q. About a centimeter? A. About a centimeter.

Q. That is a little less than an inch? A. No; it takes two and a half centimeters to make an inch practically.

Q. And I understood you to say that you found no—you found the muscle coat in good condition? A. I did.

Q. No inflammation? A. That meant, as I explained, practically no previous inflammation although I stated that—

Q. You have answered my question, doctor.

Mr. Mott: Hold on.

The Court: Finish your answer.

Witness: Although I stated that—

Mr. McCarter: I asked him if it meant—well, I do not want to cut the witness off, but I do think when I ask him a question he has no right to say that includes something else.

The Court: He has got to finish his answer before the Court can rule on it; then you can apply to have it stricken out.

Mr. McCarter: I asked him if that meant no inflammation.

The Court: He says, "Yes; although I stated that—"

Mr. McCarter: What he stated has nothing to do with it. You will see if you hear the question and answer he passed on—

Mr. Mott: It is a qualification of his answer and he has a right to finish the answer.

The Court: I am not going to rule on something we have not heard yet. You will have to finish.

Witness: I stated that the inner lining of the womb was practically missing so that I could not say absolutely that there was no previous inflammation.

Q. Well, you found no inflammation in any tissue that you examined, did you, doctor? A. No, sir.

Q. Now, these decidual cells that you spoke of, blood cells, have you any smaller word for decidual that comes down to the level of us poor lawyers? A. No; that is the only name I know of that will describe—practically describe them.

Q. What does decidual cell mean? A. I believe that got the name through the following fact, that during menstruation in the description of the older text books they thought that there was a membrane formed inside of the uterus thrown off during menstruation, that was called the decidua of menstruation. It is found that, practically speaking, that that is not so, that during menstruation outside of the blood and mucous and so forth that there is very little tissue destruction in the inner lining of the womb, and the decidual—the decidua of menstruation was where the superficial or innermost parts of the lining of the uterus, the cells, assumed a decidual appearance, but this was never very marked at all. The decidual cells that I have described are in the middle of the muscular layer, and which lead me to the conclusion that they are not—

Q. I have not asked you what led you to the conclusion. That may come later. I asked you to describe the decidual cell. They consisted of what tissue? A. They consisted of a uniform cell, that is a cell being polyhedral in shape, hav-

ing a large viscicular and poor staining nucleus, with a dark cytoplasma—a cell which cannot be mistaken by a more or less trained eye for any other cell in any other tissue.

Q. Exactly. Now, you say that your examination found that those decidual cells had penetrated about half of the wall of the uterus? A. This mass of decidual cells was situated in about the middle of the muscle coat of the uterus, yes, sir.

Q. Over how broad a field did you find these decidual cells, inside the layer or only did you find them in one place? A. Only in one section.

Q. Did you look for them elsewhere? A. I did.

Q. Now, what day did you make this examination? A. It was on Wednesday night.

Q. Last Wednesday? A. This last Wednesday, the night that Dr. McKenzie died, I remember it by that.

Q. The night that Dr. McKenzsie died? A. Yes, sir.

Q. That was what day of the month? A. I couldn't tell you.

The Court: May 3d, that was Wednesday.

Q. The 3d of May? A. 3d of May.

Q. Do you know where these specimens have been since the body has been exhumed? A. I do not.

Q. Were you able to recognize each part that you have spoken of? A. Perfectly. You mean each anatomical part of the specimen?

Q. Yes. A. Perfectly well.

Q. And was the bottle sealed up? A. Dr. Hicks brought the specimen in a mason jar with a screwed top. I thought—

Q. No, no. We won't have so many—

The Court: Finish the answer. You have asked if it was sealed up.

Witness: That was the first container that I saw the specimen in.

Q. Was the bottle sealed up, doctor? Can't you answer that? A. What do you mean by sealed up?

Q. Don't you know what a seal is, so that the bottle couldn't be opened without— A. A paper seal, you mean? There was no seal on it.

Q. There was nothing to prevent the unscrewing of the top of the bottle? A. To my knowledge, apparently not.

Q. I do not see why you did not answer the question.

The Court: He was describing what the mechanism was, in describing the bottle, which he had a perfect right to do in answer to the question.

Q. Did you find any specimen of the inner lining of the womb, the endometrium? A. In the sections I made from the womb I found no microscopical picture which I could absolutely identify as the inner lining or endometrium of the womb. The inner edge of all sections faded away in what I call, possibly post mortem . that is a softening from post mortem.

Q. What conclusion would you reach from this last observation with reference to there having been or not having been a curetment? A. I couldn't say what there had been done to the uterus from the sections except that the uterus contained an anti-mortem tear of a large extent.

Q. How do you account for the absence of the

endometrium or inner lining of the uterus? A. I account for it in a possibility of there being—having been a mechanical removement of most of that lining leaving post mortem edges which would so obscure the tissue and render it so that it stained so faint, the inner part, that I could not absolutely swear that it was endometrium. Perhaps some of this tissue that I saw was endometrium, but it had lost its characteristic picture.

Q. I suppose the fact that this body lay interred from the 19th of February until the 3d of March would cause some change in all of the normal situations, wouldn't it doctor?

Mr. Mott: There is an error there. The woman died on the 15th—she was not interred.

Mr. McCarter: My question is all right, I think.

The Court: It was interred on the 19th and examined on the 4th of March and taken from the cemetery on the 3d of March.

Q. I suppose that is so, isn't it, doctor? A. Can I get the question?

Q. (Question read.) A. In all of the normal situations?

Q. Normal conditions? A. Of all the organs?

Q. Yes. A. It would make some difference, but the embalming would preserve some of the tissues quite well, and in fact the muscular layer of the uterus, outside of the inner part of the womb, the main part of the wall of the uterus was remarkably well preserved.

DR. EDWARD M. RICHMAN sworn for the State:

Direct-examination by Mr. Mott:

Q. You are a practicing physician of this county? A. I am.

Q. Have been for how long? A. Seventeen years.

Q. Are you connected with any of our institutions? A. The Newark Private Hospital, Roseville Avenue.

Q. Did you know Emma C. Truesdell in her lifetime? A. I did.

Q. Had you acted as the family physician of her family previous to her marriage? A. Of her only, not of her family.

Q. Of her? A. Yes, sir.

Q. Were you present at an autopsy performed on her body at Mullin's morgue? A. Mullin's morgue? I was at Mullin's morgue, yes, sir.

Q. Who was there as physicians? A. Dr. Washington and Dr. Hicks.

Q. And are you able to say whether or not the body on which the autopsy was performed was in fact the body of Emma C. Truesdell? A. I am.

Q. Was it? A. It was.

Q. Did you remain during the whole of that autopsy or did you leave earlier than the others? A. No; I left earlier than the others.

Q. Who made the incision in the body? A. Dr. Hicks.

Q. Will you tell the Court and jury what you saw done there and what you saw? A. I saw Dr. Hicks open the abdomen; I saw him examine the uterus and remove it; I saw that the tear in

the uterus on the left side, latterally, extended to the fundus, at the top of the uterus, and part way across; I saw that the greater part of the small intestines was gone. I saw him remove the kidneys.

The Court: Did you say kidneys?

Witness: Yes, sir. I saw him open the chest, to remove the heart and examine it; saw him examine the lungs. When I left he was opening the skull for the brains.

Q. You say that you saw that most—I think that was your expression—that most of the small intestine was gone? A. Yes, sir.

Q. What do you mean by gone? A. It was entirely absent from the body.

Q. How long is the small intestine? A. Twenty-two feet and some fraction.

Q. Since the time of the autopsy have you seen and had a conversation with Dr. Young? A. No, not since.

Q. Was it before the autopsy? A. I saw him before the autopsy.

Q. Where did you see him, doctor? A. He came down to my office.

Q. About when was that? A. It was about two days after she had died, before she was buried.

Q. Do you recall about what time of day it was? A. He was there in the evening when I got in, about eight o'clock.

Q. Will you tell the Court and jury, the conversation, using the exact words so far as you can recall them? A. Dr. Young came in to see me. He wanted to know how well I knew the family and I told him that I had only attended the daughter before she was married, and I asked

him what he wanted me to do for him and he said he thought if I knew the family pretty well, that I might be able to console Mrs. Wolf if I went down to see her, and I asked the doctor what he had done and he said that he went in to operate on the patient to remove a premature fetus and because the patient had albumin in the urine.

Mr. McCarter: What?

Witness: Albumin in the urine; and I said, "Well, what happened," and he told me that he punctured the uterus and slit the uterus open and punctured the bowel. I didn't know how he come to do it but that was the remark he made to me.

Q. Do you recall anything else he said? A. Well, I asked him how it come to happen and he said, "Oh, he had a hell of a time to get into the uterus."

Q. I think you just used the expression, doctor, that you saw that most of the small intestine was gone. How much of it was gone or rather how much of it remained? A. About twelve or fifteen inches.

Q. What? A. Remained.

CROSS-EXAMINATION by Mr. McCarter:

Q. You operated upon this lady when Dr. Young administered the ether, last May, did you not, Dr. Richman? A. I will tell you the date in a minute.

Q. Now, don't you remember whether you did or not? A. I operated upon her, yes, sir, in May.

Q. Don't you remember whether you did or not? A. I remember operating, but I do not remember the date. It was in May.

Q. Was that at this Roseville Hospital that you spoke of, this Private Hospital? A. Yes, sir.

Q. She resisted considerably, the ether? A. No, she didn't resist the ether.

Q. On that occasion? A. No.

Q. Did she struggle under it? A. No more than an ordinary patient.

Q. And have you been the physician of Mrs. Wolf? A. Have I been?

Q. Yes. A. Since then I have prescribed.

Q. Since when? A. Since the operation. Since the time I attended the daughter I have prescribed for her.

Q. That is since May—since last year? A. Yes, sir.

Q. You have been Mrs. Wolf's physician? A. Well, only just giving her a prescription. She hasn't been seriously sick.

Q. And were you employed by that family to conduct this autopsy or to attend it? A. No.

Q. Who sent you there? A. The son asked me if I would go up and be present at the autopsy.

Q. Oh, that is what I thought. A. But I was not employed by them.

Q. You were requested by them? A. Yes, sir.

The Court: What is the son's name?

Witness: I don't know his first name.

Q. Now, this operation in May was a curetage? A. Curetage.

Q. That means the cleaning out of the uterus or inside of the womb? A. Yes, sir.

Q. With an instrument known as a curet? A. That is right.

Q. Well, at that time then the womb needed a curetage of this lady? A. Yes, sir.

Q. That meant that there was some matter in there that had to be removed in your judgment? A. Yes, sir.

Q. If not it would produce blood poison? A. Not necessarily that; she was having hemorrhages.

Q. Having hemorrhages? A. Yes, sir.

Q. And that meant more or less trouble in the womb, didn't it? A. Yes, sir.

Q. Now, you had nothing to do with the operation that Dr. Young conducted on the 15th of February? A. No.

Q. And when did you first see the body of Mrs. Truesdell after her death? A. It was on the 4th of March, the day of the autopsy.

Q. Day of the autopsy. You observed Dr. Hicks open the abdomen? A. Yes, sir.

Q. Did you observe that the abdomen had been opened before? A. Yes, sir.

Q. Was the same opening used? A. Yes, sir; right down through the same opening.

Q. Did you observe the stitching? A. I don't just remember the character of the stitching; I remember it was stitched.

Q. You cannot tell us whether it was a continuous suture or a broken suture? A. It was a continuous suture.

Q. Are you sure of that? A. If I remember right.

Q. Are you sure? A. I am not sure, no.

Q. No. What kind of material had been used in sewing it up? A. I do not remember that.

Q. Do not remember that? A. No.

Q. What color was it? A. I do not remember that.

Q. Do you remember anything about the suture? A. No, not very much about it.

Q. Paid no attention to that? A. No, sir.

Q. Now, you did observe that the twenty-two feet of the so-called small intestine was gone, did you? A. Not quite twenty-two feet; about twelve or fifteen inches were there yet.

Q. Twelve or fifteen inches left, yes. Where did the twelve or fifteen inches of the intestines that remained lie? A. It was the upper part of the—it was the duodenum, the portion that comes off from the stomach.

Q. And was the mesentery affixed to that? A. A portion of the mesentery was affixed to it. The mesentery was gone where the other part of the bowel was.

Q. Twenty-two feet—twenty-one feet then of the mesentery had disappeared as well as twenty-one feet of gut or small intestine? A. Not exactly that many feet of mesentery.

Q. Well, is there affixed to the intestine an organ or part known as the mesentery? A. Yes, sir.

Q. How wide is that? A. How wide is the mesentery?

Q. Yes. A. It is different in different portions; depends upon what part of the bowel it is attached to.

Q. Well, it is a flabby matter, isn't it? A. It is a serous membrane.

Q. Membrane? A. Yes, sir.

Q. About how wide? A. Some places six to eight inches wide.

Q. And some places— A. Some places where it is attached to the larger bowel it isn't over four inches.

Q. I am talking about the part that is attached to the small intestine. A. It runs as high as from six to eight inches—it depends on how near it is to the abdominal wall, the bowel.

Q. Is the whole bowel surrounded by this mesentery? A. No.

Q. Small intestine? A. No, not all surrounded.

Q. It lies in it? A. It is attached to portions of it which binds it down to the abdominal wall.

Q. And also supplies it with blood? A. Blood vessels run through it.

Q. Yes. Now, to tear that mesentery and remove that twenty-one feet of small intestine will cause, of course, hemorrhage, will it not, doctor? A. Yes, sir; if it is removed before death, it certainly will cause death.

Q. And very excessive amount of hemorrhage? A. Yes, sir.

Q. If removed before death? A. Yes, sir.

Q. How much hemorrhage do you suppose would be produced in the abdomen of a girl twenty-one or two years of age if before her death twenty-one feet of bowel—small intestine and mesentery had been removed? A. Well, she could bleed to death if she had time enough.

Q. I suppose she could. I guess we all agree on that. How much blood would be set loose by such a performance? A. Well, if you give it time—those vessels are not very large, and yet they bleed profusely. It all depends upon the time that she would have to bleed through those vessels, for the size of them. If she had time enough she would bleed to death. If they were tied off or she died suddenly of course she couldn't lose all the blood in her body.

Q. She would bleed though, in any event? A.

Q. Yes, sir; she would bleed profusely.

Q. Profusely? A. Yes, sir.

The Court: You say if she died suddenly the blood would stop?

Witness: Yes, sir.

The Court: Bleeding?

Witness: It would stop bleeding. The blood would clot.

Q. Now, if the mesentery is removed after death there would be hemorrhage, wouldn't there, short time after death? A. Well, she would probably get the emptying of those vessels which have been cut or torn.

Q. Aren't those vessels some of them, as big in as a pencil? Aren't they? A. Not that big in calibre.

Q. In the superior mesentery? A. It isn't quite that large.

Q. Pretty near? A. Good size.

Q. There would be a quantity of blood? A. No, there wouldn't be a quantity of blood run out of it—it depends upon the time after death.

Q. Well, within a few hours? A. Within a few hours you would only get a little. I don't think you would get very much blood running out of those vessels.

Q. Why not, Doctor? A. Because you would be apt to have it undergoing the process of clotting in the different vessels.

Q. What? A. Because you would have it undergoing the process of clotting in the different vessels and you would only get the emptying of those vessels which have been cut or torn.

Q. Would there be as much as a cupful? A.

Well, there probably would, as much as a cup, three or four ounces.

Q. In other words, if the small intestine, to the extent of twenty-two feet with the mesentery attached were in any possible way removed from that woman's abdomen she would bleed to death, wouldn't she? A. Before death, do you mean?

Q. Before death? A. She surely would.

Q. Sure. Had the stomach been examined enough in your presence before you left to ascertain whether or not there was any fecal matter in the intestines? A. The stomach?

Q. Did you notice any fecal matter there at all? A. I didn't notice any.

Q. Didn't notice any? A. No.

Q. Now, if you found that twenty-one feet of small intestine had been removed before death wouldn't you expect to find fecal matter in the abdomen? A. That depends upon the treatment the patient had had before the operation, and how the operation was performed. If it was tore out and the patient hadn't had any previous treatment you would probably get some fecal matter. If you went in to operate and removed that you certainly wouldn't get any fecal matter in the abdomen.

Q. I understood that you just said that if the smaller intestine to the extent of twenty-one feet had been torn out there would have been fecal matter in the abdomen? A. Unless the patient was purged pretty well before or undergone some drastic treatment.

The Court: How do you mean torn out? In answering that question what do you mean?

Witness: Torn out?

By the Court: Q. By the answer? A. I mean that there is a difference between if you tear it out and did not tie off the ends so as to prevent any leakage.

The Court: You mean torn out through the uterus?

Witness: Or through the abdomen. If you tie off the intestines and then tear it out—ties the ends and tear between it, you wouldn't be apt to get any leakage.

By Mr. Mott: Q. Did you find the end of the eleven inches fastened together? A. No.

Q. It was opened, wasn't it? A. Yes, sir.

Q. And you found no— A. I didn't see any fecal matter.

Q. No. Now, you referred to a conversation between Dr. Young and yourself. Do you remember what night that was or what day that was? A. I can't tell you the date of it. It was before—

Q. Came to your house? A. Yes, sir.

Q. What do you say he said with reference to albumin? A. I asked him what operation he had performed and he told me he went in to deliver a premature labor because the patient had albumin in the urine.

The Court: You said this conversation was before, and you stopped there and did not go on with the answer. Now, what do you mean, before what?

Witness: Before she was buried; right after her death.

Q. Do you remember his quoting to you what—telling you that he had two urinalyses? A. No, I do not remember that.

Q. Pardon me? A. I do not remember him specifying any number of analysis.

Q. And that his statement was that at the last urinalysis which had taken place the 2d of February there was almost no albumin, great improvement in that connection? A. I didn't hear him—he didn't tell me that.

Q. You are clear in your recollection that he told you at that time the one cause for this operation on the 15th was the presence of albumin in the urine? A. Yes, sir; I remember that.

Q. Doctor, you have heard of surgeons puncturing the uterus before, have you? A. I have.

Q. It isn't an unusual thing to happen, it is? A. It has happened before.

Q. What? A. It has happened before. I wouldn't say it usually happens but it has happened before.

Q. Quite frequently? A. Well, there has been a number of cases reported.

Q. With the very best of doctors sometimes? A. Sometimes.

Q. I beg pardon? A. Sometimes.

DIRECT:

Q. I think you cureted this girl in the May previous? A. I did.

Q. Did you puncture her uterus? A. I did not.

Q. Doctor, what would be the proper treatment if in the course of a curetage of a woman of the age of Mrs. Truesdell the operator found that he had brought down out of the uterus, a loop of eight or ten inches of intestines, so that they appeared below;—what is the proper thing?

Mr. McCarter: I object to the question, for two reasons; first, it is not proven that this was an operation of the character of

a curetage, it was an operation to remove a dead fetus; entirely different thing; secondly, there is no proof of any kind that the protusion was an intestine or piece of intestine.

Mr. Mott: Let me change the question.

Q. If, in the performance of an operation for the removal of a dead fetus from the womb, the operator found that he had torn down out through the uterus a loop of eight or ten inches of intestine, what is the proper treatment?

Mr. McCarter: Same objection. There isn't any proof yet that that was intestine.

The Court: Isn't there enough to show that it probably was intestine?

Mr. McCarter: I do not think so, I doubt it.

The Court: It was something the size of a quarter of an inch in diameter, or half an inch in diameter; it was something that looked to Dr. Truesdell like a tube flattened, eliptical in shape, and twenty-one feet of the intestines of this woman were not in the body when the body was examined on March 3d. Now, why isn't there enough to go to the jury upon the theory that the loop was intestine. There is certainly enough there to draw the inference.

Mr. McCarter: We have not been shown to have been the only ones to have had charge of that body. You remember there were people with that body after we left. There is a hiatus that the State seems to avoid and to which I expect to direct attention and insist that they account for what

transpired to the body between the time Dr. Young left and the time she was put in the ground.

The Court: The presumption is that the body was in the same condition at the time it went in the ground until it came out.

Mr. McCarter: Your Honor misunderstood what I said, between the time that Dr. Young left the body and the time it was put in the ground.

The Court: Is there any presumption that the undertaker took the intestines out?

Mr. McCarter: I do not know. They were there. We found holes resulting from their action already,—it already appears from the trocar punctures in the uterus and punctures in the bladder from the undertaker's. Now, what I want to direct your Honor's attention to is this that a fetus has an intestine just as much as the body of the mother, and the fetal intestine might appear and would be much more the description and size of the thing that Dr. Truesdell looked at but could not describe, than would be the maternal intestine.

The Court: He says she did not eat anything that day.

Mr. McCarter: Even if she did not, I don't know how much anatomy your Honor knows, but my information is—

The Court: I am only drawing the inference that the jury can draw. Now, if there is any evidence the question should be answered. If there is not any then the question cannot be answered.

Mr. McCarter: A hypothetical question

is always framed upon the evidence and not surmise. I am calling your Honor's attention to the fact that there is absolutely no proof that twenty-one feet of the maternal intestine was pulled out, or any part of it pulled out by Dr. Young not the slightest. We find that after the undertaker's had been at this body, and I don't know who else, that after the body has lain in the ground they discover the absence of twenty-one feet of intestines. Until they can show that it was a possible thing for those intestines to have been dragged out by Dr. Young—and there hasn't been any proof of it at all—(Interrupted.)

The Court: Dr. Young is the man who operated and that was the thing which appeared to Mr. Truesdell and that is the part absent from the body when examined. There is enough there for the jury to draw the inference that the intestine was out in what has been called a loop. I will give you an exception. You need not answer it now, Doctor.

Defendant's counsel prays an exception to this ruling of the Court.

The same is allowed and signed and sealed accordingly.

WM. P. MARTIN,
Judge.

(Seal)

Adjourned until to-morrow morning at ten o'clock.

May 9, 1916.

SECOND DAY

Appearances as before stated.

DR. EDWARD M. RICHMAN, resumed the stand for further direct-examination:

By Mr. Mott: Q. (Question read as follows: "If in the performance of an operation for the removal of a dead fetus from the womb the operator found that he has drawn out through the uterus a loop of eight or ten inches of intestines, what is the proper treatment?") A. The proper treatment would be to replace it, open the abdomen and close up the wound.

Q. Failure to resort to the treatment you have specified would produce what result? A. Well, it would be apt to set up an inflammation of the intestines if they were punctured, would produce peritonitis and eventually cause death.

RE-CROSS:

Q. He should also call help if he did it alone—had no other physician with him? A. He would need help to open the abdomen.

Q. Now you said failure to do that would set up inflammation and if it was punctured—there were a puncture—probably peritonitis would set in which would probably be followed by death. That would not be instantaneous, would it? A No, sir.

Q. Be a matter probably of three or four days? A. Be a matter of some time for the peritonitis to set in.

Q. Two or three days? A. Two or three days, probably.

The Court: What kind of help do you mean? You said it would need help to do a thing of that kind. What kind of help do you mean? You said call someone in?

Witness: Well, they would be apt to need an assistant—professional assistance.

The Court: You mean a physician? Nurses would not be sufficient?

Witness: Nurses would be sufficient.

Q. A nurse would be sufficient? A. Yes, sir.

WILLIAM H. HICKS, re-called for further direct-examination:

By Mr. Mott: Q. Were you present, Doctor, at the autopsy, along with Dr. Richman and Dr. Washington on the body of Emma C. Truesdell? A. I was.

Q. Who actually made the incision in the body? A. I did.

Q. Before you made the incision did you notice whether or not there had been—there was a scar on the body in the abdomen? A. Why, the abdomen was sewed up where it had been opened—stitches were there.

Q. Will you kindly describe the incision that had previously been made, its length and so forth—location? A. The incision was made from just below the unbilicus to about two inches above the pubic arch.

Q. What are the umbilicus and pubic arch? A.

Navel, and the pubic arch is the first bone you reach in going down from the navel.

Mr. McCarter: From the navel to the—

Witness: Pubic arch.

Q. That was a distance of about how long?

Mr. McCarter: That is the old incision or your incision?

Witness: That is the old incision. The one I found.

Q. That was about how long? A. Well, I didn't measure it. I should think it was about five inches, four or five inches, roughly.

Q. What did you proceed to do? A. I proceeded to open the abdomen. I first tried to cut down along the original incision and cut the sutures, but I found that was pretty difficult and in order to save time I cut along the side of these sutures and not through the original opening; then I enlarged this opening by extending it up above the navel to the center of the abdomen and downward as far as I could, in order to make it easier to observe what we were doing.

Q. What was the length of the incision you made? A. Well, it extended all the way from the breast bone—the lower part of the breast bone down to the pubic bone—pelvic.

Q. In this particular case that would be a distance of about how much? A. Well, I didn't measure it; I couldn't say exactly.

Q. Was it longer than the original incision? A. Oh, yes. Yes; it was extended at both ends. I extended the incision at both ends. It was the entire distance from the breast bone to the pelvic arch.

Q. Proceed, Doctor, and tell us what you phy-

sicians did. A. Then pulled the sides of the abdominal wall apart so that the contents of the abdomen and pelvis were revealed. The contents of the pelvis lay in open sight. There was nothing covering them and I made the remark at the time, "This should make a nice picture."

Mr. McCarter: Never mind.

The Court: Do not say what you said.

Mr. McCarter: You are telling us now what you found by your examination?

A. (Continuing) Well, when the walls of the abdomen had been pulled apart we see the uterus lying in the pelvic cavity in its normal position; we could see the four punctures in the uterus and —round punctures about a quarter of an inch in diameter— and we could see the ragged tear at the top of the uterus and to one side. Then I proceeded to pull the uterus up somewhat with the fingers so that we could get a better view of the uterus and we found that there was a laceration extending from the mouth of the womb, including the neck of the womb, which had completely torn through the neck of the womb and the whole of the left side and a part of the fundus. The interior of the uterus was empty except that there was a small bit of gauze sticking up into it. We followed this down to the vagina, which was very much distended and stuffed with gauze. I then proceeded to take out the entire contents of the pelvic cavity, doing as little damage as could be done—as I could help—so, having removed the contents of the pelvis, we found that we had the uterus, the ovaries, the tubes, the ligaments, and in front was the bladder and behind a portion of the rectum. Then a small slit was

made in the bladder in order to determine that that was the bladder and then we discussed the propriety of leaving the bladder unexamined in order that our land marks would be perfect in examining the specimen at a future date, so the bladder was not cut open. We left it there in order that we might be able with less difficulty to determine the different parts of the specimen which I removed. Having finished that we then proceeded to inspect the abdominal cavity. First was to examine the intestines. We found that there was about—the whole of the duodenum was present, that is the upper part of the small intestine, and probably about twelve inches of the jejunum, or the next small intestine; all the rest of the small intestines, including both divisions, and the large intestine down to the sigmoid flexure was absent; only the two ends of the alimentary canal were left there. There was a little fluid that was stained—sanguineous stain—but there were no fecal matter and there was no blood except the staining of what appeared to be the post mortem fluid. The stomach was in position, normal appearance; likewise the liver and both kidneys. The kidneys had not been examined. Then the chest was opened and the heart and lungs were inspected and found to be normal. The skull was opened and the brain and its membranes examined and found to be normal so far as we could determine by inspection. The body seemed to be in a good state of preservation.

Mr. McCarter: Are those notes you made at the time, Doctor?

Witness: Yes, sir; this page of notes are the short notes that I made there in the autopsy room; this one page.

Mr. McCarter: I have no objection as long as that is the fact.

Q. Doctor, are you through with your statement as to what you found? A. The uterus and its appendages were put into a vessel and I took them myself home and put them in a solution of formalin—four percent solution of formalin and sealed the vessel and put it in a closet and locked it up. It remained there until Wednesday, when I took it out and carried it and the contents to Dr. Martland.

The Court: Last Wednesday?

Witness: Last Wednesday, yes, sir; I think it was.

The Court: May 3d.

Q. And are you able to say that you turned those over to Dr. Martland in the condition they were when they were taken from the body? A. Exactly. Portions of the heart and kidneys were also examined.

Q. Examined how? A. Why, the kidneys were examined grossly and microscopically.

Q. "Grossly," you mean— A. By the appearance.

Q. By the eye? A. Yes, sir. The capsules came away without adhesion leaving a smooth shiny surface and sections microscopically showed no demonstrable disease.

Q. Doctor, what do you say as to the condition of the organs with reference to the amount of blood they contained? A. Which organs.

Q. All the organs you examined? A. Why, they contained very little blood they were practically exsanguinated. I have never seen an autopsy where there was as little blood in the organs as was in this one.

Q. And that would indicate what? A. That there was extensive hemorrhage at some time, to my mind.

Q. And especially what was the condition of the heart in reference to the indications as to whether there had been a hemorrhage? A. It was contracted tightly and there was no blood in it.

Q. Are you able to tell us the size of the womb? A. Why, our measurement was five and a half inches at that time.

Q. And the length of the tear? A. The whole side of the uterus and half of the fundus—about half of it—maybe a little more or a little less.

CROSS-EXAMINATION by Mr. McCarter:

Q. I suppose you noticed the former cut in the abdomen, Doctor, well enough to notice the color of the thread that had been used? A. No, sir; I did not.

Q. What? A. No; I did not.

Q. Well did you observe the character of the stitching? A. Not specially.

Q. Well, what observation did you make about it? A. Why, I simply saw that it had been opened and sewed up again. That is what I expected to see.

Q. Well, was it black thread? A. I don't know; I couldn't say, sir.

Q. Did you notice whether there were any suture orifices or holes other than they through which the thread went? A. I didn't notice any—didn't see any.

Q. Do you know enough about the undertaking business to know what is meant by "undertaker's stitch"? A. I don't think I do.

Q. You never had your attention directed to the fact that undertakers through their desire to have an orifice perfectly tight so that the embalming liquid will not leak out, have a curious stitch? A. I have heard that they use a sort of baseball stitch.

Q. Did you observe whether this was a baseball stitch? A. I couldn't say.

Q. Sir? A. I couldn't say positively how it was.

Q. What is your best recollection? A. Well, I don't recollect it well enough to testify about it.

Q. You did find some difficulty as I understand it in your first effort to use the same orifice? A. Yes, sir.

Q. What was that difficulty? A. By cutting through the sutures—I found it was harder to cut through the sutures than it would be to make a new incision.

Q. The sutures resisted your effort to cut through? A. Yes, sir.

Q. What did you use? A. Why used an ordinary post mortem knife.

Q. Yes. Well, I suppose a post mortem knife like an antimortem knife is sharp? A. Well, they usually are heavier and thicker.

Q. They are sharp, aren't they? A. Sharp? Yes? Yes; some of them are.

Q. Was the knife of sufficient sharpness and were you sufficiently strong to have cut an ordinary thread suture? A. Why, of course, Mr. McCarter, but I found this about it—

Q. Just answer. You say yes to that. A. Yes; but I would like to explain. In cutting the sutures I found that I would have to cut one at a time. I

could go along, cut one at a time, but it was much easier to make one sweeping cut alongside of it and get through much quicker.

Q. Well, yes. Do you mean by that that it was an interrupted suture? A. I couldn't say.

Q. Well, if it weren't an interrupted suture—by that I mean a stitch at a time and fastened—if it were not an interrupted suture but a continuous sewing like a housewife sews your garment what was to prevent your taking your knife and cutting right down at one cut—just one fell swoop? A. Why, it seems to me that any suture that they would put in there would have to be cut. Some would open a little quicker than others, ordinary overhand—again you could pull it open as it were.

Q. I am not asking you to speculate. I am asking you if it were not an interrupted suture—you understand what I mean by that—individual stitches? I do not see any sign of intelligence. Do you understand what I mean by an interrupted suture? A. It is where each suture is tied, isn't it?

Q. Yes. Now, if it were not an interrupted suture, with each stitch tied separately and distinctly from its fellow, what was there to prevent your taking a sharp knife and cutting right down? A. Why, the same thing as to interrupted suture except it could be done with a little less difficulty.

Q. Now, it is good autopsy work, is it not, if possible, to use the same incision, that has been made in the abdomen, if there be one, before death? A. Why, I suppose it is a little neater work; yes, sir.

Q. What? A. A little neater work.

Q. Now, you said you found in the uterus four punctures? A. Yes, sir.

Q. Round holes? A. Yes, sir.

Q. You concluded they were from the trocar of the undertaker, didn't you? A. Not at that time.

Q. Well, sometime? A. Yes, sir.

Q. Naturally doctors are not supposed to know very much about undertakers but you do know enough to understand that when an undertaker embalms a body he puts a trocar or sharp pronged instrument with a round edge into the body for the purpose of drawing off the body fluid before he inserts the embalming fluid? You know that, don't you? A. I understand.

Q. And these orifices that you found in the bladder and in the uterus you now conclude were trocar orifices? A. I make my conclusion in that way—

Q. I would rather you answer me first and then you may qualify it in any way you want. I am not trying to stop you? A. I don't know. I assume that there is the probability of their having been made by the undertaker. I don't know.

Q. Of course, you didn't see him? A. No. And the reason I formed that conclusion is that when we did open the bladder and examined it there were punctures in the bladder and those punctures appeared to be post mortem punctures, and naturally it is safest to assume that the others were too.

Q. Now, who was present with you at this autopsy? A. Dr. Richman, Dr. Washington and the undertaker.

Q. The undertaker? A. Part of the time.

Q. Do you mean Mr. Meyer? A. I don't know his name. It was in Mullin's morgue.

Q. The man that brought the body there? A. I suppose so.

Q. Did Dr. Richman go away before you found the large intestine gone? A. No, sir.

Q. Did he observe the absence of a large part of the large intestine? A. I don't know. The three of us discovered it and wondered—stood there in wonderment over it and discussed it.

Q. Did you hear Dr. Richman testify yesterday? A. I did.

Q. Did you observe that he failed to refer to the absence of the large intestine? A. I did, sir.

Q. What is the diameter of the large intestine? A. Diameter?

Q. Yes. A. Why, I suppose it varies from half an inch to two or three inches or more, according to how distended it is.

Q. Will you please tell us when you ever saw a large intestine of the size of half an inch? A. What did you say?

Q. Please tell us when you ever saw the large intestine of a person twenty-one years of age that was only half an inch in diameter? A. Half an inch? Why portions of it when it is empty and contracted—well, it would show as it lays in the abdomen—I didn't say half an inch. If I said half an inch I didn't mean to.

Q. That is what you said. A. I didn't mean to say that. I would like to correct that.

Q. Again I will put the question to you, which I think is quite simple—what is the diameter of the large intestine? A. Why anywhere from, I should imagine—I should judge from an inch and a half or two inches to probably three or four inches, according to the degree of distention and according to the location of the diameter.

Q. Well, you have conducted a number of autopsies, I suppose? A. I have.

Q. How many do you think? A. Hundreds.

Q. Hundreds. How long have you been a physician? A. Twenty-three years.

Q. Having been a physician twenty-three years are you compelled to enter the domain of imagination in answering the question as to the size of the large intestine? A. No.

Q. It is perfectly well known? A. They vary very much in size, according to the size of the person, according to whether they are empty or not, according to whether they are distended.

Q. Yes. Well, is the large intestine ever completely empty in life? A. Well, I should hardly think so.

Q. No. And the contents of the large intestine in life would normally be what? A. Why, be fecal matter normally.

Q. Fecal matter. Are there any natural juices or anything of that kind? A. Oh, yes; there are some.

Q. Some of those. And by fecal matter—perhaps some of the jury, or perhaps I, possibly his Honor, may not understand that medical phrase? A. Why the discharges of the bowels.

Q. The discharges of the bowels. The excrement from food? A. Yes, sir.

Q. Now, how much of the large intestine in inches or feet were gone? A. How much was gone?

Q. Yes. A. Why all of it down to within a few inches of the rectum.

Q. In length how much, Doctor? A. Well, the large intestine measures from four to six feet

in length, differs in length with different people; so I should imagine that three feet had been taken away.

Q. Three feet. Was there some remnant of it there? A. Well, the lower part of what we call the sigmoid, which extended up a few inches beyond the rectum.

Q. You said four or five feet gone, you thought? A. No; I said I supposed around three feet.

Q. Around three feet. What was the diameter of the piece of the large intestines that you saw there? A. I didn't measure it.

Q. I know you didn't, but you had eyes and you know a couple of inches when you see it. Roughly speaking what was the size of the piece of large intestine that remained? A. Two inches.

Q. Two and a half or three? A. I suppose it was around two inches, either more or less. I don't know. It is merely a guess.

Q. Why didn't you measure it, Doctor? A. I didn't think it was necessary. I am sorry I didn't.

Q. Yes. You never had observed that kind of an evisceration before, had you? A. No, sir.

Q. That was the most remarkable thing you struck on your autopsy, wasn't it? A. Yes, sir.

Q. Now, I ask you in view of that why, instead of taking the kidneys and going through an analysis of them, you did not measure the diameter of the piece of big intestine that you found there? A. I didn't think it was necessary at the time.

The Court: I do not understand he took the kidney.

Mr. McCarter: Yes. He said he examined them, I think.

The Court: Did you take the kidneys?

Witness: Certainly.

Q. How is the large intestine fastened? A. Why it is fastened by means of a double fold of peritoneum to the abdominal walls.

Q. Now pardon me. I think it would be better if you would take your hand away and talk so that the jury as well as I can hear you. There are two strong adhesions as we call them, are there? A. Yes, sir.

Q. Connecting the large intestine with the what? A. With the abdominal walls and the—

Q. What is the width of those adhesions? A. What is the width?

Q. Yes. A. I couldn't say.

Q. And they are very strong, are they not? A. Pretty strong; yes, sir.

Q. Very strong? A. Pretty strong.

Q. They are affixed at separate parts of the large intestine and strongly tie it or hold it in place to the abdominal walls? A. Yes, sir.

Q. Were they there? A. They were there, sir.

Q. They were there? A. You mean the—

Q. The adhesions? A. The part of the peritoneum which held the large intestine? They were there; that is the remnants of them.

Q. Well, was the adhesion proper that connects the large intestine with the peritoneal wall? A. Part of it.

Q. Partly there? A. Part of it. It looked as though it had been torn off and leaving part of it sticking there.

Q. Now, these adhesions have blood vessels in them? A. Yes, sir.

Q. During normal conditions? A. Yes, sir; certainly.

Q. And you could not have torn them away in the manner that they had been torn away without a great hemorrhage, could you? A. No, sir.

Q. Now coming to the small intestine, of which you noticed an absence of about twenty-one feet or twenty feet. A. Well, the small intestine measures from twenty to twenty-six feet. I don't know how long hers was but there was about twelve inches left.

Q. Now what holds those twenty odd feet of small intestine in place normally? A. Why folds of the peritoneum, which is called mesentery.

Q. What does that adhere to besides adhering on the one end or side to the small intestine. On the other side what does that adhere to? A. Well, along the spinal column.

Q. Over a space of how many vertibras? A. Well, from—well it extends from the diaphragm down to the rim of the pelvis.

Q. Well, about how long on the spinal column. Let us get down to business? A. Well, I would only be guessing at it. I do not remember.

Q. Pardon me? A. I do not remember.

Q. Well, now, that is like these adhesions that we spoke of with reference to the large intestine—it is supplied with blood vessels? A. Yes, sir.

Q. And this article we have just been speaking of that on the one side is attached to the spinal column and the other side is attached to this twenty odd feet of smaller intestines— A. Yes, sir.

Q. —is called the mesentery? A. Yes, sir.

Q. Now, on the end of this mesentery that adheres to the spinal column—how thick is the mesentery, at its root? A. How thick is it?

Q. How thick is the mesentery? A. It varies somewhat in thickness.

Q. I suppose so, Doctor, but it must have some—

The Court: Let him have a chance to answer first.

Witness: It is much thinner and much more elongated than the adhesions which support the large intestine and it is full of blood vessels.

Q. I was coming to the blood vessels in a minute.

The Court: What is the size about near the root?

Q. Have you any picture in your mind, in the investigations that you have made of the inside of a human body as to the thickness of the root of the mesentery where it hangs on to the back bone? A. Why, it is—I couldn't say in inches—but it is thicker there than it is in the center. In the center it is thinner than it is right next to the intestine.

Q. It is a quarter of an inch thick? A. Yes, sir.

Q. Is it half an inch thick? A. I couldn't say just how thick it was. I never had occasion to measure it.

Q. The thing is kind of fan like. The ends come into this comparatively small area on the back bone and then fans out more thinner to the long small intestine, is that right? A. That is right.

Q. Now, you already anticipated a question I have been going to put to you. That is also full of blood vessels, isn't it? A. It is.

Q. And you found that gone or torn away? A. Torn, yes, sir. It was torn through some places, jagged.

Q. Now, there had necessarily to be, when that was torn from its position, a considerable hemorrhage, didn't there, Doctor? A. Must have been.

Q. Must have been? A. Must have been.

Q. Are you able to estimate the amount of hemorrhage that must have taken place to account for the anemic condition of that body as you found it, in measures of things that we common people understand, pounds or quarts; in other words about how much blood does the normal body have in the normal condition? A. Of course after death a great deal of blood gathers into the large veins—

Q. You see you are not answering my question. I am asking you about how much blood does the normal living body contain. In other words if I should be knocked down now and completely deprived of blood how much would come out, probably? A. Why, I believe they say it is about one-twelfth of the body weight.

Q. One twelfth? A. Yes, sir; I think so. I think it is about twelve quarts, the average man. Something around twelve quarts. I am not sure of that.

Q. Twelve quarts, yes. Now, how rigidly does the mesentery in normal condition hold the small intestines? A. Well, that is much more easily torn than the large one.

Q. Yes. Have you ever pulled away the large intestine from the adhesions? A. In the abdomen?

Q. Yes. A. Yes, sir.

Q. It takes a great deal of force, doesn't it? A. In some parts of it. It doesn't require so much force in some parts of it.

Q. Well, can you liken the force of the traction that is required to pull away the large intestine from its adhesions to anything that we people might understand? A. No; I could not.

Q. Well, it is a good deal of a pull, isn't it, Doctor? A. As I say in certain portions of it it doesn't require much of a pull—it comes away quite easily, in a way.

Q. I am talking about the part where it does require. Would it require about all your strength? A. Oh, my no, not the small intestine.

Q. I don't suppose a tug of war with your feet up against something, but standing, how hard would you have to pull? A. Why, for the small intestines you would not—

Q. Oh, I am talking about the adhesions to the large intestine. A. Oh, the large intestine? That would require a good deal more strength. That would require much harder pull than to rip away the small intestine.

Q. Yes. How many of these adhesions to the large intestine are there? A. Well, there are usually—a part of the ascending colon is enveloped by the mesocolon and usually a part of the descending—that varies in different individuals—the transverse colon is always bound with this mesocolon, but the other two varies with different individuals to some extent as to how much.

Q. And it was the transverse that was removed in this case was it not? A. It was not there.

Q. In other words the hardest—the toughest—the hardest to pull was the part that was removed? A. Yes.

Q. Transverse? A. All of it was removed.

Q. Yes. Have you spoken yet of what is known as the spleenic ligament? A. No.

Q. That also holds the large intestine, does it not? A. Why, yes, that is part of the mesocolon and extends—

Q. And is very strong, is it not? A. Yes, sir; that is very strong.

Q. Is it also true that at or near the appendix, where the big and little intestines join, there is another very strong portion of adhesive matter? A. Yes, sir.

Q. Now, there must have been fecal matter exposed when that—those two intestines were removed, mustn't there? A. I should think so.

Q. And that would be very fragrant, would it not? A. What?

Q. That would be very malodorous? A. Yes, sir; I should think so.

Q. No mistaking that? A. No, I should think not.

Q. Where would you expect assuming these two sets of intestines to have been pulled from their places—where would you expect to have found the fecal matter, if it had been there? A. Why, in the abdominal cavity.

Q. In the abdominal cavity. It must therefore have been cleaned out, mustn't it, Doctor? A. Yes, sir; I should think so.

Q. I beg pardon? A. I should think so. That is if the bowel was broken.

Q. Well, do you think that anybody, by traction, could pull the bowel from those strong adhesions without breaking the bowel? A. Why, that is owing to how you pull them.

Q. Did you conclude that the uterus had shrunk from the time you examined it at this post mortem, which I understand was on the 4th of March,

and the 5th of February, the day of the operation? A. Why, I don't think we speculated about that.

Q. You had no ideas on that subject? A. No.

Q. Sir? A. No, sir.

Q. Did you measure the size of the cervix? A. Surface of what?

Q. The cervix of this person, the womb? A. Why, no; I didn't measure it, but the cervix was within—

Q. Didn't it occur to you that there ought to be some relation between the size of the cervix of the womb and the ability of all this gut or intestine to have gone through it? A. Certainly.

Q. You didn't think it went through the cervix, did you? A. Oh, I understand. You mean the slit? A. I thought you meant just the cervix itself.

Q. You understand that there is what is known as the mouth of the womb? A. Yes, sir.

Q. Did you measure the mouth of this womb? A. No, sir.

Q. Why not? A. I didn't think it was necessary.

Q. Well, did you look at it? A. Certainly.

Q. Will you describe it as to the circumference of one human finger or two human fingers? A. I couldn't say. It was ripped right through, the opening—the tear. The opening of the cervix was all one slit—simply torn open and laid open.

Q. Now, didn't you form any conclusion at all with regard to the size of this opening? A. Why, the opening extended—

Q. I am not talking about the opening into the womb at the side; I am talking about the mouth

of the womb? A. Our measurement of the uterus was four and a half inches and this slit extended the whole length of that uterus.

Q. I am not speaking up there, Doctor, I am speaking about the mouth of the womb—the natural mouth of the womb? A. I told you I didn't measure that.

Q. Pardon me? A. I did not measure that.

Q. Why not? A. I didn't think it was necessary.

Q. Well. you know, and knew before you took the stand in this case and knew when you made this autopsy that it was claimed that Dr. Young had pulled through that hole all of this alleged twenty-one feet of gut and three feet of large gut, didn't you?

Mr. Mott: One minute. I object to the question as indefinite because it does not convey to the mind of the witness whether he means the cervix—the mouth of the womb or the whole cut or tear?

Mr. McCarter: The mouth of the womb I am speaking of.

The Court: He says it was cut—there was no mouth any more. Was the side of the womb cut so that it went into the inner side? Was this cut in the neck of the womb all the way through?

Mr. McCarter: I think your Honor is making an assumption there that is not right.

Witness: If you let my hand represent the uterus—

Mr. McCarter: I think your Honor is under a misapprehension in the statement you

have just made. I do not understand the proof to have been as your Honor has just stated.

The Court: I am not desirous that any misapprehension should occur.

Mr. McCarter: No, sir.

The Court: I understood that the substance of your question was, that the entire contents—these intestines and so forth—were drawn through the slit in the uterus and through the neck of the womb?

Mr. McCarter: Yes, sir.

The Court: Now, the question I am asking is whether the doctor has said that the neck of the womb was cut all the way through the neck, through the wall of the side.

Mr. McCarter: I do not understand there is any such evidence.

Mr. Mott: Torn, your Honor.

The Court: Cut or torn. Torn, was it?

Witness: It was. Let my hand represent the uterus, and this the cervix, the opening. It was ripped right through the mouth of that and up the side of the uterus so that the mouth of the womb and the slit represented one opening.

The Court: Now, you can ask your question.

Mr. McCarter: Your Honor has disposed of the matter, I think.

Q. What angle would the gut have to take to reach, in its normal condition, to the orifice that you have just described? A. I don't know.

Q. Isn't that of some importance? A. Well, I think that is a question for a surgeon or obstetri-

cian. I am neither a surgeon or an obstetrician.

Q. Now, what is the distance from the mouth of the womb to the opening of the vagina—about two and a half inches? A. You mean the external orifice of the vagina? You mean the vulva?

Q. Yes—out into the world we will say? A. That is from the cervix.

Q. From the mouth of the womb to the opening of the vagina—that is to say where you get into daylight—about two and a half inches, isn't it? A. Why, it varies from three inches to four inches.

Q. And what is the circumference of that three or four inches in length? What is the circumference of the thing that is three or four inches long? A. You mean the vagina?

Q. The vagina. A. Why, that varies somewhat, I suppose from an inch to an inch and a half.

Q. Inch or inch and a half? A. Yes, sir. Of course there are times when that is very much distended. Distended in parturition, abortion and things of that kind.

Mr. Mott: What do you mean by parturition?

Witness: Birth.

Q. Assuming, now, that an operator had either himself punctured or else found a punctured uterus and assuming that a piece of maternal gut or intestine went through that puncture and was caught by an instrument and pulled down through the opening of the womb and thence out at the mouth of the vagina; assuming that the big and little intestine had the adhesions and the mesenteries in normal condition, and assuming that the orifice at the mouth of the womb and the width or

circumference of the vagina were of sufficient size to permit the progress through them of the intestines, how long would it take to pull twenty-one feet of the one and three or four feet of the other —how long would that take? A. Mr. McCarter, I think that is a surgical or obstetrical question and I haven't had experience enough to speculate on that.

Q. You cannot answer? A. No.

Q. But you know enough about it to know that it would take a mighty long time, don't you, Doctor? A. I don't know.

Q. Is that too much for you? A. That is too much for me.

Q. Could it occur without a hemorrhage? A. Without hemorrhage?

Q. Yes. A. I don't believe so.

Q. No. Would you undertake to say, Doctor—you seem to shun obstetrics—we will get more into pathology—will you undertake to state, if you had an opening in the abdomen and undertook with one hand to pull out these twenty-one feet of the small intestines and three or four feet of the large ones, adhering in the manner we have agreed, how long it would take—with one hand grabbing the end of the intestines to pull it out? A. I don't know.

Q. Eh? A. I don't know.

Q. That is too much too? A. I think it is a surgical question.

Q. Pardon me? A. That is a surgical question. I am not a surgeon.

Q. Well, did you ever remove them in these very many autopsies you conducted— A. Yes; but I never practiced removing them in that way —tearing them out.

Q. It would be a very difficult thing, wouldn't it? A. Part of it I should think would be attended with some difficulty.

Q. You would pull the body off the table, wouldn't you? Wouldn't you, sir? A. I don't think so.

Q. You don't think so? Do you think that with a hand—possibly only able to insert two fingers in an orifice, there is strength in that to break those adhesions—two fingers? A. Could you break them with two fingers? Do I understand you to say could all those adhesions be broken with the strength of two fingers?

Q. I ask you if you think that there would be strength enough in a person whose limitations are that he has got two fingers in an opening, with two fingers, to break those adhesions and pull the bowels out? Do you think so, Doctor? A. I don't think so, not with two fingers.

RE-DIRECT-EXAMINATION by Mr. Mott:

Q. Doctor, suppose instead of two fingers you had inserted through the opening a pair of forceps and had taken a grip on the bowels with the forceps, what do you say as to the amount of force that would be required to draw them down? A. Why, with sufficient forceps he could make something give way. He could tear away the adhesions or break the intestines.

Q. The circumference of the opening of the mouth of the womb—of the opening from the mouth of the womb to the vagina, you said varied under various conditions, did you not? A. Yes, sir.

Q. In the case of a pregnant woman three or four months pregnant, what would be the condition of the muscles around this opening, as to their elasticity? A. Why, they would be more elastic. They would not be so rigid as in an unpregnant uterus.

Q. It is opening from the mouth of the womb down is the opening through which the child passes at childbirth, is it not? A. Yes, sir.

RE-CROSS-EXAMINATION by Mr. McCarter:

Q. Well, the opening at that time, the time of parturition, I think you spoke of, is very much dilated, is it not—very much enlarged by nature as well as by assistance from the doctor? A. Yes, sir.

RE-DIRECT-EXAMINATION by Mr. Mott:

Q. I asked you about the insertion of forceps through this opening in which Mr. McCarter asked you about the two fingers. Suppose instead of forceps a curet was inserted there and had caught hold of the intestines, what would you say as to the ability to draw them down through with that? A. Why—

Mr. McCarter: I understood the witness to say he was not an obstetrician and did not care to answer a similar question put by me.

Witness: I am not sufficiently familiar with the shapes of the different curets to say whether they could wrap the intestines around it and get such a grip upon it that they could pull it down.

PAUL E. TRUDESDELL, re-called for further direct-examination by Mr. Mott:

Q. Dr. Trudesdell, after Dr. Simmons and Dr. Young left who remained during the rest of the night at your house? A. Why, my mother stayed until about 7 o'clock. Ernest Wolf stayed all night and Mrs. Wolf stayed the night as well as myself.

Q. Ernest Wolf is the brother of the girl—your wife? A. Yes, sir.

Q. And Mrs. Wolf is the mother? A. Yes, sir.

Q. And during the evening were there any friends in? A. Yes, sir; the two brothers were up.

Q. Your two brothers were up? A. No, not my two brothers; my wife's brothers, Harry Wolf and Frederick Wolf, Miss Thubel was there; Mr. Atwater and Mr. Renie Thubel. The undertakers were there. I don't know how many.

Q. That night? A. Yes, sir.

Q. Anybody else? A. Friend of mine from Philadelphia came in to see me. I can't recall any others.

Q. Other than the undertaker do you know whether your friends viewed the body? A. I don't know—that is to say before it was embalmed? Do you mean before it was embalmed or after?

Q. Either. A. Yes, sir; they viewed the body after it was embalmed.

Q. After it had been embalmed? A. Yes, sir.

RE-CROSS:

Q. I am not certain whether it has been covered or not, but to be sure of it I will ask you

again to state as near as you can what time Dr. Young left that day, Dr. Truesdell? A. Why, I have no means of saying but I should imagine about 5 o'clock. I am not sure—possibly before.

Q. And about what time did the nurses leave? A. Why, they left before that, quite a little before.

Q. Yes; and do you remember what time the undertakers arrived there; was it about seven? A. Why, I should imagine about then, because a little before seven my mother brought some things over and then immediately after that the undertakers came.

Q. And do you know how long the undertakers were there—couple of hours? A. I should say that they were there quite awhile.

Q. And you do not recall that Garret or Atwater or your friend from Philadelphia or Mrs. Wolf were in with the undertakers or saw the body until after it was prepared? A. I know my friend from Philadelphia was not because he was with me continuously, but I do not know about the others.

Q. Now, Dr. Truesdell, I want to ask you a question. You met me on one occasion prior to your being on the stand here, did you not? A. Yes, sir.

Q. At my office? A. Yes, sir.

Q. One evening? A. Yes, sir.

Q. In the presence of Mr. Harry Reeves, my associate here, Dr. Young, your counsel, Mr. Gordon and myself? A. Yes, sir.

Q. Do you remember on that occasion your saying to Dr. Young whom you shook by the hand, "Dr. Young, at the outset of this conference I

want you to distinctly understand that I acquit you of any blame whatever for my wife's death.''

Mr. Mott: I object.

The Court: How is that competent?

Mr. McCarter: Well, it seems to me to be very competent. This witness has been called by the State and has undertaken to prove certain things. I should think, if he had told voluntarily, the defendant, who is here on trial, for the horrible crime of manslaughter, that notwithstanding what he saw he still nevertheless acquitted him of any blame whatever it was a very important and significant thing, which we ought to be able to show on his cross-examination.

The Court: It is not a contradictory statement of his testimony. It is only his expression of opinion. You are not going to permit people to express their opinion as to whether or not they should be excused. Somebody might say that he is, that would not be fair. We have got to have the facts.

Mr. McCarter: I know, but when the husband of the decedent is called for the State to prove certain facts and the State even goes so far on the re-direct-examination to bring out with some detail the fact that he knelt in prayer, it seems to me that the fact that he frankly stated to Dr. Young the first time he ever saw his counsel what I have incorporated in my question, it contradicts the inference when is sought to be drawn from his testimony.

The Court: He has no option. I suppose he takes the witness stand and is asked questions and he has got to tell what he knows, and it does not appear that he is for or against the doctor. He simply tells what the truth is. This alleged statement does not contradict the statements made by the witness upon the stand and it does not relate to his bias, as I understand it. It is not offered on that theory. Objection sustained.

Mr. Mott: May I request at this time to instruct the jury to disregard the inference involved in the question.

The Court: I will instruct the jury generally to disregard inferences in all questions except as it may be sustained by the answer or failure to answer.

Defendant's counsel prays an exception to this ruling of the Court.

The same is allowed and it is signed and sealed accordingly.

WM. MARTUS,
Judge.

(Seal)

JULIUS F. ROEMMELE, sworn for the State:

Direct-examination by Mr. Mott:

Q. Where do you live? A. Fifty-seven Hamburg Place.

Q. What is your occupation? A. Assistant embalmer.

Q. Assistant embalmer. For whom do you work? A. Mr. August Meyer.

Q. Mr. Meyer is an undertaker? A. Yes, sir.

Q. On the evening of the 15th of February last, or sometime around the evening of the 15th of February last did you go to the home of Dr. Truesdell at Montclair? A. Dr. Emma C. Truesdell, yes, sir; Seventy-one Valley Road, Montclair.

Q. What time did you get there? A. Got there around half-past five.

Q. Did you go alone or in company with somebody? A. I had an assistant with me, Mr. Alder—Edward Adler.

Q. When you got to the house whom did you see? A. Mrs. Wolf, Dr. Truesdell and Mr. Fred Wolf.

Q. And after you got to the house what did you do? A. Went into the kitchen and done my embalming.

Q. Where did you find the body of Mrs. Truesdell? A. On the kitchen table.

Q. How was it covered? A. On the kitchen table about four feet along, two feet wide, both feet propped up on a chair and turkish towel on her head and the table was covered with newspapers.

Q. Now, won't you tell the jury just what you did before you began the process of injecting the embalming fluid—what you noticed—what did you do? A. When I came to the house—went in the kitchen, put up my embalming board, took her off the kitchen table, put her on the embalming board, got open my embalming grip, sewed up the wound where she was operated—where the operation was.

Q. Had the wound been sewed up previously? A. There was three stitches in catgut—the doctors use—I think it is called catgut.

Q. What did you do with those stitches? A. I took the stitches out and restitched it.

Q. What kind of a stitch did you use? A. I generally call it baseball stitch.

Q. That is what you put in? A. Yes, sir.

Q. Do you know how many stitches you put in? A. Well, the incision was about between five and six inches. I couldn't tell you how many stitches I put in—quite long stitches.

Q. With what material did you stitch it? A. Strong white thread. I generally buy the thread from the shoemaker, what they call shoemaker's thread—good strong thread.

Q. Go on and tell us what you did. A. After I got the wound sewed up I started to embalm.

Q. How did you do that? A. Picked up my brachial artery and the axillary vein. I picked up my brachial artery first—picked up my axillary vein first and then my brachial artery after. While I was injecting my fluid I drawed my blood from the axillary vein.

Q. About how much blood? A. About a quart.

Q. How did you inject your fluid? A. I have a regular syringe—I mean the regular pump I generally use.

Q. What do you call it? A. Rubber pump. It is connected with the fluid bottle.

Q. Go on and tell us what you did besides? A. After I had my two quarts of fluid in the body I checked off—two quarts of fluid generally put in the artery.

Q. It isn't what you generally did. The ques-

tion is what you did this time? A. Two quarts put in the artery, checked off my vein, tied up my arm, put two ounces of fluid down in the lower cavity—(interrupted).

Q. How did you do that? A. By trocar.

Q. By trocar. Where do you insert the trocar? A. Up on the left-hand side, two ounces up above and two ounces down below.

Q. Whereabouts on the left-hand side? A. Underneath—about the first rib.

Q. Then what did you do? A. Then, I dressed her. After I got through I dressed her, put her on the board and carried her in the front parlor.

Q. Did you at that time remove any organs or part of the body? A. I did not.

Q. And while you were there operating on her did anybody else do that? A. No, sir.

Q. Have you brought with you the trocar you used that day? A. Yes, sir.

Q. Where is it? A. I give it to Dr. Hicks.

Q. Before you sewed up the cut did you remove anything from the abdomen at all? A. I did not.

Q. Blood? A. No, sir.

Q. Feces or fecal matter? A. No, sir; nothing at all. Only injected my fluid, two ounces in the upper cavity and lower cavity.

The Court: How much did you say in the lower part you put in?

Witness: Two ounces of fluid in the lower cavity and two above.

The Court: Two ounces?

Witness: Yes, sir.

The Court: Above, in the arm?

Witness: I mean in the upper cavity and lower cavity.

The Court: And two ounces below?

Witness: Yes, sir.

Q. When you took out the original stitches, did you pull the cut apart?

Mr. McCarter: I object to the question as leading.

The Court: Objection sustained.

Q. Did you have any look at any time into the abdominal cavity? A. I did not. There was a lot of pus there I washed myself.

Q. What? A. There was some blood coming out I washed myself with a sponge to catch it while it was coming out, otherwise it would run on the floor.

Q. How much blood run out of the cut in the abdomen when you took out the stitches? A. Well, I couldn't tell you. About, maybe, half a pint or so.

Q. What is this instrument I show you? A. It is a trocar.

Q. Is that the one you used that day? A. Yes, sir.

Q. Now, how do you use that in inserting the fluid? A. Well, I took it—I used it and put it in right above the navel—jabbed it in the stomach—and put two ounces of fluid in the above cavity and two ounces of fluid down in the lower cavity; put it in about four inches to give a chance for the fluid to run in the upper cavity and lower cavity, to circulate through the body.

CROSS-EXAMINATION by Mr. McCarter:

Q. Where is your residence? A. Fifty-seven Hamburg Place.

Q. Newark? A. Yes, sir.

Q. Do you work for Mr. Meyer alone or for others? A. I work for different undertakers.

Q. Different undertakers? A. Yes, sir.

Q. Do you remember where you were that day previous to this call? A. That day? I think I was home that day—no, I was sitting across the street on my brother-in-law's place that day—he has got his place right across the street from there.

Q. Brother-in-law's place? A. Yes, sir.

Q. On Hamburg Place? A. No; on William Street;—40 William Street.

Q. Forty William Street? A. Yes, sir; where I generally make my—

Q. Not what you generally do. I want to know where you were that day if you recall? A. That is where I was called from, from 40 William Street.

Q. Who called you? A. Why, Mr. Meyer's step-sister.

Q. And where did you go then? A. I went across the street, and she answered the telephone —she said I was wanted at the telephone.

Q. And after you went across the street into the undertaker place and got word, what did you do then? A. Well, I got my board and stuff together—got my embalming tools—kit and embalming board and got an automobile car and went up to 71 Valley Road.

Q. Who went with you? A. Mr. Edward Adler.

Q. Where did you find him? A. Well, he is always around with me.

Q. I don't care whether— A. He was right at the same place where I was.

Q. At your brother-in-law's across the street? A. Right in the same place; yes, sir.

Q. He was over to your brother-in-law's too; was he? A. Yes, sir.

Q. Sure about that? A. Yes, sir; he makes his stay there—generally stays right there. If he ain't there he is next door. He lives right next door to the place.

Q. You and Adler went alone? A. I had the man that run the car, Mr. Honeywell—young Honeywell.

Q. Did you look at the clock when you arrived at the place? A. Well, I got the call around—

Q. Did you look at the clock when you arrived at the Valley Road Place? A. Yes, sir; at the Town Hall just about twenty minutes after five.

Q. The Town Hall? A. Yes, sir.

Q. At any rate you and Mr. Adler—is that his name? A. Yes, sir.

Q.—Went into the house, and whom did you first see? A. I seen Mrs. Wolf when I come up the stairs.

Q. Yes. A. Dr. Truesdell and Mr. Fred Wolf.

Q. Saw Dr. Truesdell? A. Yes, sir.

Q. And Mr. Fred Wolf? A. Yes, sir.

Q. Any of them show you into the kitchen? A. I asked them where the remains was.

Q. I asked you if anyone showed you in the kitchen? A. I think they did, yes, sir.

Q. Who? A. I am pretty sure it was Mr. Wolf.

Q. Fred Wolf. Mr. Truesdell—Dr. Truesdell did not go in there with you? A. No; he stood there with his mother.

Q. He saw you come in? A. Yes, sir.

Q. What time did you say—how long do you

say this performance—this operation took, previous to dressing the body? A. I was home in Newark—

Q. I didn't ask you that? A. About an hour and a half?

Q. Hour and a half? A. Yes, sir.

Q. So that if you got there at half-past five you were through about 7 o'clock? A. Well—

Q. Well, were you? A. No, I wasn't through at 7 o'clock. Might be a little longer, from an hour and a half to two hours.

Q. Well, now, what time did you spend there? Were you there two hours? A. Well, about that. Say about two hours.

Q. Don't you know you didn't leave until 9 o'clock? A. Nine o'clock?

Q. Nine o'clock? A. I was home before 9 o'clock.

Q. Home before nine? A. Yes, sir.

Q. Did Adler go home with you? A. Yes, sir; and the machine I had was engaged to go to Jersey City by half-past eight.

Q. Now, it is very important, to have a successful embalming that the body be tight, isn't it? A. Sometimes.

Q. So that there will be no escape of your fluid? A. Yes, sir.

Q. And you found that the wound was only partially sewed up, as I understood you? A. Yes, sir.

Q. Only three stitches? A. Yes, sir.

Q. Of catgut? A. Yes, sir.

Q. They were each separate stitches, weren't they? A. Yes, sir; I should judge about an inch and a half apart—about an inch—inch or so.

Q. Fastened together? A. Drawn up and tied.

Q. Drawn up and tied with catgut? A. Yes, sir.

Q. You removed that catgut? A. Yes, sir.

Q. After you cut these three separate stitches? A. I took one stitch out at a time until I got up to the next one—next stitch—next thread—then I took the other one out and stitched it all the ways up.

Q. What did you cut the catgut with? A. I had scissors.

Q. Scissors. And having cut out the further—highest one—did you commence on the upper one? A. Started below and came up.

Q. Having cut out the lower stitch you had already commenced to sew, had you? A. Yes, sir. As soon as I got the first stitch out—the first stitch I took out—I started to sew until I got to the second stitch and when I got to the second stitch I went up further.

Q. How much of the wound had not been sewed together? A. Oh, I judge about—you mean open space? How far was open between the wound?

Q. Yes. A. Between the stitches?

Q. Yes. A. I should say an inch between each of them.

Q. Inch between each? A. Yes, sir.

Q. Now, how near to the end of the wound were the two end stitches? A. Well, the stitch on each end was about half an inch from each end and one in the center.

Q. And one in the middle? A. Yes, sir.

Q. And you commenced at the lower part of the wound? A. Lower part.

Q. And with a baseball stitch sewed a continuous stitch right up to the top of the wound? A. Top.

Q. And as you came to these three separate catgut stitches you cut them and got them out of the way? A. Yes, sir.

Q. Now, I understood you to say that when you first got there and viewed the body you saw some pus and blood exuding from this wound, is that right? A. Running out a little bit like—just running out the least bit; yes, sir.

Q. Can you describe this thing which you call pus? A. Well, it is like—it was like blood to me.

Q. Like blood? A. Blood; yes, sir.

Q. Coming out of this wound? A. Yes, sir; running gradually. It wasn't flowing much, but just run gradually.

Q. Just gradually, yes. And you washed that away? A. Well, when I took—I had a sponge and water—as soon as I started to stitch it generally starts to run and I catch it again and rinse my sponge out.

Q. And your object in doing this was to sew that wound up tight so the body would hold the embalming fluid? A. Yes, sir.

Q. Now, where is that trocar? A. Right here.

Q. You had no other instrument to use—to insert into this body than this trocar, had you? A. That is all.

Q. Is this the very one you had? A. Yes, sir.

Q. And as I understand it you have a double object in embalming and it is to remove the blood and to pour in the embalming fluid, is that right? A. Yes, sir.

Q. Now, what did you do to relieve the body of the blood? How do you get the blood out of the body? A. I got a regular vein tube.

Q. Another one of these things? A. Yes, sir.

Q. Then this is not the only instrument? A. I got what they call a vein tube.

Q. Have you got that with you? A. No.

Q. Is it something like that? A. It is something like that, only no point; it is round.

Q. You insert the vein tube in— A. It has the same holes on the side.

Q. You insert the vein tube in and then how do you get the blood out? A. Pull out my rod and it runs through the vein tube, through the hose into a bottle. The rod you pull out.

Q. Kind of a syringe? A. Rod on the end of that.

Q. Pull the blood out? A. No; pull out the rod and the blood goes through the rod into the bottle.

Q. Into the what? A. Into the bottle.

The Court: It is a tube?

Witness: Yes, sir; regular tube. What they call a vein tube.

Q. Now, that you do first, I suppose, before you insert the trocar, this instrument? A. Yes, sir.

Q. And I understood you to say that you drove this trocar in several places three or four inches? A. I run up one side, up on the left—left side—and then three inches down below.

Q. That is three inches in the body? A. Down below, slanting way; generally shove them down slanting ways.

Q. Slanting ways? A. Yes, sir.

Q. Three inches of it went in under the skin? A. Yes, sir.

Q. And how many different places did you insert that three inches? A. Two places one up once—upper cavity and down the lower cavity (illustrating).

Q. Just those two cavities. Do not attempt to describe it anatomically because I do not think we will understand you, but where were they locally, where were these two places? A. On the upper cavity on the right side above the diaphragm.

Q. Where with reference to the teats here, the breast? A. Under the breast.

Q. Under the breast? A. Yes, sir; underneath.

Q. On the right side under the breast? A. Yes, sir.

Q. That is one place? A. Then, I reversed it around and let it run down the other way. Reversed my rod and went down the other way.

Q. Now, when you went in that room at that time and prepared this body and dressed it did you notice any blood on the floor? A. Yes.

Q. You did? A. Yes, sir.

Q. Where? A. Well, alongside of it, near the stove—alongside of where the body was laying on the table—kitchen table.

Q. Yes. Did you notice anything in the sink? A. I noticed the sink was kind of splashed up where—

Q. Not what you suppose. I want to know what you noticed on the sink? A. On the sink, yes, sir.

Q. What did you notice? A. Couple of spots on the sink, blood.

Q. How far was the sink on which there was a couple of spots of blood from this table where this poor girl's body laid? A. Here is where the body is and about where that rail is about the sink (pointing to the rail in front of the Judge's bench).

Q. If the body was where you are the sink is about where this rail is? A. Yes, sir.

Mr. McCarter: I suppose that is about five or six feet?

Mr. Mott: I guess that is a good guess.

Q. What else did you observe about that room? You found blood on the floor by the table? A. Yes, sir.

Q. And you found blood on the sink about six feet away? A. Yes, sir.

Q. From the table? What else did you observe? A. And alongside of the stove in the coal scuttle was newspaper with blood on.

Q. How far was the coal scuttle with newspaper in it with blood on from the body? A. I should say about three feet.

Q. Three feet? A. Yes, sir.

Q. What else did you observe? A. That is all I seen.

Q. Eh? A. That is all.

Q. All you saw? Did you notice—I understood you to say the feet were higher than the head? A. Yes, sir; had two chairs and both feet were propped upon the chair.

Q. Oh, I was going to ask you about that. Where were these chairs? A. At the foot of the—where her feet were.

Q. Assuming now that this is the top of the table, this table here— A. Yes, sir.

Q. The chair was right here at the foot? A. The foot part where you are, see, each foot was on each table—I mean on each chair.

Q. Now, the back of the chair was higher than the table? A. A little bit, not much.

Q. A little bit higher than the table, and a leg— A. One leg on each chair.

Q. One leg on each chair; that way and that way (indicating), is that right? A. Yes, sir.

Q. Well, did you remove those chairs? A. I re-

moved those chairs, after I had her on the board, yes, sir.

Q. Yes. And what kind of chairs were they? A. Regular kitchen chairs.

Q. Kitchen chairs? A. Yes, sir.

Q. How much blood did you wipe up with your little sponge, that you spoke of, have you any idea, or this mucus or pus? A. Where the operation was? Wouldn't be much. I didn't think it was. Half a pint or so. Just what run out while I was sewing up.

Q. Did your sponge go into the wound? A. No, sir; I just catched it outside.

Q. You ordinarily, in preparing a female body for burial pack the vagina, don't you? A. I do not pack it, no, sir. Never pack it.

Q. Do you do anything with it at all? A. No, sir.

Q. Did you look in there at all this time? A. No, I did not.

Q. Didn't look in there? A. No, sir.

RE-DIRECT-EXAMINATION by Mr. Mott:

Q. How many holes through the skin of the body did you actually make with this trocar? A. One hole. I shoved it up in the upper cavity, and one down the lower cavity.

Q. Then you inserted your material in both cavities? A. Yes, sir.

Q. From the same hole by changing— A. Reversing it up and reversing it downward.

Q. And that hole you said was made over the— A. Right near the navel.

Q. Near the navel? A. Yes, sir.

Q. You said something about one of the ribs? A.

Yes, sir; near the rib, between the first rib and the—

Q. All right. That is all.

WALTER S. WASHINGTON, sworn for the State:

Direct-examination by Mr. Mott:

Q. Doctor you are a practicing physician and surgeon of this county, are you? A. I am.

Q. How long have you been practicing medicine, if I may ask you the question? A. A little over forty years.

Q. Are you connected with any of our hospitals or institutions? A. Yes, sir; I am on the consulting staff of St. James' Hospital at this time—is the only one.

Q. Did you formerly hold a public position here? A. Yes, sir; I was the County Physician for Essex County for eight years.

Q. And did you begin your practice in another State? A. Yes, sir; in Michigan.

Q. And in Michigan did you hold any position? A. Yes, sir; I was County Physician of Roscommon County for twelve years.

Q. Has your practice been generally both medical—if you understand what I mean—and surgical? A. Yes, sir; general.

Q. Did you have an interview, Dr. Washington, with Dr. Young in the presence of myself and Dr. MeKenzie in the prosecutor's office? A. I did.

Q. Dr. McKenzie is dead, is he? A. Yes, sir.

Q. Do you recall the day that that interview took

place? A. Yes, sir; that was the morning of March the 14th, last. The appointment was kept at ten o'clock in the morning.

Q. And after we gentlemen, including myself in that designation met, who first spoke? A. You did.

Q. What was said by me? A. You said that the defendant, Dr. Young, had asked you for an interview and you had said that you preferred to have that interview with myself and Dr. McKenzie present as your limited knowledge of medical terms or surgical terms would not be of any help in having an interview with Dr. Young, for that reason the appointment was made for the following day and was kept.

Q. After that will you proceed now and tell the conversation that took place there as accurately and as fully as you can? A. The first thing I said was said to Dr. Young at once, and that was that he understood or should understand that anything he said at that interview might be used against him. With that understanding he started to tell something—some few questions were asked—very few by me—and answered. He said that the operation was done for the removal of what he supposed was a dead fetus of about three or four months duration; that Mrs. Truesdell was put on the table; that he knew he had torn the womb; that part of the intestines came down; that he saw the end of it. He was asked then where was the other end and he said he didn't know. Some one suggested that it must have been somewhere and he said he supposed it was, but he did not know anything more about it, or at least said nothing more about it. He said he did not see the fetus, or he

did not find the fetus. He said he used a dilator and a curet as the only instruments; that Mrs. Truesdell became worse while on the table—he was afraid she was going to die—that he did not know what caused her death and he was very anxious to know. He told of the incision made by himself in Dr. Simmons' presence, of the tear in the womb and his relief at finding that there was no blood present in the abdominal cavity. He was afraid that she had bled extensively and that he would find blood in the abdominal cavity. He said he did not know what caused her death and he would very much like to know.

Q. Is that all that you recall, Doctor? A. I think that is all that I recall. I do not remember all of the details. I asked very few questions.

Q. Do you recall whether or not he said anything as to what he and Dr. Simmons did at the time that he made the incision? A. Nothing except he said he made the incision that he asked Dr. Simmons if he should do it, because he had his gown on, and so on, and he made the incision and they saw the rent in the top of the womb and he passed his hand down and—with a piece of cotton— and did not find any blood there, which was a relief to him.

Q. Do you recall whether he said anything as to whether anything was removed from the body at that time? A. Oh, he said nothing was removed from the body at that time.

Q. Do you recall whether he said anything about putting anything into a pail or bucket? A. Yes, sir; part of the intestine which was removed.

Q. Just tell us about that? A. He said that part of the intestine which was removed was placed

in the bucket with the blood and was taken away with that.

Mr. McCarter: I did not hear the last part.

Witness: Taken away in the pail—in the bucket.

Q. Do you recall whether he said what was done with it? A. Well, it was taken away by the nurse. Thrown—supposed to be thrown away.

Q. Do you recall just what he said? A. No; I do not.

Q. That exhausts your memory, does it? A. It does, mine, yes, sir.

Q. Dr. McKenzie was present during the whole of this interview? A. He was.

Q. Dr. Washington, were you present when an autopsy was performed on the body of Mrs. Truesdell by Dr. Richman, Dr. Hicks and yourself? A. I was.

Q. Will you please tell the Court and jury just what was done at that autopsy, first describing the exterior condition of the body before the incision was made? A. The body was naked, in the morgue of Mr. Joseph J. Mullin at 105 Washington Street. The first noticeable thing was an incision in the right arm pit which was closed by two or three sutures. The next was an incision in the center of the abdomen extending from about one inch above the navel down to the bottom of the abdomen. This incision was about nine or ten inches in length. Mrs. Truesdell was a small woman. Dr. Hicks then—oh, the incision was closed with what is spoken of as a base ball suture, a continuous suture that went this way and that way (indicating) and so on, and the thread was light in color. I could not tell you

what it was composed of but it was light in color. Dr. Hicks began the work by not re-opening the old incision but cutting down beside it, extending it clean down as far as he could at the bottom, and up as far as the bottom of the breast bone exposing the inside the abdomen. On separating the abdominal walls the first thing that was particularly noticeable was the absence of the intestine and of the omentum, which covers the intestines in front. As soon as the incision was opened the top of the womb could readily be seen situated in its normal condition in the pelvis, with a large rent on the left side beginning near the center, extending across just below the top of the womb and disappearing down, where we couldn't see any further at that time. This—the womb in a normal condition is always covered by the intestines and on opening any abdomen you will never see the womb except by the removal to one side of the intestines.

Q. Well, if then, Doctor, on opening—

Mr. McCarter: Is that part of what you saw or is that a little remark thrown in? That is not in answer to what you were asked, Doctor, and I move to strike it out.

The Court: You cannot move to strike out an answer to a question because it is not responsive. Only the examining counsel can do that. If it is competent it is proper.

Mr. McCarter: I suppose he cannot have a witness run all around.

The Court: He has not run all around. He says the first noticeable thing that I saw was the fact that the intestines were absent; that the womb is usually covered with the intestines when you open up the abdomen

and the first thing you would see are the intestines and I think that is a perfectly proper statement to make.

Q. Doctor, if under any circumstances on opening the abdomen of a female you can see the womb what does that indicate? A. The absence of the intestines, particularly the small intestines.

Q. Is that an invariable situation? A. Invariable unless the omentum should be so large as to extend completely down to the pelvis and cover the womb. In that case there would not only be the intestines to move before you could see the womb but also the omentum. But in all cases the small intestines cover the top and surround the top and sides of the womb.

Q. Now, proceed, Doctor. A. After inspecting the parts at that time, Dr. Hicks removed the womb, the fallopian tubes, the ovaries, the bladder, the upper part of the vagina and part of the rectum in one mass, so that it could be examined with the various organs in their proper relation to one another. It was discovered that the—oh, before doing that some gauze was taken out of the vagina and also out of the mouth of the womb. After doing that it was discovered that this rupture of the uterus began at the cervix or mouth and extended all the way up the left side, across into the broad ligament and across the front of the womb nearly to the center, so that the whole extent of the rupture involved very nearly half of the entire circumference of the womb.

Q. And that would make a rupture of about what length at the time you saw it? A. The length of the womb at that time by measurement which I made myself was four and a half inches, the rup-

ture extending in a slightly—not in a straight direction—would be fully that length or a little longer, because it extended up the side of the womb almost to the top and then across two inches, so that in the irregular way in which it went it was as long or possibly slightly longer than the actual length straight up and down of the womb itself. This was a ragged, irregular rupture, completely through the whole of the wall, and at the portion on the front of the womb near the end or about the end, it was still more ragged, with some portions torn away, leaving part of the muscle exposed below and leaving it so that the insides could be seen almost or very nearly from inspection. Two—four punctures were seen in the top of the womb behind the fundus—behind the middle top on the posterior surface just back of the center. They were near together and we had not—no decision was arrived at by inspection as to what caused them or whether they were caused before or after death. I examined the rectum or the sigmoid flexure just where it was torn across. It was collapsed—the walls were together. The diameter I should say was about an inch and a half. It is a point of the large intestines where the diameter is not quite so large as some other portions below there. In the rectum, what we speak of as the ampulla of the rectum, is a very wide open space, which probably was four inches—three or four inches across. That was the largest spot. That is where it was cut off and taken—or at least part taken with the rest. These organs were placed in the care and the hands of Dr. Hicks with instructions to retain them for further microscopical or chemical examination—any

desired examination that we wanted to make later. Our attention was then called to the abdomen itself. The first noticeable thing was the open end of the duodenum which is the small part of the intestine. It was hanging loose in the upper part of the abdomen, about an inch in diameter, the rest of the duodenum being attached by the peritoneum to the posterior wall of the body. The other two parts of the small intestine, that is the jejunum and the ilium, together with all of the large intestine except the lower part of the sigmoid flexure and the rectum, all of the mesentery, all of the various mesocolons, which act in a similar capacity for other parts of the intestines, were gone, with the exception of some loose fringes left where their site had been. The stomach was examined and appeared to be normal. The spleen was cut into and examined. Both kidneys were examined—cut into. The liver was also treated in the same way. The heart was opened. Found no clots. Contracted. Complete absence of any blood in either of the cavities. The lungs were opened—cut open and the skull cap was removed and the brain examined in the same way. These organs, so far as their gross appearance is concerned, were normal. The only noticeable thing about them was the absence of blood, or at least the small amount of blood, the brain in particular being pale—almost bloodless.

Q. Which would indicate what? A. It would indicate a hemorrhage. A recent—that is very soon before her death.

Q. The punctures you found in the uterus were on what part of the uterus with reference to where the tear was? A. The tear was on the front and

left side. The punctures were also on the left side but they were on the posterior side of the uterus.

Q. Did you measure the uterus? A. I did.

Q. What was its size? A. Four and a half inches in length.

Q. Did you say that you found some gauze in the vagina? A. Yes, sir; in the vagina and some in the mouth of the uterus.

Q. What kind of gauze was it? A. Ordinary gauze that is used in surgical work.

Q. Well, was it ordinary surgical gauze? A. I suppose so. I did not charge my memory with that. It had all the appearance of ordinary surgical gauze that the surgeons use in cases of that kind.

Q. Doctor, you have told us of the size of the uterus at the time you saw it and the length of the tear at the time you saw it. Are you able to form any opinion, and to express it, as to the relative size of the uterus at the time you saw it and of the uterus before death? A. No; that is quite impossible for me to say, from any or all of the information that I have at present. I can say this—

Mr. McCarter: If it is impossible, that ends it.

Q. Go on and give us "this" please. A. The normal size of the womb would be from two and a half to three inches. This was four and a half inches. That size in the absence of anything like a tumor would indicate the uterus was about half as large again as it ought to be. That immediately creates the presumption of pregnancy, and did in this case, and I was entirely satisfied that this womb had been a pregnant womb. For this reason

we had the further examination to develop absolutely the fact that it had been a pregnant womb.

Q. Now, in answering my question assume that it was a pregnant uterus. A. I could not say how far, on my information I have now, this womb was pergnant. I am justified in saying that if she were pregnant that the womb was larger at the time of the operation than it was at the time of the autopsy. The womb could contract immediately on the removal of its contents, and, as I say, it is quite impossible for me from any information I have now to say how much—how long or how far she was pregnant, except this, that the womb would be larger at the time of the operation than it was after the contents were removed.

Q. Doctor, in your opinion, could a physician, operating either in curetting to remove a supposed dead fetus or by the use of forceps have made the tear in the uterus that you found? A. No.

Q. How would you account for that tear? A. That it was made by a dilator.

Q. By— A. By dilator.

Q. What is a dilator? A. A dilator is an instrument with two prongs which, then closed, are entered into the neck or mouth of the womb, and when opened by pressure on the other end dilate or stretch the mouth of the womb.

Q. Is it a difficult matter to get into the womb? A. Frequently is very difficult.

Mr. McCarter: Very what?

Witness: Very difficult.

Q. And when it is difficult to get into the womb what does correct practice require? As to caution I mean. A. Well, there is scarcely any danger of doing any harm in the simple introduction

of the blade of a dilator. It requires some patience and some tact, but they can usually be passed in wihout any danger or any damage being done in their insertion. The damage comes after they have been inserted.

Q. Doctor, assuming that a physician inserted dilators and made the tear in the womb which you found and afterwards used forceps forcibly in your opinion could the bowels that you found absent from this woman have been drawn down through that tear with the forceps? A. Very easily.

Q. Please tell the Court and jury why? A. The opening—the rupture of the womb extended from the mouth completely up along the left side and across the front of the top. This opening was four inches at least in length. If the dilator, as used in this way tore it, it snapped like this (indicating), unusual force would have to be used. It is not always an easy matter to dilate to the size or amount that you want and you are justified in using a certain amount of force. If you are using too much force you will do damage. That is a question of judgment. In this case a very large amount of force would be required to make so large—so long a rupture nearly half extending around the womb. Ruptures of this part of the cervix have undoubtedly been often made by surgeons and no fault could be found with them whatever, but this is an unusual affair in its size and extent in an absolutely healthy, normal uterus. The moment this uterus was split open in this way the small intestine would immediately well or drop into the opening. They seek or pursue where there is the least resistance. They are loose—freely moving around in the abdomen. They will go into

any opening. Just simply slide down into the uterus at once. Now, they would come down and if they were mistaken for something else, or not removed, not the proper treatment applied, they would easily be brought down through. The opening in the cervix in normal condition, and even when dilated in normal condition, is small, nothing much could get out—not a great deal could get down through there, but when it is torn completely through there is no resistance between the well side of the cervix and the pelvic wall. There is nothing there in the vagina. The vagina is loose and free. It is open. And when you get above there you have nothing which prevents stretching—swelling or stretching of the parts, so that the hand could be placed up—anything could be placed up in that way. The vagina would be the smallest part after the rupture was made. The small intestines could readily come down through. Then, the large intestines it would be quite impossible to remove in the clean way in which we found the abdominal wall, by the hand. That would be impossible. The removal of them. You see there is plenty of room—there was four inches wound in the abdomen—uterus—the largest intestine when it is collapsed isn't half an inch thick, you know. It is only in its distended state when it is large and it is not distended when it is empty. As a result that comes down very easily. But they could not—the mesentery attachment or the various parts of the large intestine and the mesentery itself could not be loosened by the ordinary process of dragging down the intestine. That would be quite impossible. The intestines might come down but the

mesentery and those parts would not be separated in that way. The bowel would tear and the other parts would tear. You couldn't get them down unless the hand were passed through and the attachments were torn down by the hand. It couldn't be done except in that way without the use of instruments. With the use of forceps or the curet, why, you could tear any of those structures without any difficulty whatever. They are not India rubber. They are easily torn—all of them—any of them are easily torn with an instrument.

Q. Doctor, assuming that a physician in an effort to remove a dead fetus discovers that there is hanging from the mouth of the vagina a loop that looks like intestines about eight or ten inches long what does ordinary and proper practice require to be done? A. It requires stopping the operation and immediately opening the abdomen to repair the damage otherwise the accident is absolutely fatal. There is is no possible hope of recovery unless it is done, and done at once.

Q. Assuming that in the course of performing an operation such as I have described, that is for the removal of a dead fetus, the operator finds that he has drawn down the intestine, has seen one end of it and knows that there is another end and has put the portion of the intestine that he has drawn down into a bucket or receptacle, what does proper practice require in that case? A. The same thing, the opening the abdomen and the repair of the damage to the intestine and to the uterus.

CROSS-EXAMINATION by Mr. McCarter:

Q. Did you come to the conclusion what was the cause of death? A. Did I?

Q. I am not going to ask you what somebody else concluded. I ask you, Doctor, if you come to the conclusion after this autopsy, as to the cause of death? A. That is what I asked you if that was what you asked me. I did.

Q. What was it? A. Hemorrhage and shock.

Q. Hemorrhage and shock? A. Yes, sir; undoubtedly.

Q. It must necessarily have been hemorrhage? A. Undoubtedly.

Q. Pardon me? A. Undoubtedly.

Q. And to what extent? A. Do you mean the amount?

Q. Yes. A. How do you want it, in pounds or quarts? I couldn't answer that question, or anybody else. That is simply impossible to answer, what would—the amount of blood that would kill one might not kill another. That is a variable proposition.

Q. Well, to loosen up all of this big and little intestines that you have described as having been loosened in the manner in which you have described it would cause a hemorrhage of about how much? A. I couldn't tell you that.

Q. What are you looking at there, a note? A. What is that?

Q. Are you looking at anything? A. I am looking at you, and sometimes I look at my hands, it is a habit I have, when I am not looking at you.

Q. You are quite a professional witness, aren't you, Doctor? A. I appear occasionally.

Q. In fact, you do not practice medicine, now, do you? A. Oh, yes.

Q. Haven't you for the past five years devoted most of your time acting as witness for the Publice Service Corporation? A. No, indeed.

Q. Didn't you tell me the other day in my office that you had practically given up practice for several years? A. No; I said I didn't do as much as I used to do.

Q. And that you were practically devoting your time to acting as witness? A. I didn't say that.

Q. Didn't say that? A. No, I didn't say that.

Q. Nothing of the kind? A. Well, I didn't say that. I said, as I have said on the stand—I am perfectly willing to acknowledge anywhere—that I do not begin to do the amount of private practice that I used to do; that I appear in Court a good deal for the Public Service and other corporations and also for the state. I don't know that there is any reason why I should deny it.

Q. Who employed you—who first directed you or requested you to attend this autopsy? A. I was engaged by Mr. John Bernhard.

Q. And he is the counsel for the Wolf family, is he not? A. Yes, sir.

Q. And you were told to present your bill to the Wolf family? A. I was.

Q. Mr. Fred Wolf? A. No; I was paid by Mr. Bernhard.

Q. Paid by Mr. Bernhard? A. Yes, sir.

Q. Is that true of the other gentleman who participated in the autopsy? A. I don't know.

Q. In other words the autopsy, so far as you know, was neither inspired by or paid for by the State? A. No. It was made with the knowledge of the State but not inspired by them so far as I know.

Q. Now, the punctures as distinguished from the tear that you found in the uterus you finally concluded were the trocar punctures, did you not? A. I did not come to any conclusion about that.

Q. Well, have you any doubt about it now since you have heard the other testimony of the other doctors? A. I haven't any doubt, no. I think that is what they were, but of my own knowledge and from my own judgment it is impossible to say what they were. They were a matter of no moment at any rate. They were only small and did not, in other words, affect the case.

Q. You spoke of the fact that the absence of blood struck you when you performed the autopsy. Did you find an entire absence of blood? A. No.

Q. But very much less than you would have normally expected to find? A. Yes, sir.

Q. Of course, assuming that the main part of the big and little intestines that were ultimately removed had been removed after death, there would have been hemorrhage then too, wouldn't there? A. Where from?

Q. From the torn mesentery? A. After death?

Q. Yes. Within a short time after death? A. What do you mean by short time, a day or a few hours or what?

Q. I will say a few hours first. Very amusing, Doctor. A. There would be some.

Mr. Mott: I do not see any occasion for commenting on the witness.

The Court: The comments may go out and the jury may disregard them.

Mr. McCarter: The Doctor in a quite flippant way is seeking to disspoil the reputation of a fellow physician and I would rather he wouldn't be so flip about it, and answer the question.

The Court: I do not see the slightest necessity for the remarks and the jury will

disregard them and the Doctor will answer the question.

Mr. McCarter: That is what I want him to do.

The Court: It is not necessary for comment further upon the matter.

Q. (Question read.) A. There would be some hemorrhage.

Q. Some hemorrhage? A. Yes; certainly.

Q. How much? A. I couldn't tell you that.

Q. There would also be fecal matter, wouldn't there? A. In the intestine?

Q. Exposed in the abdomen? A. If the intestines were torn there would.

Q. Will you answer my question please? Why can't you say yes. A. Let me do the answering. You can do the questioning. Allow me to do the answering.

Q. If this rupture had taken place— A. That was not the question before.

Q. You knew I was talking about the tearing away of the big and little intestines.

The Court: Do not argue with the witness.

Mr. McCarter: I beg your Honor's pardon?

The Court: I say there is too much argument about this. Let him answer the question. Proceed with the question.

Q. You knew I was speaking of the removal of the big and little intestines, didn't you? A. Yes, sir.

Q. From their adhesions? A. Will you change that? There are no such thing as adhesions. Attachments is the correct word, if you do not mind.

Q. What do you call the two strong things that fasten the large intestine? Are they called spleenic ligaments, one of them? A. One of them is, at the corner of the spleen, yes, sir.

Q. Now, when that is severed—when the mesentery in severed away from the other things that attach the big and the little intestines to their respective places there would necessarily be considerable loss of blood, would there not? A. It would if they were separated during life.

Q. And after death? A. After death nothing like—there would be some but nothing like the amount there would be during life.

Q. Pardon me? A. Nothing like the amount there would be during life.

Q. And there would be, even if this took place after death, there would be fecal matter in the abdomen? A. Well, I suppose there would be.

Q. Will you answer the question? A. Well, I will answer it in my own way.

The Court: Take your own time, Doctor, and answer it in your own way.

Witness: If there was fecal matter in the intestines and the intestines were ruptured there necessarily would be fecal matter in the abdominal cavity. If for causes that we know nothing of there was little or no fecal matter—if the fecal matter did not extend through the whole length of the small and large intestines, there might be a rupture without the appearance of any fecal matter.

Q. Do you know of the fact—have you ever heard or read of a situation where the large intestine was ever totally free from fecal matter in a healthy person? A. Not except it was removed by being washed out. Of course, in a perfectly

normal person, who eats regularly, there is always fecal matter in the large intestine.

Q. Are there fluids in the intestines over and above fecal matter? A. Yes, sir; sometimes, some secretion from the intestines and from the glands.

Q. And will you go on record as stating that in the normal person either the large or small intestines is ever entirely free from fecal matter? A. Oh, no.

Q. Now, I understood you to say that in order to have removed the parts that you observed were gone it would have been—with the hand—it would have been necessary to have the hand where? A. In the abdominal cavity, of course.

Q. Through the vagina, into the uterus, and out of the opening of the uterus? A. Certainly.

Q. Into the abdominal cavity? A. Certainly.

Q. And having gotten the hand through the vagina, through the uterus, into the abdominal cavity you would have had to give a considerable jerk and pull, would you not? A. Yes, sir, they would have had to be torn loose.

Q. Torn loose? A. Yes, sir; in order to do that in that way.

Q. In that way. And that would be a matter requiring considerable strength and pull? A. No; it doesn't require a great deal of strength. It requires time but not strength. The mesentery and mesocolon and these various structures that hold the bowels in place are not strong in the sense that they are not easily torn. As a matter of fact they are easily torn. They are all delicate structures and specially easily torn. Be no trouble tearing them with the hand without very much force.

Q. Have you ever torn them? A. I have at post mortems, many times.

Q. How about tearing the bowels with your hands? A. The bowel can be readily lacerated if you have sufficient purchase on it, not otherwise. You have got to have a purchase, they will slip through your fingers. You have got to have it in some way that you can pull on it. If you do you could tear it.

Q. At which end of the mesentery are you assuming the tear to have occurred, the cord end or the intestine end? A. I don't think I understand you, Mr. McCarter.

Q. Which end of the mesentery are you assuming the tear to have occurred, at the intestine end or the cord end? A. At the other end, at the attachment of the abdominal wall, that is certain, not at the other end.

Q. That is the root of the mesentery, isn't it? A. Yes, sir; in that neighborhood. There was some remnant of it left. In that neighborhood.

Q. That is where it is thickest? A. Where it is thickest and where it is attached to the abdominal wall.

Q. And where it is hardest to tear? A. Yes, sir; I think that would probably be the most resisting part of it.

Q. Now, it is true that as a matter of fact it would be quite difficult to tear that there—require considerable jerk and pull? A. I don't think so.

Q. You don't think so? A. No; I don't think so.

Recess.

Q. Dr. Washington, you stated, I think before luncheon, that under the conditions that were given

to you in the questions put by the prosecution, it was good practice for the operating surgeon to stop at once and as soon as possible open up the abdomen and correct the trouble and if that were not done death would ensue. You do not mean by that that death would be instantaneous, do you? A. No. That would be the ultimate result of that condition.

Q. The probability is that death would be from blood poisoning or peritonitis, which would set in after two or three days? A. No; not at all. The death—the immediate cause of death under those circumstances would invariably be hemorrhage and shock.

Q. Would that be true if the mesentery was not torn off? A. Yes, sir, with this extent of laceration of the uterus, at this time.

Q. Well, you now have the advantage of the post mortem in the extent of the laceration of the uterus but I am assuming now this question—and that extent—by the way, was not involved in the question the prosecutor put to you. The prosecutor put to you, assuming that the uterus had been ruptured and assuming that a portion of the bowel was dragged out by the use of forceps, what did good surgery demand, and your reply, "It demanded ceasing the operation at once, opening the abdomen and correcting the evil." Now, I ask you if—you have already replied to my question with reference to that, that death would not necessarily be instantaneous—I ask you if, under the circumstances that I have named, death in such a case, with those conditions all you know, would probably be from peritonitis or blood poisoning which probably would not come for two or

three days? A. I do not believe I gather just the import of the question, Mr. McCarter. I will have to have it either explained or made in a more compact form.

Q. Do you remember the prosecutor putting a question? A. Yes, sir; I remember what the question was Mr. Mott put to me and I remember the answer. Now, then, if you will go on from there I will be glad to answer you if I can.

Q. The question that the prosecutor put to you, as I understand it—I will just repeat it, because the jury want to know what we are talking about—is this, assuming that the operating surgeon has to his knowledge punctured the uterus and assuming that he has by the use of an instrument become aware of the fact that he has gotten hold of a piece of the maternal intestine, what does good surgery require, and I understood your answer to be that it required the cessation of the work, the opening of the abdomen and the correction of the trouble with the bowel? A. Yes, sir; that is correct.

Q. I ask you under those conditions, with that question before you, and that answer, if it is not a strong inference and probability—in fact a practically medical certainty—that the trouble that you would anticipate would be from blood poisoning or peritonitis which would not result fatally for two or three days? A. That is so if I did not know, or if the suregon—not I—if the surgeon did not know the extent of the rupture and there was not excessive hemorrhage, that that is the probable result, and that would be after a number of days, as you say.

Q. Now, assuming the rupture to have occurred

at this operation and to have been as extensive as you discovered it to be two or three weeks afterwards, there would have to have been considerable hemorrhage, wouldn't there? A. There—

Q. Now, Doctor, wouldn't there have to be considerable hemorrhage? A. Very extensive hemorrhage. Fatal hemorrhage in my judgment.

RE-DIRECT-EXAMINATION by Mr. Mott:

Q. Doctor, the last question asked you was, if I understand it, assuming a rupture of the uterus such as you found on your post mortem there would be a large hemorrhage and your answer was "I think a fatal hemorrhage"? A. Yes, sir.

Q. How soon would death follow from such a hemorrhage? A. I couldn't tell you in minutes just how long that would take. All I can say is that the moment a uterus becomes pregnant it begins to enlarge. The blood vessels particularly enlarge. Become tortuous and anastomos and that after the after-birth is formed there are also the sinuses that are between the after-birth and the uterus and which nourish and support the child. This increased vascularity is very very apparent and a laceration of the extent that I speak of would lacerate—break the uterine artery and the ovarian artery and the other vessels that connect them together and that the hemorrhage itself would be a very, very serious one, and if time were taken, it might be a number of hours, death would undoubtedly result from hemorrhage from that alone. Of course, this is also dependent upon another thing, the length of time that the womb was pregnant. In the earlier stages it would not be so severe as it would after three or four or five months. The

amount of hemorrhage depends on the size of uterus and the length of pregnancy.

Q. Doctor, you said that the small intestine if I understood you correctly, lay right over the uterus and that on the opening of the abdomen you could not see the uterus without the removal of the intestines, is that substantially correct? A. I think that is so.

Q. Do you then have in mind a particular state or condition of the uterus or were you speaking generally? A. Of course I meant the non-pregnant uterus or the very early stages of the pregnancy; and the size of uterus as found in this particular case, which was four inches and a half, where the normal would be three inches, that was practically the same thing, and in the case where it was no more advanced than that the uterus would be covered over, the top and sides by the small intestine. Of course as pregnancy goes on the uterus pushes the intestines aside and it is not visible—at least it is visible.

RE-CROSS-EXAMINATION by Mr. McCarter:

Q. Suppose there was a pregnancy of four months? A. In that case, Mr. McCarter, the uterus would be more easily found or reached.

Q. In other words it has grown and protrudes above? A. And as it grows up it pushes the intestines aside so that part of the time they are not over it.

Q. Now, assuming a uterus to have contained—to have been pregnant for three and a half or four months and then a dead fetus sought to be removed at about five or six months—such of the

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pregnancy with the contents of the uterus removed—and the post mortem discovery of the uterus about a fortnight after the death, you would expect to find the uterus smaller than it had been at the time of the operation, wouldn't you? A. Yes; oh, yes. The uterus would immediately contract after the contents were either removed or escaped in some way so that the uterus at that time—if the laceration—I mean the rupture—occurred at that time, it would be very considerably larger than the laceration that we found.

Q. Now, just one more question. The uterus is a body that is muscular, is it not, and tends to remain closed? A. Yes, sir.

Q. Tends to contract? A. Yes. sir.

Q. So that even if there be a rupture in the wall of the uterus the wound would not gap or gap naturally? A. No; except in this case, at the place where there was something more torn away, but I do not suppose that was torn at the time of the laceration. That was torn afterwards.

Q. We must not then picture this uterus as an affair with the laceration in it that is open at the point of laceration and remaining open, but rather its tendency is to close up, isn't it? A. That is right.

The Court: Do you mean by that the torn parts come together?

Witness: Yes, sir. Immediately after the laceration, or at the time when it is spread open in this way, the small intestines get in it, or they can get in at that time, or they may be brought in by the instrument, but aside from that the tendency is to reclose. It depends on the amount of contraction.

RE-DIRECT-EXAMINATION by Mr. Mott:

Q. Doctor, confining your attention to this particular case and dealing with the uterus as you found it at the autopsy, in your judgment, if the intestines had been in their natural and normal place in the body, could the uterus—this uterus—have been seen on opening the abdomen?

Mr. McCarter: I object to the question. The answer has already appeared by the testimony that the uterus must have contracted and it is no use therefore to speculate with regard to what could or could not have been seen at the time of the operation with a larger uterus on the assumption that the uterus was the size when the operation took place that it was two weeks after that.

The Court: You said operation. Do you mean the autopsy?

Mr. Mott: No, the operation.

Mr. McCarter: Dr. Simmons' operation.

The Court: You have left out the length of time of the pregnancy.

Mr. Mott: He has got to judge that from the uterus as he saw it.

Q. Adding to my question—taking into consideration the natural amount of contraction which took place between the time of death and the time that the operation was performed by Dr. Simmons—

Mr. McCarter: I object. It seems to me that is too speculative, your Honor. We have these facts, Dr. Washington, of course, saw nothing here until the time of the autopsy which was about a fortnight after death and Mr. Mott's question is directed,

to have Dr. Washington testify as to what could or could not have occurred at the time that Dr. Simmons examined this thing—did examine it or made such examination as you heard him say he made, on the day of the operation, with reference to being able to see the uterus without observing the bowels. Now, before luncheon Dr. Washington said it would be impossible to have seen the uterus without having seen the bowels. After luncheon he voluntarily corrected that, as we all have to do, by stating that of course that statement had reference to a uterus of the size as he observed it two weeks after the operation, at the time of the autopsy. On cross-examination I asked him and he stated, as your Honor heard, that at the time there was no fetus in the uterus, and if there had been a fetus it would necessarily have been larger and could have been seen without necessarily seeing the bowels. You cannot draw any inference except with one size of uterus you could not see it without seeing the bowels and with the other size uterus you could without seeing the bowels, and I do not see how any question can be framed, such as the prosecutor has framed, which can change that situation.

Mr. Mott: May I ask this question. Are you able to say from your examination of the uterus in question to what extent it had decreased in size from the time of death until the time you saw it?

Witness: Oh, no. There is no means by which I could determine exactly the difference in size at

the time of the operation or at the time of the death, say, and the time I saw it. I can only say this, that a uterus which contains a fetus immediately contracts after the fetus has been removed or has escaped. It immediately contracts, but it does not contract down to what would be the size later, but it does contract so that it is very, very marked, but not completely down. Now, whether it was down as much as this I couldn't say.

Q. What do you mean by immediately? A. Immediately after it is emptied. You see the size—

Q. A matter of minutes or hours? A. Yes—oh, no. Pregnant uterus will contract down in two or three minutes after the child is expelled. It immediately comes down but it doesn't come down to its normal size; but it comes down a very, very great deal, but not entirely. It takes a little time. It takes two or three months maybe before it regains its normal condition; but always, the moment a uterus is emptied of its contents, it contracts down immediately. Within a few minutes there is contraction very marked, and very marked difference in the size, but if it were four months pregnancy I could not say that this would represent the contraction that had occurred. I couldn't tell you that. While I might guess at it I am not prepared to say exactly.

The Court: Do not guess.

Q. Doctor, assuming that this women, Mrs. Truesdell, died around two o'clock, which I understand to be the time—about two o'clock—and that about 4:40 an incision was made into the abdomen what would, in your judgment, the condition of the uterus be at 4:40, as to the amount of contraction that had taken place? A. Well, you see I am un-

able to answer that or any question of that character because I didn't know when the contents of the uterus left it. I have no means of knowing when this uterus was emptied. We have no evidence when the uterus was emptied or where.

The Court: You mean there is nothing in the hypothetical question?

Witness: No, there is nothing in the fact.

The Court: On which to base any opinion.

Witness: No. I don't know whether the fetus escaped into the abdominal cavity or whether it came out through the vagina. We have no knowledge on that, so I can't tell you how long after that would be.

Q. If you knew, for instance, that the fetus escaped into the abdominal cavity during the operation could you then answer the question? A. As to the exact amount of contraction?

Q. Yes. A. Well, I don't know. I can't say that I could answer exactly. I can in a general way. I know it would contract down very nearly to its normal size, I should think. I think I am safe in saying that the contraction of a uterus which would be normal at three inches would be perfectly proper at four and a half inches. I think that the amount of contraction as shown by the measurements would be the normal contraction after it had been emptied, and that it would occur within a few minutes unless the uterus was kept open by some other means.

RE-CROSS-EXAMINATION by Mr. McCarter:

Q. Is the Mr. John A. Bernhard the counsel who paid your bill for this autopsy, the gentlemen who sits right in front of you here? A. Yes, sir.

FREDERICK L. WOLF, sworn for the State:

Direct-examination by Mr. Mott:

Q. Mr. Wolf, you are the brother of Emma C. Truesdell, are you? A. I am.

Q. Do you know Dr. Young? A. I met Dr. Young.

Q. Shortly or some time after the death of your sister did you have an interview with Dr. Young? A. I did.

Q. Whereabouts? A. At my sister's home.

Q. Mrs. Truesdell's home? When did the interview take place? A. About an hour after her death.

Q. Were you present—were you in the house during the time of the operation? A. I was.

Q. Do you know what time your sister died? A. Well, I received a telephone message—

Q. No. Just— A. About quarter past two as far as I could understand. That is what the nurse told me over the telephone.

Q. You received the information quarter past two? A. No, I received the information quarter past three.

Q. That she was dead? A. That she died quarter past two.

Q. I am prompted to ask you this question about your last answer, if you were present when Dr. Young performed the operation—if you were at the house—the Truesdell house? A. I was at the Truesdell house after the operation was performed.

Q. That is you went there in response to that telephone message? A. I did; yes, sir.

Q. Whereabouts did you see Dr. Truesdell and have your conversation with him—or Dr. Young? A. In the home of my sister.

Q. What was the conversation? I am asking now in reference to your sister? A. When I got to the house—

Mr. McCarter: Answer the question. "When I got to the house" doesn't answer the question of what the conversation was.

Witness: I asked the doctor—Dr. Young—whether—whether the operation was absolutely necessary and he said yes; he said, "I had concluded that there was a dead fetus and it was necessary to remove this to save her life"; and I said to him, "Did her death follow that?" He said, "Well, there was a fetus formed there which had to be removed and I cureted the uterus to remove that and I found that the fetus had dropped from the uterus into the bowels and I was protected by medical records to warrant me going ahead on that basis."

Q. Is that all of the conversation in relation to this matter that you recall? A. And he said that if I would wait until Dr. Simmons got there he would explain still further with regard to her death.

Q. Then this conversation took place before Dr. Simmons arrived, did it? A. Yes, sir.

Q. Were you at your sister's house the next morning at all? A. No.

Q. Were you at your mother's house in Elm Street? A. I was.

Q. When the body arrived there? A. I was.

Q. Who brought it there? A. Mr. Maier and his assistant.

Q. Was the body then in the casket? A. No, brought in a basket.

Q. Where was the body placed when it arrived at your mother's house? A. In the front room.

Q. What time was it when the body got to your mother's house? A. About between ten and 10:30.

Q. The next morning? A. Of the next morning.

Q. And when was the body put in the casket? A. I do not think the body was put in the casket until Thursday. It was just laid out on a sort of table.

Q. The body remained continuously in your mother's house until the time of the funeral and interment, did it? A. Yes, sir.

Q. Who had access to the body at that time? A. Why it was exposed to the view of anybody in general.

Q. Friends, you mean? A. Yes, sir.

Q. From the time the body arrived at your house or your mother's house, until final interment was any operation of any kind performed on it? A. I should say not.

Q. And are you able to say whether or not the body was finally interred, that is buried, in the same condition it was when it arrived at the house? A. It was.

CROSS-EXAMINATION by Mr. McCarter:

Q. Do you live at your mother's house? A. I do not.

Q. You reached Dr. Truesdell's flat about 3:15? A. 4:15.

Q. Four fifteen, and you remained there over night? A. I did not.

Q. What time did you leave? A. About ten p. m.

Q. Do you know who summoned the undertaker? A. I did, per instructions of Dr. Truesdell.

Q. About how soon after you reached the house did you 'phone for the undertaker? A. I believe I 'phoned for the undertaker soon after Dr. Simmons had left.

Q. Do you know what time that was? A. Why, I imagine it was about a little after five, as much as I can remember.

Q. Where did you telephone for the undertaker, William Street, Newark? A. William Street, August W. Maier, or whatever his name is.

Q. And of course he had to come from Newark up to Montclair? A. Yes, sir.

Q. And so if it was a little after five that you sent the telephone are you able to tell us what time it was when he arrived there? A. As near as I can remember it, it was around six o'clock; as near as I can remember.

Q. See if I can recall anything to your recollection, Mr. Wolf. Do you recall the fact that Mrs. Truesdell brought over a supper to the doctor that night? A. Yes, sir.

Q. And wasn't that just before the undertaker arrived? A. Well, that was as near as I can remember—just before six o'clock.

Q. I did not ask you what time it was. I asked you if it happened just before the undertaker arrived? A. I believe it was.

Q. Did you know of what material the casket was made? A. The casket itself?

Q. The casket? A. I think it was made of white material.

Q. Wood? A. No, it was covered.

Q. What was the foundation of the casket? A. Cloth.

Q. Beg pardon? A. Covered—cloth—it was cloth.

Q. What was under the cloth? A. I didn't examine that part.

Q. Do you know whether the box into which it

was put in at the cemetery was a cement box or not? A. Cement, as I understood it.

Q. Cement? A. Yes, sir.

Q. Hermetically sealed? A. I didn't see it sealed.

Q. Now, you reached there about 4:15? A. Yes, sir.

Q. Do you remember interrogating Dr. Truesdell in reference to Dr. Young? A. I do not.

Q. Do you remember asking Dr. Truesdell if Dr. Young owned that automobile that stood in front? A. At that time Dr. Truesdell was so excited—

Q. Will you answer my question? A. I do not.

Q. Do you remember asking Dr. Truesdell if Dr. Young owned his house? A. I did not.

Q. No. How large a practice he had? A. I do not remember asking that question.

Q. No. Do you remember telling Dr. Truesdell at the same time and place, "We will make Dr. Young sweat for this"? A. Not at that time.

Q. Do you remember asking him, "Who is this guy; we will make him sweat for this?" A. No, not at that time.

Q. What time did you say that? A. I do not remember saying that during any—at any time.

Q. Why did you just twice repeat the expression, "Not at that time?" A. I may have said something after I found out.

The Court: You asked what made him say that. He can go on and state his answer.

Witness: I may have said that when I found out from Dr. Simmons, or got the statement from Dr. Simmons of the cause of her death. I may have said something about him paying the penalty. That is all.

Q. What did Dr. Simmons say was the cause of death? A. Dr. Simmons said the cause of death was rupture of the uterus and hem—shock. Rupture of the uterus, shock, and there was a combination of letters there that I do not recall just now.

Q. You attach so much importance to what he said as that you then said something or other to Dr. Truesdell concerning what you were going to do with Dr. Young. What was it he said, Dr. Simmons said? A. Just what I told you.

Q. Was the cause of death? A. Just what he told me.

Q. Have you told us what he said, now? A. That was the statement I got from the death certificate and I went to see Dr.—

Q. Now, look here.

Mr. Mott: Go on. You asked him what induced him to make that statement?

Mr. McCarter: He got it from the death certificate.

Mr. Mott: And something more.

Witness: I went to see Dr. Simmons in Orange the next afternoon after her death to find out the exact cause of her death.

Q. Then it wasn't what Dr. Truesdell told you—Dr. Simmons told you in the house? A. He didn't tell me in the house.

Q. And this remark was not made that afternoon in the house? A. It was not. There was no occasion for it then.

Q. And what did Dr. Simmons tell you in addition at the interview at West Orange—what did he tell you? A. He advised me to see—

Q. No; what did he say was the cause of death? A. Hemorrhage—shock.

Q. Hemorrhage? A. He added that fact—

The Court: Go on, shock—

Witness: Shock and—what was that combination of stuff he had there?

The Court: H. M. C.

Witness: H. M. C.; that is it.

Q. You had already seen the death certificate? A. I did.

Q. Did you ask him why the statement made to you differed from his death certificate? A. Well, we had quite a lengthy conversation.

Q. Did you ask him that? A. No, I did not.

Q. You knew he filed a formal death certificate signed by him officially? A. I did.

Q. As Deputy County— A. Physician.

Q. —physician. And while he gave you a different cause you did not ask him the reason? A. He did. We had quite a lengthy—

Q. Did you ask him the reason? A. Why he filed a different certificate?

Q. Why he gave you a different cause of death from the official certificate which he filed. Did you ask him that? A. Well, he explained to me how that might follow.

Q. The question is whether you asked him that question? Why he gave you a different cause from what he had put in his formal official death certificate. A. At that time I do not believe I asked him that question.

Q. Is the mother of Mrs. Truesdell your mother? A. Second mother.

Q. In other words—

The Court: What do you mean by that?

Q. Are you a full brother of Mrs. Truesdell? A. Half brother.

Q. Had the nurses gone when you reached the house? A. No.

Q. Did you see the nurses? A. I spoke to one nurse, and that is all, and I do not remember who she was.

Q. Do you know what time they left? A. Well, after Dr. Simmons had got there they all bundled up their things and left there, just before Dr. Young.

Q. Dr. Young left at that time? A. Approximately, about a little after five as near as I remember.

Q. What is your age, Mr. Wolf? A. Thirty-three.

Q. And what business are you in? A. Real estate.

Q. In Newark? A. Yes, sir.

Q. Where is your office? A. On Clinton Avenue, 221.

Q. 221 Clinton Avenue? A. Opposite Elizabeth Avenue.

Q. Did you go into the room about the time or before the nurses left? A. I did not.

Q. When you first went into the death chamber what time was it? A. After the body was removed to the alcove.

Q. Have you other half brothers of Mrs. Truesdell? A. Yes, sir.

Q. What are their names? A. Harry B. Wolf and Ernest Wolf.

Q. And is Mr. Bernhardt your counsel? A. He is.

RE-DIRECT:

Q. In stating the reason which induced you to

make your remark to which Mr. McCarter called your attention you started to say that Dr. Simmons advised you to do something, what did he advise you to do? A. See Dr. McKenzie.

Mr. McCarter: I object. One moment.

The Court: Why?

Mr. McCarter: I do not think the whole conversation between Dr. Simmons and himself is competent.

The Court: You brought it out on cross-examination.

Mr. McCarter: I supposed that he had referred to a conversation that had occurred at the house. I did not know of any conversation over at West Orange, and he stated that he had been told by Dr. Simmons the cause of death and that he stated the cause of death to be so and so, and the only thing that I asked him was if he asked Dr. Simmons why he stated to him the cause of death differently from the certificate.

The Court: Didn't you ask him if he made the statement "That that guy would sweat for this," and he said, "no"; "did you make any statements like that," and he said, "Yes," and he said he made it as a result of a talk with Dr. Simmons?

Mr. McCarter: Yes, sir.

The Court: And in that talk, you thought, as I presume everybody did, that it was immediately after five o'clock at the house that day of the death. Now, he says it was next day. Now, why can't he say what Dr. Simmons said in view of the fact that you

brought out some of the things that he said, that he said death ensued upon shock and hemorrhage and some combination of letters? Why can't he go on and be asked whether Dr. Simmons said anything else that compelled him to make a remark of that character?

Mr. McCarter: You see I did not ask him what Dr. Simmons said at all. I did not refer to the conversation of Dr. Simmons. I did not ask him one word of what Dr. Simmons said. All that I asked this witness was if he hadn't made these remarks about getting after this guy and so forth and he said not at that time—not at that time.

The Court: You asked him what time.

Mr. McCarter: And I said what time. "Why," he said, "when Dr. Simmons told me the cause of death" and went on and told him what was the cause of death, I hadn't asked him what Dr. Simmons said and the only question I did put to him in regard to Dr. Simmons at all was, did you ask Dr. Simmons why he made a different statement verbally from what he had made officially.

Mr. Mott: Why Mr. McCarter asked, if I am not mistaken the witness why he made this statement that he referred to and the witness said it was because of what Dr. Simmons told him.

Mr. McCarter: You are mistaken, Mr. Mott. My recollection is quite clear.

The Court: We will have to have the

stenographer go back and refresh our memory, because we differ about it.

(Testimony read.)

Mr. Mott: He is asked for the conversation with Dr. Simmons.

The Court: No. He said, "What did Dr. Simmons say?" That was the question. Then he interrupted the answer showing that his mind and the question related to what Dr. Simmons said about the cause of death. I do not think the mere slip of counsel like that opens the door wide. It is perfectly apparent from everything that precedes and follows that what he was asking about was that, what he was asked, was what did Dr. Simmons say was the cause of death.

Q. Before you made the remark that Mr. McCarter called your attention to did you have an interview with Dr. McKenzie, the county physician? A. Yes, sir.

JULIUS F. REOMMELE, re-called for the State:

Direct-examination by Mr. Mott:

Q. Did you do anything to the wound where you inserted the embalming instrument? A. I did not.

Q. Now, listen to my question. Think of my question. After you took out your instrument, before you went away, did you do anything to the wound where you placed your embalming instrument? A. All I did, I sewed up the wound, that is all.

The Court: What?

Witness: All I did was I sewed up the wound.

Q. You put some stitches in it, did you? A. Yes, sir.

Mr. McCarter: Base ball suture.

The Court: This is the puncture made by the trocar, referred to.

AUGUST MAIER, re-called for further direct-examination by Mr. Mott:

Q. Mr. Maier, when you went up to Mrs. Truesdell's house to get the body, did you put it in the casket there or subsequently? A. No, sir.

Q. Where did you put the body in the casket? A. We have a carry basket that we remove bodies from the hospitals or different places.

Q. And you took the body to Mrs. Wolf's home? A. Yes, sir.

Q. Are you able to say whether or not you delivered that body at Mrs. Wolf's home in the same condition as it was when you first saw it in Dr. Truesdell's house? A. Yes, sir.

Q. Did you? A. Yes, sir.

Q. Did you ever at any time in putting the body into the casket or before or during the burial do anything to the body in any way by way of removing anything from it or making any opening in any of it? A. No, sir.

Q. Incisions? A. No, sir.

Q. What kind of a casket was she buried in? A. Cedar casket covered with white cloth.

Q. And that casket was put in what at the grave? A. In a vault—cement vault sealed up.

The Court: With a top, you mean over it, the top having cement around the edges and when the casket is lowered down then it seals itself?

CROSS-EXAMINATION by Mr. McCarter:

Q. What time did you leave Mr. Truesdell's home with the body? A. About twenty minutes of ten.

Q. And how long did it take you to go down with the body? A. Not over half an hour.

Q. Would you swear that you came down in half an hour that day? A. I couldn't swear to half an hour but I know—

Q. Didn't you come direct? A. Yes, sir.

Q. With the automobile? A. Yes, sir.

Q. With no trouble of any kind, no tire trouble? A. No, sir.

Q. Did you see the bare body at the Montclair house? A. No, sir.

Q. Did you see the bare body at all? A. I looked at her when I was dressing it to put her in the casket to make sure that everything was all right—I raised the cloth and seen that everything was all taken care of; that is all.

Q. And saw the wound? A. Yes, sir.

Q. And took Mrs. Truesdell and Mrs. Wolf in and made a remark about it, didn't you? A. No, sir.

Q. Eh? A. No, sir. Mr. Wolf—

Mr. Mott: You have answered.

Q. Didn't you say to Mr. Truesdell and Mrs. Truesdell, his mother, pointing out this wound in the abdomen— A. No, sir.

Q. One minute. Don't be so anxious. Wait un-

til I get through. "Look at this, what a pretty doctor you had," and didn't Dr. Truesdell tell you, "Why here that was done after her death," or words to that effect?

Mr. Mott: Objected to as hearsay, not cross-examination and improper, from every standpoint.

Mr. McCarter: I think it shows malice.

The Court: I do not see how that shows malice.

Mr. McCarter: Why, suppose this witness took the husband and the mother-in-law of this woman and raised the drapery or had the drapery already raised and said, "look at this thing, this is a pretty doctor you had;" don't you think that indicates malice on his part? It seems so to me.

Mr. Mott: I withdraw the objection to that much of the question.

Mr. McCarter: That is all there is to it.

The Court: What is the rest of it? All the witness said was I took the body down and buried it and put it in a casket, and didn't take anything from it; that is the substance of his testimony.

Mr. McCarter: I do not care anything about Dr. Truesdell's reply. Mr. Mott objects apparently to the reply of Dr. Truesdell.

The Court: Repeat the whole question as we have it and then you can revise it.

(Question read.)

The Court: What are you referring to, the incision—the mark of the incision?

Mr. McCarter: The incision, the abdominal wound.

The Court: You are going to revise your question.

Q. I ask you if it is not true, Mr. Maier, that down at the Wolf residence, before the funeral, after you had, as you said, raised the drapery of the body to see if everything was all right—you observed this incision or scar or remains of a wound in the abdomen and you said to Dr. Truesdell and I think to Mrs. Truesdell, the mother, and possibly some others then and there calling them into the room—calling their attention to this wound in the abdomen, said, "Look at this, this is a pretty doctor you had," or words to that effect? A. No, sir.

Q. Nothing of the kind? A. Nothing of the kind.

Q. And Dr. Truesdell did not in reply say to you, "Why, you fool, that was made at the autopsy"? A. No, sir.

State rests.

Mr. McCarter opened for the defense.

Adjourned until tomorrow morning at ten o'clock.

May 10, 1916.

THIRD DAY

Appearances as before stated.

On motion by Mr. McCarter the State's case was reopened for the introduction of further testimony.

DR. WALTER S. WASHINGTON, re-called for further cross-examination by Mr. McCarter:

Q. I meant to have asked you yesterday, Doctor, how many abdominal operations have you performed? A. None.

Q. None. Your experience then, with reference—your actual personal experience with reference to your testimony concerning the adhesiveness, strength, blood and all that matter upon a rupture of those things is from autopsies rather than from abdominal operations? A. Entirely.

Q. Do I understand you to have said in your testimony yesterday that the large intestines could be pulled through the vagina without much force? A. The large intestines, yes, sir; without very great amount of force. The amount of force required in simply removing the intestines is considerably less than that required in removing the attachment of the intestines to the abdominal wall.

Q. In your autopsies, which I understand to be post mortem always—after death—and you remove the intestines, you cut them, rather than tear them, don't you? A. Well, you might do either one or the other.

Q. I do not ask you what you might do. I asked you if it isn't your practice and hasn't it been your invariable practice in autopsies that you have conducted where you have undertaken to remove the intestines that you cut the mesenteries? A. No.

Q. Which is the more frequent and ordinary way? A. The method of removing—

Q. Won't you answer me? A. I am trying to do so, if you will allow me.

The Court: Take your own time, Doctor.

Witness: The method of removal as pursued by me would be to strip the intestines loose. It is simply held by the peritoneum and it would be pulled through, stripped through, when you wanted the intestine alone. If you wanted the other parts why you would remove the other parts. If I were removing the mesentery entirely I would cut it, but for the simple removal of the intestines I should not do so.

Q. Why would you cut the mesentery? A. Because that is the easiest way of doing it.

Q. The stripping of the intestine from the mesentery when you want only the intestines as distinguished from the mesentery is because the weak end of the mesentery is next to the intestine? A. Oh, yes. It is more easily done in that way. It is a comparatively easy matter to strip all the intestines through the mesentery which encloses it.

Mr. Mott: I offer the trocar that the embalmer used.

Marked Exhibit S-1.

State rests.

DR. JOHN H. YOUNG, sworn in his own behalf:

Direct-examination by Mr. McCarter:

Q. Doctor, how old are you? A. Thirty-six.

Q. Where were you born? A. Born in Maryland.

Q. You live now in Montclair? A. Yes, sir.

Q. How long have you lived there? A. About thirty-five years.

Q. Were you educated there? A. In the Montclair schools.

Q. Public schools? A. Yes, sir.

Q. And High school? A. Yes, sir.

Q. Did you go to college? A. Yes, sir.

Q. Where? A. Amherst.

Q. What did you do in the way of self support while you were going through college?

Mr. Mott: I object.

The Court: What has that got to do with it?

Mr. McCarter: I think that the elementary education and history of this man is important, your Honor.

The Court: The preliminary education is unquestionably relevant and competent, but what difference does it make whether he supported himself or his father and mother supported him? Do you think he has got a better education because he supported himself? You cannot argue that.

Mr. McCarter: That has been my experience.

The Court: That may be so. Objection sustained.

Q. What year were you graduated in Amherst? A. 1902.

The Court: That is the academic course?

Witness: Yes, sir.

Q. Did you then pursue a medical education? A. Yes, sir; that fall I entered the New York College.

The Court: What college; I did not catch it.

Witness: New York Homeopathic College.

Q. Before you went to the New York Medical College hadn't you got any preliminary medical work by way of study, in your academic career at Amherst? A. A course in comparative anatomy and special course in dissection, my senior year.

Q. How long a medical course was it that you pursued at the New York Medical College? A. Four years.

Q. And you were graduated there when? A. 1906.

Q. With what position in your class? A. Fifth man.

Q. Receiving what kind of a seal on your diploma? A. Purple seal from the University of the State of New York.

Q. That signifies what? A. That I had passed my examination for the license to practice with the general average of over 90.

Q. During your period at the New York college did you do any practical work at all? A. Yes, sir.

Q. Just describe to the jury what practical work you did when you were still in the medical college? A. I had four months as resident house physician at the Laura Franklin Hospital.

Q. That is where? A. 111th Street, New York City; I supplied one summer as interne at the

Metropolitan Hospital, Blackwells Island; I had a special course in obstetrics at a lying in hospital; I had a position for six or seven weeks at the St. Gregory's—down below Brooklyn Bridge—it is now known as the Volunteer Hospital; and I supplied through the vacations several occasions in the Cumberland Street Hospital in Brooklyn.

Q. After leaving the New York Medical College what did you next do? A. I entered Flower Hospital as an interne.

Q. How long were you there? A. One year.

Q. Flower Hospital in New York City? A. Yes, sir; Sixty-third Street.

Q. Did you crowd any during the seven years that you were in New York—five years that you were in New York—work that ordinarily is not taken in the five years? A. By actual count I had finished little over seven years' actual work in that time.

Q. I do not remember having heard you say anything about a lying in hospital, were you there? A. Yes, sir; I said I had a special course.

Q. I beg pardon. A. I had a special course of over three weeks.

Q. Lying in Hospital in an obstetrical Hospital? A. Yes, sir.

Q. In New York? A. Yes, sir.

Q. After completing this experience that you have described did you then commence practice? A. Not immediately. I did some substitute work for a doctor up in Westchester County, again up in Connecticut, November, 1907.

Q. And from that time to the present have pursued your practice? A. Yes, sir.

Q. And are practicing there today? A. Yes, sir.

Q. Are you married? A. No, sir.

Q. Who lives with you? A. My mother keeps house for me.

Q. You have a fully equipped office in Montclair? A. Yes, sir.

Q. You have an office nurse? A. Yes, sir.

Q. What is her name? A. Susan L. Cox.

Q. Is she a relative of yours? A. She is a cousin of mine.

Q. What experience and capacity has she had and does she possess as an anesthetist? A. We have a record of about 200 cases in the eight years that we have been together. She has given anesthetics for three or four doctors of Montclair in addition to my own work.

The Court: He can only speak of what he knows.

Mr. McCarter: Yes, sir.

Q. What do you consider her capability as an anesthetist? A. Very skillful.

Q. Have you during your practice of—how many years do you say in Montclair? A. I have been there since 1907.

Q. Have you had any obstetrical cases—births? A. Yes, sir; I have filed in the State of New York three—State of New Jersey, 383 birth certificates.

Q. How many maternal deaths have you had?

Mr. Mott: I object.

The Court: What is the purpose of that?

Mr. McCarter: Why, I think to show the skill and success that he has pursued in his practice.

The Court: Can't you show that otherwise? Suppose he says that he did not have any deaths are we going to allow the State to introduce in evidence testimony showing that out of 380 there were a certain number of deaths. It certainly makes a confusion of the issues.

Mr. McCarter: I do not want to confuse the issues, but it seems to me that upon an issue of the kind we are trying the fact that the man has a history made and a career established is of the greatest moment in helping to conclude whether or not he would do so extraordinary a thing as the state claims he did in this case.

The Court: It is logical, relevant—I suppose but as a matter of law is it relevant in view of the fact that to meet it you must go into all these cases and find out the facts and circumstances about each one and then possibly controvert it by some testimony on the part of the State. We cannot try each one of the 300 obstetrical cases that he has had. The question is not whether he was negligent in this case, the question is whether he was grossly negligent in this case, evincing a reckless disregard of human life. Now, if you show so many cases in which there was no death, and for ought we know that may not be a proper criterion or standard as to whether or not the work was done skillfully—if you are going to come in and show there was no death in some cases, is the State going to be allowed

to introduce other cases where there was death. You see it is going to make a hopeless situation, where we are going to be trying all these other cases instead of trying this case. It makes for confusion of issues.

Mr. Mott: Then too this was not a case of the delivery of a child from the beginning. It was a case of the removal of a dead fetus and the case of the delivery of a child has no relation I insist to the removal of a dead fetus.

The Court: You will find in Wigmore a discussion of this question. He says he thinks it is competent but he thinks all the authorities are the other way. I will sustain the objection at this time, and during the course of the trial you may recall the doctor, if in the meantime you submit authorities to support this proposition, unless you have some now that you want to submit.

Mr. McCarter: I haven't any just now.

The Court: I am pretty clear that it is not competent at this time.

Mr. McCarter: May I be permitted, not with the idea of changing your mind, but to have you think about it, that on the idea of the confusion of issues it seems to me that the same objection would obtain to his experience at Flower Hospital, experience at the Lying In Hospital—any one of those things

The Court: That is to show that he is an expert, but suppose the Public Service Cor-

poration is sued for the negligent conduct of the motorman in running a child down in the street, you are not going to let that motorman testify that he has been a motorman for ten years and that he has repeatedly gone by children and never run any of them down to show that he was not careless on this particular occasion, and the reason why is because it makes a confusion of issues.

Mr. McCarter: Permit me to say another word. This is a case not of simple negligence, as your Honor said a moment ago. It is a case of gross negligence and it seems to me that it is a relevant fact to be considered by the tribunal that is going to consider this issue of gross negligence whether or not a man who has had a history—who has built up a practice—who has been eminently successful—not whether he is going to make a slip—we are all liable to make slips, of course—and that fact would not bear upon a mere mistake that we are all liable to make—but that he would do so extraordinary a thing that they claim he did here. It is like finding a lawyer who has conducted a successful business for eight or nine or ten years and enjoys a good clientage suddenly acting like a crazy man. Now, wouldn't you if he were accused of doing some outrageous, terrible thing, such as is said this man did here—something for which there was no sense or reason, feel that it would or would not be

more likely that he should have done such a thing if he had had a career behind of which he was proud and which he was adding to. That is the point.

The Court: I understand your point of view. I think the law is, as I have stated it.

Q. How many pregnant women have you had care over? A. About 600.

Q. Have you done any obstetrical work since your practice commenced for other physicians than yourself? A. Yes, sir.

Q. For whom? A. For Dr. Conklin of Newark, Dr. Burnett of East Orange, Dr. Post of Bloomfield, Dr. W. W. Brown of Montclair.

Q. Is there anybody else, osteopath? A. Dr. Harry Iehle of Montclair.

Q. When did you become acquainted with Mrs. Truesdell? A. In May of last year.

Q. Under what circumstances? A. Dr. Truesdell came to my office and told me of his marriage —told me that—

Q. Never mind what he told you; that there was an operation to be performed upon his wife? A. Yes, sir.

Q. I don't care about the preliminaries. Who performed that operation? A. Dr. Richman of Newark.

Q. Where? A. Roseville Private Hospital.

Q. Did you participate? A. I gave the anesthetic.

Q. Did you find anything peculiar with reference to her conduct with reference to the anesthetic? A. We had a great deal of trouble. We took

all the spare nurses on the floor to control her until the ether overcame her.

Q. What was that operation? A. It was a curetage.

Q. When next were you employed or seen by either Dr. or Mrs. Truesdell in connection with her condition? A. In October of that same year.

Q. That would be October 1915? A. Yes, sir.

Q. Where was that conference? A. It was in my office.

Q. And what were you told? A. I was told—

Mr. Mott: By whom?

Witness: By Dr. Truesdell.

Q. In the presence of Mrs. Truesdell? A. That his wife—

The Court: Begin over again, which one made the statement?

Witness: What is that?

The Court: Which one made the statement you are about to tell us?

Witness: Dr. Truesdell told me that his wife's last menstrual cycle began on the 29th of July, that she had not menstruated since and that he believed she was pregnant.

Q. Did you then form any conclusion with reference to the probable termination of the assumed pregnancy? A. By reference to the obstetrical card in my desk May was fixed as the probable date of her confinement.

Q. Within how close a time, with the data that is before you, did you assume you were able to conclude correctly? A. The 5th of May is the middle date; delivery may take place ten days prior to that or ten days after that.

Q. What advice or instruction did you give at

that time, if any? A. The advice that is usually given to a pregnant woman.

Q. Well what is that? A. Out door exercise, the regularity of habit to avoid intercourse at the time of the month when she would naturally expect to be unwell if she was not pregnant and to avoid cathartics.

Q. How did Mrs. Truesdell look at that time? A. She looked exceptionally well.

Q. Had you seen her at all, if you remember, between the May operation and this occasion? A. I had seen her once.

Q. How did her figure compare with what you observed when you last saw her? A. She had gained in every way. Her face had rounded out, her breasts or bosom was full and she gained physically in every way. I never had seen her look so well.

Q. When did you next see her? A. They came into my office—I think it was sometime in November.

Q. What occurred on that occasion? A. The talk, I think, at that time—if I could look at my record—my office record—

Q. You may look at it, I think. Made at the time? A. Yes, sir. I haven't it.

Q. Do you keep a record?

The Court: Where is it?

Witness: What I have written up is in that case (indicating).

Q. We want your original office record. A. May I leave the stand?

Q. Is that it? A. Yes, sir. That is not all of it—yes, it is too.

The Court: Do you want to cross-examine on the use of the memorandum?

Mr. Mott: I think not, your Honor. Just have it marked for identification. What have you got in your hand. What are you using? Just call that by name.

Witness: These are the large sheets on which is kept a record of every day's work and from these are made the individual bill account, not the account of the week's work. There is a record of every prescription made with the visit, when they come in my office. I write on this card any special data of which I wish a memorandum.

The Court: They are in your handwriting?

Witness: Yes, sir; with the exception of the blue part of it, is made out by my office nurse from these slips.

Q. These are your regular day by day office records? A. Yes, sir.

Q. Now, you may refer—

The Court: Let them be marked.

Marked Exhibit D-3 for identification.

The Court: You do not need the bills, do you, Doctor?

Witness: I can get the sequence of visits more readily.

Q. The date, I believe, is November 8th, Doctor? A. Eighth of November, yes, sir.

Q. Do you recall anything that occurred or was said on that occasion by either Dr. or Mrs. Truesdell in the presence of one another and you? A. I remember particularly as Dr. Truesdell and his wife were leaving my office, he told me this, "That Emma has been taking something on the

chance that it would upset this pregnancy; what is your idea about it?" and I raised my hand and said, "Paul, it is bad business; do not meddle with anything of the sort."

Q. What else had occurred on that occasion? Did you examine her or get any information with regard to her condition? A. No, sir; the talk was general. There was nothing particular about it and there was no record made of the call other than I have given you.

Q. Did you have any 'phone communications with either one of them after that? A. Dr. Truesdell 'phoned me almost invariably two or three times a week on little trifles that it would seem almost exceptional. He was very solicited about the condition of his wife.

The Court: Only state what he said.

Q. With reference to his wife? A. Yes, sir.

Q. Did you have any urinalysis made? A. The first urinalysis was made on the 6th day of January.

Q. By whom? A. By Miss Cox.

Q. With what result? (We will prove it by Miss Cox as well.) A. That there was a mild—

The Court: He cannot state it unless he was there.

Mr. McCarter: He can state the result of the analysis as handed to him. We, of course, will prove the fact by the person who made it.

Witness: That she had a mild degree of pyelonephritis.

Q. What do you mean? A. That there was an inflammation of the pelvis of the kidney with a small percentage of albumin.

Q. Does that indicate, the pyelonephritis of inflammation of the pelvis of the kidney—indicate any trouble with the kidney itself? A. Not of the kidney proper.

Q. Is such a situation frequent or common in pregnancy? A. It is very common in pregnancy.

Q. Did you give any instructions after finding the result of that urinalysis? A. On account of the presence of the small amount of albumin I warned her specially from bathing or chilling the body and advised her not to eat red meat.

Q. How about eggs? A. Red meat and eggs.

Q. When do your records show that you next saw or communicated with Dr. Truesdell? A. The 15th of January.

Q. What occurred then? A. He telephoned me that his wife was having regular pains and there was a little show of blood.

Q. Did he say anything with regard to the character of pains as being constant or intermittent? A. They were intermittent.

Q. What do you mean by that? A. They come and then there is a pause and then another pain will come and go. It is a regular contraction.

Q. What advice upon learning this did you give? A. Told him to put her in bed at once and that I would come right up. Went up immediately.

Q. Found her in bed? A. Yes, sir.

Q. What did you do? A. I examined her abdomen and I gave her some specific to allay the irritability of the uterus and advised her not to get up under any circumstances and that I would see her on the next day—to keep her food right.

Q. What did you find with reference to the ex-

tent of the pain she seemed to be suffering, if anything? A. Pains very, very slight.

Q. And hemorrhage? A. The hemorrhage was very, very slight.

Q. Did you at any time make a vaginal examination? A. No, sir.

Q. Now, we speak quickly of these things, perhaps the jury might not understand. What do you mean when you examined the abdomen and what do you mean when you say you made no vaginal examination? Explain the difference. A. The abdominal examination, the bedclothes were turned down and nightdress turned up a very little and I passed my hand over the abdomen. Vaginal examination means with the hand, your own hand, examining hand sterilized and protected with perhaps sterile rubber gloves, the parts of the woman disinfected, sterilized, then you make an internal examination up through the vagina to the mouth of the womb.

Q. Why did you refrain from making a vaginal examination that day? A. In trying to allay the irritability of the uterus by vaginal examination and manipulation of the cervix, even by careful examination, you may defeat your own purpose—you may excite the uterus to contraction.

Q. These pains which you had spoken of and which had been told you—of which you had been informed—put it that way—the pains of which you had been informed and which induced you to go to the house and see her and make this abdominal examination, did they lead you to suspect that anything was going to happen? A. The condition is symptomatic of a threatened miscarriage.

Q. Now, what effect would a vaginal examination have on a miscarriage or threatened miscarriage? A. It would have accentuated the very condition I was trying to avoid.

Q. When did you next see her? A. Saw her the next day.

Q. Was she then in bed? A. She was still in bed.

Q. What about any prescription at that time? A. The prescription was continued. The prescription of the day before.

Q. As you left the room do you remember noticing anything with reference to the position of Mrs. Truesdell in bed? A. Yes, sir; she was sitting bolt upright in bed.

Q. Who was in the room at that time, if anybody? A. Dr. Truesdell was there and I think Dr. Truesdell's mother.

Q. When you noticed her sitting up in bed as you went out did you give any instruction or advice? A. I did. I repeated my caution that if she did not keep the recumbent position, lying flat out in bed, that she would be very apt to bring on trouble.

Q. When did you next see her, Doctor? A. I saw her then after an intedval of a day, the next day, but one?

Q. That would be the 16th? A. Yes, sir.

Q. What condition did you find her in? A. Complete cessation of pains and complete cessation of hemorrhages.

Q. Where was she? A. In bed.

Q. Any instruction about remaining in bed? A. To remain in bed.

The Court: I do not think you ought to

lead the witness so much. This is your witness.

Q. What did you do? A. I told her to stay in bed for forty-eight hours longer.

Q. When did you next see her? A. The 2d of February.

Q. What happened then? A. Dr. Truesdell came into my office. Dr. Truesdell told me that his wife hadn't felt life, that the abdomen was a great deal smaller than it was—than it had been at any time—and he believed that she was not normally pregnant; that something had happened to the contents of that uterus. I have not given his exact words. That was the idea that I got from him.

Q. Did they bring anything along with them? A. They brought a specimen of urine along with them at that time.

Q. Did you keep the specimen? A. Yes, sir.

Q. Was that submitted to Miss Cox again for urinalysis? A. Yes, sir.

Mr. McCarter: We will prove the fact of the examination but I would just like at this time, if I may, from this witness, to get the result of that urinalysis as given to him by Miss Cox.

Witness: The albumin had disappeared. There were present as shown by the microscopic examination numerous crystals of calcium oxalate.

Mr. Mott: You make that statement on what Miss Cox told you?

Witness: Yes, sir; on the written report handed in to my desk.

Q. Where is that written report that Miss Cox made? A. I think it is in my—in that bag of mine, back of you. It is a red book, three by five. Miss

Cox can pick that out if it is there. I think it is in the flap.

Q. See if you can find the report. I will ask you to read the report at this time. A. January 6th.

Q. This is February 2d. A. You want the second analysis?

Q. Yes. A. Second of February, 1916. Mrs. Paul Truesdell. Specific gravity 10:26, moderately acid in reaction, albumin distinct trace, indican, slight excess.

Q. How about sugar? A. None.

Q. Under the microscope what? A. Red blood cells, pus cells, pelvic epithelia, convoluted epithelia a few and urethrall epithelia; calcium oxalate crystals abundant. Diagnosis oxaluria pyelitis and irritation of the kidneys.

Q. Now, won't you explain in homespun language, if you can, what you mean by oxaluria? A. People in whom we find the presence of calcium oxalate crystals in the urine are people, as a rule, who have very little outdoor exercise and have had an excess of foods that tend to produce in the changes of the food through the body an excessive amount of calcium crystals in the urine.

Q. What about pyelitis? A. That means that there is an inflammation of the pelvis of the kidney. That may be mechanical, an irritation by scratching by these minute crystals as they go down through the kidneys, through the pelvis.

Q. Did you give any diet or instructions with reference to her diet? A. Yes, sir; I wrote her out a list of food to be avoided.

Q. And that was what? A. To eat freely of potatoes and carrots, and then followed a list of

fifteen or sixteen vegetables—shall I give them?

Q. Well, to avoid or to eat? A. To avoid.

Q. Well, give a few of them. A. Apples, oranges, bananas, turnips, rhubarb, asparagus, spinach, kale, romaine, chickory and string beans.

Q. That was to avoid this oxaluria that you are talking about? A. Yes, sir.

Q. Had you prior to this time made any particular investigation leading to any work—special work upon this subject of oxaluria, Doctor? A. Yes, sir.

Q. What? A. Through the year after Miss Cox had finished her work with Dr. Heitzman in New York, by her help, a number of chronic cases that had responded to my efforts of treatment by the routine examination of urine and by the correction of diet, I made a great many of these people much more comfortable by the examination of the urine and by putting them on this diet.

Q. Well, did you crystallize the result of your work in any document or paper? A. Yes, sir.

Q. When was that? A. I read a paper before the Galis Club, the date of that I cannot remember.

Q. Before February, 1916? A. Yes, sir.

Q. Now, on this interview of the 2d of February, 1916, did you make any provision for a further examination of Mrs. Truesdell, and if so, what? A. I told them—told Mrs. Truesdell, that night to come to my office within a day or two without her corsets, with her husband and I would put her on the table.

Q. Did she come? A. She did.

Q. When? A. On the 3d of February.

Q. Just describe what occurred? Her husband with her? A. Her husband came with her and accompanied her into my examining room. She was put on the examining table and draped. I made a most careful examination manually, palpating the abdomen.

Q. What do you mean by palpating the abdomen? A. Pressure with my hand on the abdomen to determine the size of the uterus. I took the stethoscope and put it in my ears and placed the end over her abdomen.

Q. For what purpose? A. To try to determine the presence of the fetal heart.

Q. When you pressed or felt of her abdomen did you feel any fetal motion— A. None at all.

Q. By fetal motion— A. I mean that the child in the uterus often moves an arm or leg or twists and turns. In a woman as small as this woman was, it is very apparent. As you put your hand on the abdomen you can feel fetal life.

Q. That is what is spoken of as the life or quickening of the fetus. By the way, I think you have not described about the size—normal size of Mrs. Truesdell. A. At the time of my first meeting her, the operation in Newark, she was very slight—very girlish. At that time she was very thin. I do not think she could have weighed over 80 or 85 pounds.

Q. And correspondingly short? A. Very, yes, sir; slight girl.

The Court: How high was she—how tall?

Witness: Why, if you will let my office nurse stand up, I can tell you. She was about—she was even shorter. I cannot give you that in figures. I haven't measured her.

The Court: About.

Witness: I don't know whether my office nurse is four feet—

The Court: Never mind your office nurse; what do you think she was about.

Mr. McCarter: It must be a mere guess.

Witness: She was under five feet. I cannot tell you in inches. I don't know.

The Court: You haven't answered the question as to what she was at that time in February, what her weight was then.

Q. Was she weighed then? A. No, sir; she was not.

Q. Well, was she larger than normal at that time? A. No, sir; she was abnormally small.

Q. I mean now, the 3d of February? A. Third of February.

Q. What did you find with reference to the fetal heart? A. I could find none.

Q. The stethoscope produced no indication of the movement of the heart of the fetus, is that what you mean? A. None at all.

Q. What about the ability to discover through a stethoscope the motion of the heart of the fetus if the fetus is alive? A. After the fifth month in a woman who is thin it is generally obtained.

Q. Describe briefly a stethoscope. A. Hand me one from my bag.

Q. Have you now got in your hand a stethoscope? Is that the particular one you used that day? A. Yes, sir.

Q. Just show how you used it? A. Why, the ends placed in the ear and the diaphragm is placed over the abdomen of your patient; of course any vibration at all is intensified by the diaphragm and your ears detect it.

Q. Did you notice at this time the color of the membrane of the vagina? A. Yes, sir; they were intensely congested; what we term as violet hue of the vaginal membranes known as a possible sign of pregnancy.

Q. What, if anything, did you notice with reference to the cervix, neck of the womb? A. The cervix was shortened and somewhat softened.

Q. Could you feel how—did you get the shape of the uterus? A. Yes.

Q. Describe it. A. The cervix was about that length (indicating) and then the uterus bulged out above it sharply so that it was globular above the cervix.

Q. After this examination was completed—have I got all you want to say about the examination? A. Yes, sir.

Q. What conclusion did you make—what diagnosis? A. That there had been an escape—loss of the amniotic fluid, that the pregnancy had been advanced beyond the third and fourth month; that this woman had twenty-six weeks time from her last menstrual period and that the uterus was not the size we would expect in a woman with the contents of the uterus normal at that period—

Q. So that it should have been with a pregnancy of twenty-six weeks—your statement is the uterus should have been larger than you found it?

Mr. Mott: I object.

The Court: Objection sustained.

Mr. Mott: He did not say anything about larger and smaller. He simply said it was not normal size.

Q. Will you repeat again your diagnosis and use as little medical phrases as you can. Now,

you spoke of amniotic fluid. Possibly some of the jurors, possibly I do not know what you mean. A. Do you want me to tell about the amniotic fluid?

Q. You said something or other about amniotic fluid. A. The diagnosis of interruption of pregnancy between the third and fourth month —that the amniotic fluid was not present in the uterus.

Q. What is the amniotic fluid? A. It is a fluid in which the fetus is suspended during its life within the uterus. It is there to protect the fetus from pressure of the surrounding walls. It keeps it floating so to speak.

Q. Why did you conclude that there was a dead fetus of three or four months as you have stated? A. This woman was twenty-six weeks from the time of her last menstrual period. The uterus at that time should have—the top of the womb should have reached the naval. The quickening takes place—that is the fetal life—the consciousness of the fetal life detected by the mother takes place about the sixteenth week. The fetal heart should be determined or observed by the examiner in the fifth month.

Q. Assuming therefore the presence in the uterus of a dead fetus, what should be done? A. The remains of conception, of that fetal life, should be removed and the normal function of the uterus restored.

Q. Did you make any disclosure of that information to the doctor or Mrs. Truesdell? A. I did.

Q. Tell us what you told him? A. I told him that it was absolutely necessary that the contents

of that uterus should be taken out—I spoke to them of the possibilities of disposal of the contents of the uterus, that if any infection should take place, that once it was started it was difficult to deal with. That there were cases on record where no removal had been made, by the pressure of the uterine wall contracting down in its effort to get back to a normal condition, that the blood supply of the walls of the uterus would be shut off—there were cases on record where the fetus had slipped through into the abdomen.

Q. By infection what do you mean? A. By infection I mean the entrance into the uterus of bacteria.

Q. When you speak of infection resulting, what, in common— A. Blood poisoning.

Q. Did you make any recommendation as to what should be done? A. I told them that the cervix was closed, that apparently the parts were normal, and in as much as she had had a threatened miscarriage on the 16th—13th, 14th and 16th of January—that it would be well to wait until the end of the next month, when, with the congestion taking place normally in the uterus at that time that perhaps spontaneously, by her own power, the uterus would empty, that again she would have pains and again she would flow and the uterus would soften up.

Q. So you waited to see what occurred at the next cycle? A. Yes, sir.

Q. And that would be due as you were informed and knew, when? A. Thirteenth, 14th and 15th of February.

Q. Well, the cycle came around? A. Yes, sir.

Q. What next occurred? A. On the night of the

14th of February, Dr. Truesdell telephoned me, in the evening—my evening hour—between 7 and 8 o'clock—that his wife was having pains—

Q. Go on, Doctor. A. I asked him as to their frequency and their severity and told him to keep track of her and that if he needed me at all through the night to let me know and I would be with him at once.

Q. What occurred? A. I did not hear. I told him further that if the pain ceased, in the morning not to give her her breakfast but to telephone me, that I would make arrangements for the nurse to come in and that we would take care of her some time the next morning.

Q. Was any remark made either then or at any time with reference to the place of having the proposed operation if one was necessary? A. That was talked over on their visit to me either on the 2d or 3d of February.

Q. What was said? A. And he told me that he wanted to have his wife have the best; that I was fully conscious of the fact that he did not have any spare money to spend but he wanted that girl to have the best, and if I said hospital, hospital it would be. I told him that if he would give me a trained nurse and a room with suitable light and heat that she could be taken care of in her home.

Q. Did you hear from Dr. Truesdell on the next day, the 14th, when you had this telephone that you described? A. He called me on the 'phone about eight the next morning, told me that the pains had ceased, that his wife had slept the greater part of the night.

Q. What did you then conclude to do? A. I told him that I would telephone for a nurse and

would come in as soon—as close to 11 o'clock as I could.

Q. Did you telephone for a nurse? A. I telephoned for Miss Regan.

Q. Had you known her before? A. She had been with me on one case.

Q. When was that? A. That was back last September, or October. A man with a fractured skull, at the base of the skull.

Q. That was the extent of your experience with her? A. Yes, sir.

Q. And how did you reach her? A. I took her nurse's—the card on my desk with the telephone number on it and called her up.

Q. That was the extent— A. She went to the flat of Dr. Truesdell's, yes, sir.

Q. By the way, tell us where Dr. Truesdell lived and what kind of a domestic arrangement he had. Was it a flat? A. Lived in an apartment on the second story; apartment that extent—well, kitchen was at the rear facing the east and the parlor in front facing the west.

Q. What instructions did you give Miss Regan when you 'phoned her? A. To prepare the patient as for curetage, for the delivery of this contents of this uterus—to have sterile water, towels, sheets and usual preparation of the room, double sheets.

Q. What time did you go to Mrs. Truesdell's apartment that morning? A. I got in there about 11:35.

Q. What did you take with you? A. I took with me my office nurse and my obstetrical outfit.

Q. Your office nurse is this Miss Cox you have spoken of? A. Miss Cox.

Q. And your obstetrical outfit that consists of what? A. It consists of a Kelly pad, my kit of instruments, the curets, the placental forceps, cotton, soap, sutures, needles and forceps, the large forceps for delivery of a full termed child, artery clips, scalpel, suture material, umbilical tape—

Q. Any bandages? A. And a roller bandage.

Q. Did you then and there perform the operation or later? A. I gave—I wanted the patient to have a quarter grain H. M. C. tablet.

Q. Why? A. Because my experience with her in the Roseville Hospital in the preceding May—that she would need much less of the ether—that it would rob her of the fear of the operation—that her condition after would be much better by use of the H. M. C. than it would to have her frightened for the interval of half an hour or hour; the time of the preparation.

Q. And what directions did you give as to the administration of this H. M. C.? A. That Miss Regan was to give it by hypodermic; in under the skin as it is usually given.

Q. What did you then do? A. I handed them—I took out all the instruments, handed them over to Miss Regan or Miss Cox—I don't know just which one—and I told them that I would be back in about half an hour.

Q. Then, did you go away? A. I went out and made several calls.

Q. Got back about what time? A. Got back about 12:25.

Q. Where was the operation performed? A. The operation was performed in the kitchen.

Q. Why was that room selected? A. The day

was extremely cold. The kitchen was the warmest room in the house and it had the best light; it had hot and cold water.

Q. Upon what was the patient laid? A. Miss Regan had put the patient on a table—kitchen table—ordinary kitchen table, which was quilted to make it comfortable for her.

Q. When you arrived there and saw this was the patient under ether? A. No, sir; she wasn't even under the hypodermic. She was still talking which was very unusual. Most people—most patients, even after a small dose of that, an eighth of a grain, are quiet and not talkative; they are relaxed.

Q. Now, just describe what you did and what preparation you made for performing the operation. The patient lay how? A. The patient lay with the feet extending towards the east window, with the knees put back over the abdomen that the light would be to my advantage.

Q. What did you have for provision in taking care of sponges or anything else that night— A. Rubber pad. Do you want that out of the bag?

Q. Yes; let us have that. A. If that bag were placed up here I could pick these things out.

The Court: Are you going to put these things in evidence?

Mr. McCarter: No.

The Court: If the case should go on appeal you do not want to take the surgeon's outfit to Trenton?

Mr. McCarter: I asked the doctor to produce this rubber apron.

Witness: It is the ordinary Kelly pad of rubber which is inflated.

Q. Well, we won't take time to do that. You inflate that? A. Yes, sir.

Q. And then that is put where? A. This is placed under the back of the patient with the trough running down into a pail placed at the foot of the table.

Q. Does the pail that was produced the other day look like the pail that you had there? A. That is the pail.

Q. Now, what did you do with yourself before you commenced the operation? A. I slipped on, removed my coat, vest and shirt, got on an apron, scrubbed up with green soap to the elbows, had Miss Regan disinfect or sterilize the operative area of the patient, the inside of the thighs and vulva and put on my rubber gloves, sterile rubber gloves.

Q. What was the disinfecting solution that you made—what did that consist of? A. Iodine, three and a half per cent.

Q. Having gotten yourself now sterile or disinfected in the manner you have described and the parts or region of the proposed operation being prepared by Miss Regan, what did you then do? A. The patient by this time was under the ether. I took a weighted speculum, placed it—before I used my weighted speculum—

Q. What kind of a speculum? A. Weighted, heavy, so it is self retaining—I took a good sized pledget of cotton on the end of the syringe forceps and scrubbed out the vagina with the iodine solution.

Q. How were the limbs of the patient kept in that position? I understand they were that way? A. By the use of a strap passed around each knee,

and up over—beneath the shoulder. This is the ordinary shoulder straps with the snaps that we usually place over one shoulder and under the other, and then with the snaps put around the knee as the leg is placed on the abdomen.

Q. Now, who were in the room at this time? A. Miss Cox, Miss Regan and I called in Dr. Truesdell and asked him if his mother-in-law would hold up one leg so as to take some of the weight off the shoulder strap. Occasionally there is a little bit of lameness if the patent is in the straps for three quarters of an hour without the leg being supported somewhat.

Q. Did Mrs. Wolf come in? A. No, sir.

Q. Then what happened? A. Then I asked Dr. Truesdell if he would take the place at the patient's right leg.

Q. And he did? A. He did.

Q. Now, without going into the details, did you observe how Miss Cox administered the ether? A. By the open drop method.

Q. What does that mean? A. That means there is an open cone placed over the face with a bit of towel to shut off the crevices between the cone and the face and the ether is given drop by drop on the top of this cone.

Q. I do not care to have you produce all these things, Doctor; it isn't worth while. They are there for inspection if anybody wants to see them. Proceed with your description of what next occurred. What occurred, just slowly, now. A. I placed the weighted speculum into the vagina—shall I show the things as I go on?

Q. Perhaps the weighted speculum you might show. I do not want to load this case down but I

think that might be shown. A. Weighted speculum, by its weight. I mean it has its name from its style. It is self retaining. If put in the vagina it retains its position.

Q. Where you might fasten it? It was fastened to the lip of the vagina? A. Yes, sir.

Q. And that opened it and kept it open to a certain extent? A. Yes, sir.

Q. This thing hangs down? A. Yes, sir; in the direction of the Kelly pad and pail on the floor.

Q. Now, go on. A. With a double pointed—double pronged tenaculum I took hold of the anterior lip of the cervix—

Q. Anterior lip, which is that?

Mr. Mott: What did you say?

A. Double pronged tenaculum. I took hold of the upper—the anterior lip—the upper lip of the cervix and then with a small curved Kelly dilator I passed it in through the cervix. These dilators are graduated, one end a little bit larger than the other—begin with the small one, you reverse it—throw it aside, and take the next larger one—I had four in my kit that day. Two were duplicates. I used but three, the ten, twelve, fourteen and sixteen.

Q. Are those the numbers? A. Those are the numbers stamped, so that you can easily distinguish without trying to determine the calibre.

Mr. Mott: Which were the three used?

Witness: The duplicate I had was of the largest. I used ten, twelve and fourteen.

Mr. Mott: Fourteen or sixteen?

Witness: Ten, twelve and fourteen; on the other end, eleven, thirteen and fifteen.

Q. Now, which are the numbers that you ac-

tually used, the first three? A. Ten, twelve and fourteen.

Q. You have spoken of putting the dilator into the cervix? Now, what is the common parlance for the cervix? A. The cervix is the mouth of the womb.

Q. Mouth of the womb. What was the object of these dilators? A. To gradually and gently open the mouth of the womb.

Q. How far, if you can tell, did they penetrate? A. Possibly an inch—little over an inch—inch and a half.

The Court: That is through the mouth of the womb.

Witness: Mouth of the womb, yes, sir.

Q. Is there anything on the dilator that regulates the extent of the entrance? A. An inch—an inch and a half from the tip, the curved tip is a shoulder, a metal ring—that definitely determines the amount of penetration—the distance of the penetration.

Q. Can you remember about how much time elapsed between the first and the last dilation? A. Fifteen or twenty minutes. It was unusually rigid.

Q. At this stage of the operation what did you notice with reference to blood? A. That there was less than the ordinary amount—almost none. I didn't have to sponge her.

Q. How large an opening did you secure by means of this dilation? A. By the three that I have used? To about the calibre of a lead pencil.

Q. And how large an opening did you secure in the mouth of the womb? A. By these three dilators, about the size of a lead pencil.

Q. What did you next do? A. The next was to introduce the by-valve dilator, which is about the size of the largest Kelly dilator that I have used. These jaws open. They are hinged here about three inches from the end. They are protected in the same way as the other dilators, with a shoulder, and then by pressure on the handle, turning the instrument, to gradually enlarge the opening which I had at that time secured.

Q. And the result of that was the securing of an opening of what size? A. Why, probably a little smaller than a twenty-five cent piece.

Q. In other words you secured, you think, an opening about the size— A. A little smaller than a quarter.

Q. A little bit smaller than that? A. Yes, sir.

Q. What next occurred, Doctor? A. I put my dilator to one side, and took my sterile instrument at my right, a curet with a flat handle and a rib, and introduced it into the uterus to determine its depth.

Q. Have you got that curet with you? A. Yes, sir.

Q. Get out the dilators too, Doctor? Just get the dilators and the curet. A. This is the smaller size—this is the smaller end (indicating).

The Court: Dilator?

Witness: Yes.

Q. Those are the three dilators? A. Yes, sir.

Q. What is the instrument you now hold in your hand, Doctor? A. This is the curet with the flattened handle and rib on the handle.

Q. What was the purpose of the insertion of that instrument which you now hold in your hand which I understand is a curet? A. To pass it

through the mouth of the womb and to determine its depth—the measurement—the internal measurement.

Q. That you had to ascertain? A. Yes, sir.

Q. Is there any other instrument that is commonly used for that purpose? A. The instrument commonly used is best represented by removing this flat, brightened portion—just a small bulbus tube with the inches marked off.

Q. That is known— A. That is known as a uterine probe—measuring probe.

Q. How does it happen that the uterine probe— A. It would be like this instrument with this broad curet blade taken off; it is a little bit bulbus, much smaller.

Q. Smaller. How did it happen you used this rather than a sharp pointed probe? A. I haven't carried the other probe in my kit for three or four years.

Q. Why not? A. I have always been afraid of it on a uterus that was softened by any infection, that it would readily pass through the uterine wall.

Mr. Mott: If you are not going to introduce it you ought to put it down.

Mr. McCarter: I am going to introduce it.

The Court: Offer it in evidence?

Mr. McCarter: Yes, sir.

Curet marked Exhibit D-4.

The Court: Your counsel asked you to produce the bi-valve dilator that you had there?

Witness: Yes, sir.

Q. Let us see the dilators again. A. This is the bi-valve dilator.

Mr. McCarter: I do not want to actually offer these unless the State desires me to do so.

The Court: You refer now to the first dilator?

Mr. McCarter: The first three dilators.

The Court: You are not referring to the bi-valve. You are going to offer that.

Mr. McCarter: I am in a moment. These are in constant use by the doctor and I would rather not leave them here.

The Court: All right.

Q. You call that bi-valve or bi-valvular? A. I usually call it by-valve. It is a manual dilator.

Q. How do you use it? A. This is introduced through the mouth of the womb which has been dilated by the three solid little curved dilators.

Mr. Mott: Is this the actual one you used that day?

Witness: Yes, sir.

Q. Where is what you call the shoulder? A. Right—this ring (indicating).

Q. Which? A. Right here (indicating).

Q. Describe how you introduced it and how far you introduced it? A. It is introduced with the tip pointed up towards the patient's abdomen and then as it is introduced begin turning it from time to time so as not always to put the pressure on the same spot.

Q. The object being? A. To open the mouth of the womb further than you have with the solid dilator.

Q. Now, is that a regular instrument regularly used for that purpose? A. Yes, sir.

Q. And won't you again describe just how you

operated it, on that day, and if you differed in its operation on that day from normal ways? A. It was done in the usual way. The only difficulty I encountered was I took, I believe, an unusual time to open the mouth of that womb, the size of a little less than a twenty-five cent piece

Mr. Mott: You offer this dilator?

Mr. McCarter: Yes; I offer that.

Dilator marked Exhibit D-5.

The Court: What do you call it now, Doctor, bi-valve dilator, or bi-manual?

Witness: It is a manual dilator.

Q. How did you hold the curet when you inserted it for the purpose of measuring the womb? A. The curet was held in the usual manner, between the thumb and fore-finger, very lightly, so that as it passed inside of the womb that the least resistance will cause the butt of the instrument to slip through these two fingers.

Q. Why did you want to know the size of the uterus? A. Simply as a basis for my next step, that I might know how far I was justified in going in that uterus—into the womb.

Q. How much measurement did you get? A. I got an inch beyond that rib which is a little over a—the rib is five inches from the tip of the instrument. The measure was a little over six inches.

Q. Yes. And when you say that you wanted to know the size of the uterus so that you would know how far to go in, what purpose—what result were you seeking to avoid; not in the act of measuring but going in later. A. Well, it would either confirm or deny my diagnosis made two weeks previous. It was to confirm that, so that

I might know the dimensions of the organ on which I was to work.

Q. Well, now, you found—you have concluded that the inside of the uterus measured how much? A. Over six inches.

Q. Then, it crossed your mind—what conclusion did you reach? A. That the uterus was larger that I had determined on my examination of February 3d, the abdominal examination that I made over on my table.

Q. How did you account for this discrepancy? A. I couldn't altogether account for it, so I took further steps to determine the accuracy of that measurement.

Q. What? A. Of this last measurement. I had Miss Regan who was standing out of the sterile field and up beyond the sterile sheet put her hand on the patient's abdomen to try to press the uterus—the womb.

Q. What did she report? A. And reported that she could not get through the abdominal muscles; that they were very rigid.

Q. You are using a phrase "get through." A. Get through I mean that the muscles would be so relaxed that her hand would press the muscle down over the top of the womb and then with her examining hand she could tell me its location.

Q. She couldn't feel the womb? A. She couldn't feel—these muscles on the abdomen were so rigid—so tense.

Q. When you passed the curet into the womb did any liquid appear? A. None at all.

Q. In other words what did you conclude then would be the condition of the uterus in respect to wetness or dryness? A. That the amniotic fluid had gone.

Q. What next occurred? Just go on and describe. A. I turned, put this measuring curet up on my—among my instruments—and took a pair of sponge forceps. Still holding the upper lip of the mouth with my tenaculum, I passed the sponge forceps closed through the opening and opened them as soon as they were through.

Q. How far did you pass them in? A. The instrument cannot pass more than two or three inches. As soon as you begin to open it on the hinge the criss cross of the blades prevent further entrance.

Mr. McCarter: I offer this sponge forcep in evidence.

Sponge forcep marked Exhibit D-6.

Q. What did you then observe, if anything, after you had used the sponge forceps in the way you speak of? Were they just as I hold them now? A. They were put in closed.

Q. Just go on and describe the occurrences. A. Before those sponge forceps were introduced there was presenting at the mouth of the womb a little knuckle—a flesh tissue—I drew that down through the cervix to expose it for—to my eyes—and spent considerable time in examining it.

Q. What conclusion did you reach with reference to it? A. It was round—it was about the size of my forefinger its color was flesh; the lustre was dull; I rolled it over between my fingers—I had exposed a small piece of it by this time—looking for evidence of blood. I spent considerable time looking at this bit of tissue. It seemed to me it was dead.

Q. Yes. Any evidence of mesentery on it? A. No attachment at all. Perfectly free.

Q. What conclusion did you reach in reference as to what it was? A. I didn't know anything about—I took steps then to determine the source of that tissue. I put my sponge forceps back—I broke my technique by putting my—

Q. That is a technical phrase. You broke your technique. A. I went with my hand that I had washed up and sterilized and protected with sterile gloves—I put that hand up on that patient's abdomen outside of my sterile sheet on an area that had not been disinfected. That meant I would have to sterilize my hand again before I would go on with my work.

Q. After that what did you do? A. I interposed the index finger of my right hand through the cervix—

Q. Through the mouth of the womb? A. Yes, sir; trying with my hand up over the abdomen—with my left hand up over the abdomen of the patient to force the contents of the womb down onto this examining finger.

Q. Now, what was the result of your effort with your left hand on the abdomen? A. I found that—I verified Miss Regan's report that I could not relax those abdominal muscles. I could not get through them. They were so tense I could not make any pressure—

Q. Have you had any experience previous to this occasion with an evisceration of a fetus? A. Yes, sir.

Q. What was that experience and what relation did that experience bear to the conclusion you reached at that time?

Mr. Mott: One minute. I object. It is stating his experience in another case.

Mr. McCarter: Suppose a man performing a similar operation meets certain phenomena and that phenomena that he met with influenced him in his conclusion with reference to the present situation, can't he give us the result of his experience?

The Court: In the other case?

Mr. McCarter: Yes.

The Court: No. The point is to state his reason for his opinion.

Mr. McCarter: One of his reasons for the conclusion is the experience he had before.

The Court: May not state that experience. It cannot be denied. It is the same proposition as the one you referred to this morning.

Mr McCarter: I offer to show that on the previous occasion, perhaps about a year or so anterior to this operation, in a similar situation, and under similar conditions, the defendant, Dr. Young, found something protruding which he found and ascertained to be the fetal intestine, and I make that offer for the purpose of having him draw on that experience any conclusion and diagnosis he may at this time.

The Court: He does not say that.

Mr. McCarter: That was within my offer, your Honor.

The Court: He does not say that he based any opinion that he entertained at this particular stage of the operation upon anything that happened previously.

Mr. McCarter: If your Honor will listen to the question—

The Court: I have listened.

Mr. McCarter: You will find that that is involved in the question.

The Court: He may go on and state his diagnosis. You have got him up to the point where he says he did not know what it was. Now, go on and ask him his opinion about it. He has got a perfect right—he is an expert—to state his opinion and he can state his reason for his opinion.

Mr. McCarter: May I have my question read? I do not think your Honor has understood it. I may be wrong.

The Court: I understand it. You may read it if you think there is any mistake about it.

Mr. McCarter: I would like to have it read.

(Question read.)

The Court: That assumes that it did bear some relation. He has not said that yet. You are putting the cart before the horse. If he says that anything he did or made up his opinion about at this particular time is based upon something else he can state his reasons, as I understand it.

Mr. McCarter: That was what I was trying to get.

The Court: You are not doing it. You are going ahead and asking for his experience first.

Mr. McCarter: Your Honor overrules that question, and I have made an offer and your Honor overrules that?

The Court: Yes.

Defendant's counsel prays an exception to this ruling of the Court.

The same is allowed and it is signed and sealed accordingly.

WM. MARTIN,
Judge.

(Seal)

Q. Go on and describe the situation.

The Court: I do not overrule your offer. I limit your offer. When it is shown to be connected with the subject-matter.

Mr. McCarter: I pray an exception to what your Honor does do to my offer.

The Court: That is allowed. It is signed and sealed accordingly.

WM. MARTIN,
Judge.

(Seal)

Q. Please proceed. Just describe now—your thoughts—your conclusions—your actions? A. The conclusion I had was that by the depth of the uterus, by my measurement being greater than I had determined by the external examination on the 3d of February, that that fetus was larger, that the woman was further along in her pregnancy than I had determined, and that with the dilator, the bi-valve—the manual dilator—I had introduced that into the abdomen of the fetus as I had done on a previous occasion; that the object or tissue presenting being free from the mesentery, with no sign of recent or fresh blood on it, that its lustre was dull, that it was smaller than any bit of adult's intestine I have ever seen, that it was fetal, and I spent considerable time on that. I tried that—manual pres-

sure up over the abdomen again and again, each time having it washed up with soap and hot water with the hand in the iodine.

Q. How long before this occasion had been this experience which you recalled to which you have referred? A. That was three or four years ago.

Q. What was the condition of the abdomen when you repalpitated it? A. I never got through; I never could make pressure.

Q. You say "Got through"? A. I never could—I can't tell you—"get through." I mean I couldn't relax those muscles. They were so rigid that they prevented my detection of the top of that womb—the size of it.

Q. You could not detect the size of the uterus through the abdomen because the abdomen was so rigid? A. Yes, sir; that is right.

Q. What did you next do? A. With the sponge forceps, putting them in closed and opening them when they were inside the womb, I tried to find a leg or an arm of the fetus; again I spoke so that my nurse heard, I said, "I would give ten dollars for an arm or a leg; I do not want to eviscerate it. It would take me too long;" and again I tried, again and again at different angles—putting the sponge forceps in closed, opening them and feeling around and then closing them, withdrawing them a bit.

Q. Did anything come out on the forceps? A. Some more of what seemed like the same dead tissue that presented at the mouth of the womb came out.

Q. About how long? A. I didn't hold it out—I didn't measure it. There was a loop—finally there was one end of this loop that was pretty nearly—

all but just a shred as if I had bruised it through with my sponge forceps—that end came down loose. I haven't any accurate knowledge of the length.

Q. How far did the sponge forceps penetrate into the mouth of the womb at the time you have just been referring to? A. Putting these sponge forceps through the mouth of the womb and opening them it couldn't have passed beyond this hinge, because immediately it begins to dilate and I could not force it through. It was just the length from the hinge to the tip of that sponge forcep.

Q. That is the natural limitation? A. Yes, sir.

Q. Can you measure that? A. It looks to me to be about three inches. It is three and a half from the hinge to the tip.

The Court: The instrument you have in your hand is Exhibit D-5.

Witness: Exhibit D-6.

Q. Had there been any hemorrhage at this time? A. No, sir.

Q. Had the anesthetist called your attention—could a skilled anesthetist detect the presence or absence of hemorrhage? A. Could detect the presence of it by the immediate acceleration of the pulse.

Q. And you get no report of such an acceleration? A. No, sir. I thought of it while I was making this bi-manual examination and trying to determine the size of the uterus, and was unable to get through the rigid abdominal muscles, and asked her the patient's condition. She told me the pulse was good. I requested her to count it. She gave me the report that the pulse was 90, good in quality.

Mr. Mott: You said that the nurse reported what?

Witness: Miss Cox, the anesthetist.

Q. You spoke of the bi-manual examination? What do you mean by that? A. I mean by that using both hands.

Q. That you have referred to with the left hand on the abdomen? A. On the abdomen and the other up inside.

Q. Inserted in the womb? A. Yes, sir.

Q. How did your fingers penetrate the uterine mouth? A. Through the mouth of the womb. This examining finger probably got just beyond this middle knuckle.

Q. Could you find any leg or arm of the fetus? A. No, sir.

Q. What did your finger run against, if anything? A. Just a doughy mass.

Q. What conclusion did you reach then with reference to that doughy mass which your finger or what you called the bi-manual examination came in contact with? A. That I was within the abdomen of that fetus; that it was larger than I had made it from the diagnosis on the 3d of February.

Q. At this time, Doctor, was there any odor—fecal odor? A. No, sir; none at all.

Q. And you said there was no hemorrhage? A. No hemorrhage.

Q. What do you mean by fecal odor? A. I mean the odor that every one knows is characteristic of intestinal contents.

Q. Now, up to this time was Dr. Truesdell still in the room? A. He left the room soon after I had begun my examination of this abdomen, when I stopped proceeding.

Q. Was another nurse sent for then or later? A. Dr. Truesdell—was rather overcome by the smell of ether, by the proceedings, and his wife and asked to be relieved. Again I asked if Mrs. Wolf would come into the room and brought back the answer that she could not, and then I told him to telephone for a nurse. I wanted—

Q. Did you name any nurse? A. No, sir.

Q. Did you tell him where to telephone for a nurse? A. Gave him the telephone number of the Mountainside Hospital; they have a registry there of nurses.

Q. Who came? A. Miss Speicher.

Q. Had you known her before? A. I had known her. She had never been on a case with me before.

Q. What condition was the patient in when Miss Speicher arrived? A. When Miss Speicher arrived the patient's condition was still good.

Q. What happened next? A. The anesthetist, Miss Cox, reported that the pulse was bad.

Q. What does that mean, "bad," poor pulse? A. Yes, sir; that her pulse was poor.

Q. What did you then do? A. I stopped immediately.

Q. What with reference to the further use of the anesthetic? A. I told her to stop her ether; she says, "I have already stopped it."

Q. What did you then do? A. The loose end of the tissue presenting through the vagina I tucked back into the vagina and packed loosely around it with the roller bandage. My instrument—took off my gloves and gave the nurses—asked them to get ready a quart of hot saline solution; went out into the other room to my medicine case, came back

with camphor, gave her the first teaspoonful myself and then kept track of her pulse. We put the table up so that the patient's head was a little bit lower than her feet; lifted the foot of the table and had the nurses put—there were a couple of telephone books and some magazines under the foot of the table, and telephoned for Dr. Bunn.

Q. How was the table elevated? A. The table was elevated by putting under the legs at the foot of the table some telephone books and some magazines.

Q. I didn't quite understand what you said about this dose of camphor. What did you do with the camphor? A. I went out into the other room and I got my instruments—I got my medicine case, took a bottle of camphor, came back, dropped it into about twelve teaspoonfuls of water and gave my patient a teaspoonful.

Q. Of water? A. Of the camphor solution.

Q. Which was camphor? A. Yes, sir.

Q. How much did you drop into it—camphor did you put into the water? A. I put the usual amount—the homeopathic preparation.

Q. Now, you spoke of a saline solution; what was done with that? A. I gave that myself. I gave that myself. The vagina had been packed up with gauze; I gave it into the bowels.

Q. Why did you administer the solution of camphor and why inject into the bowels through the rectum the saline solution? What was your purpose? A. To resuscitate my patient. I had Miss Regan give a little bit later a hypodermic of a sixtieth of strychnia.

Q. You have already spoken of having telephoned for Dr. Bunn? A. Yes, sir.

Q. He arrived shortly? A. Very quickly. His chauffeur told me afterwards.

Mr. Mott: I object.

Q. Did Dr. Bunn come into the room? A. He did.

Q. As he arrived what was happening to the patient? A. The patient was covered with an additional blanket and she was gasping her last.

Q. And died there? A. Yes, sir.

Q. Now, up to that time had you removed anything whatever from that womb? A. No, sir.

Q. How much of this tissue that you have spoken of did you remove, to the best of your recollection, Doctor, from the patient, I mean? A. I didn't measure it. It is hard for me to tell in inches. My idea is that there was possibly—I don't know how I can tell you that—there wasn't a great deal of it. I didn't measure it.

Q. I cannot expect you to be exact, of course. You did not measure it. But about how much? A. Possibly sixteen inches.

Q. That was all? A. That was all.

Q. Did you remove twenty-one feet of maternal gut? A. Never.

Q. Did you remove between three and four feet of the large intestine? A. No, sir.

Q. What became of this piece that you say was sixteen or about sixteen inches or so of tissue? A. It went down into the pail?

Q. Into the pail? What else went into the pail? A. There were three large cotton balls with about a quart or so of iodine solution, two hand towels that slipped off the Kelly pad.

Q. Had any change whatever been made in the physical condition or surroundings of that room before Dr. Bunn arrived? A. Not one thing.

Q. And he was there just as the patient was expiring? A. Yes, sir.

Q. At that time was there any blood on the floor? A. Not one bit.

Q. At that time was there any blood in the sink? A. There was no blood anywhere in that room.

Q. At that time was there any blood on newspapers in the coal scuttle? A. No, sir.

Q. How long did Dr. Bunn remain? A. Probably ten or fifteen minutes.

Q. After the patient's death? What did you next do? A. I went out in the room with Dr. Truesdell and Mrs. Wolf? I don't just remember where Dr. Truesdell was—I left the kitchen, went out in through the dining room—Dr. Truesdell was in a bad way; he was cold and clammy, his pulse was very thin and unsteady—completely prostrated.

Q. Prostrated? A. Yes, sir.

Q. On what? A. I don't mean in position, I mean in condition.

Q. Oh, yes. A. I took him out of a chair—I don't remember whether that was out in the sitting room or dining-room—and put him in on a couch in the little telephone room to the left as I came from the kitchen. I got him covered up with a blanket and I gave him medicine.

Q. Go on. A. I gave him camphor. I gave him what comfort I could. He was almost pulseless and I worked over him for some time.

Q. Yes. A. Little by little his strength came back. We began to talk of the sudden, horrible death of his wife—told him that—

Mr. Mott: I object.

The Court: What has this got to do with it, Counsellor?

Mr. McCarter: I don't know that it makes any difference what he told Dr. Truesdell.

Q. Did you finally resuscitate him? A. Yes, sir; that is he got better. I don't know whether I did it or not.

Q. What next occurred? A. We began to talk about his wife.

Q. Never mind about the talk between Dr. Truesdell and you. As soon as he got better what did you next turn your attention to? A. I called up the Montclair Police.

Q. Yes. A. And reported to Sergeant Tom Claren the death on the operating table of Mrs. Truesdell.

Q. Yes. A. And he gave me the name and the telephone number of the coroner of our district.

Q. Did you know who that was before that? A. Not until he told me.

Q. That was the regular thing to do under these circumstances, as you understood it, Doctor? A. Yes, sir.

Q. Yes; and having gotten the telephone number of this party did you telephone? A. Yes, sir.

Q. And got Dr. Simmons' house? A. Got his office.

Q. Was he in? A. He was not in.

Q. Left directions? A. To call me as soon as he came in.

Q. What time did you commence the operation, Doctor? A. Probably about twenty-five or twenty minutes of one.

Q. What time was it, when you packed, so far as you can tell, when you packed the vagina—when you had ceased work? A. It was ten or fifteen minutes after one.

Q. Dr. Simmons arrived? A. He came. I telephoned his office several times. There was considerable delay.

Q. What time did he get there? A. About four o'clock.

Q. I think it already appears. When was it that you procured from Dr. Truesdell, the consent to have the autopsy? A. I think that was before I called up Dr. Simmons.

Q. And did you send out for anything? A. I sent Miss Speicher for a spool of cotton; a spool of about two inches in height; a spool that she bought at some little dry good store in the neighborhood.

Q. What did you want that for? A. For Dr. Simmons' use; for the autopsy to sew up the abdomen.

Q. When Dr. Simmons arrived where was Dr. Truesdell if you can recall? A. He was sitting in the front room with Mrs. Wolf.

Q. Did you report to Dr. Simmons anything? A. I told him just what I have told here today.

The Court: That is very indefinite.

Q. You mean with reference to the operation? A. Yes, sir.

Mr. McCarter: Does your Honor think I ought to go over that again, the entire conversation?

The Court: No.

Q. Did Miss Cox, the anesthetist, remain all the afternoon? A. No, sir.

Q. What time did she leave? A. I sent her back to the office probably about half-past two.

Q. And the other two nurses remained? A. Yes, sir.

Q. And where were they while you were outside

with Dr. Trusdell, resuscitating him and while you were talking to Dr. Simmons? A. In the room with the body of Mrs. Truesdell.

Q. Had you given them any directions whatever? A. No, sir.

Q. Well, now, what occurred after Dr. Simmons went into the room? A. I was still stripped down to my underwear, as far down as the waist, my apron on—I put on a coat, the day was cold—and he started to remove his coat. I said, "Doctor, shall I open her for you?"; he said, "I wish you would," or words to that effect. I do not recall it word for word.

Q. Were the nurses there? A. Nurses stood right there.

Q. Had anything occurred in the meantime? A. No, sir.

Q. Go on. A. The sheet was thrown down from the body and in the median line I made an incision about the size of the usual operative incision, three and a half—

Q. About how long would that be? A. Probably three and a half to four inches and Dr. Simmons at once exclaimed, "Doctor, that is not big enough; make it longer," and I did.

Q. How long did you make it? A. From the navel down to the pubes.

Q. What are the pubes? A. That is the first bone you meet as you go down through the abdomen to the pelvic arch, over the bladder.

Q. That would be an orifice or opening of what length? A. Probably four and a half to five inches long.

Q. Now, Dr. Simmons stood right there? A. Yes, sir.

Q. After you had made the incision just tell the jury slowly, now, all that occurred? A. I drew aside the walls of the abdomen and stepped a little one side for Dr. Simmons to look. I took from what was left of a roll of cotton, that was probably that large, (indicating) just a handful, a batch probably as large as my fist. I ran it down in through the incision to each iliac process, as we call it; that is this part of the abdomen (indicating), right side and left; brought the cotton up barely tinged with blood; threw it down in the pail; took a fresh piece of cotton, turned it a little bit so that my hand went up towards the diaphragm, down in under—over each kidney, each time with a fresh piece of cotton, and threw it in the pail.

Q. Did you find any blood other than this little that you found on the cotton in the abdomen? A. No, sir.

Q. Was there any fecal odor whatever? A. Not a bit.

Q. Were the twenty-one feet of small intestines and three or four feet of the large intestines gone? A. No, sir.

Q. What was the first thing you personally saw when you opened—laid aside the mouth of this incision? A. As you do in every abdomen; it was full of coils of intestines.

Q. Did you see the uterus? A. After I had with my left hand drawn the abdominal contents down out of the way.

Q. Yes; and what did you observe? A. In through the left side, extending up into the top was a tear.

Q. And where did that tear commence and how

far down did it go? A. It came up in through the left broad ligament, a little bit around on the top and down on the side, and as I showed it up—held the uterus up and held it to Dr. Simmons' eye was probably about two fingers down on the side.

Q. About how much? A. The width—breadth of two fingers on the side of the uterus.

Q. Did it go to the neck of the womb? A. No, sir.

Q. Did you find any fetus in this uterus? A. I did not open the uterus.

Q. Did you find any fetus in the abdomen? A. No, sir; there was none.

The Court: Did you expore it?

Witness: Yes, sir; most thoroughly.

Q. Before you were able to look into it and show Dr. Simmons the uterus did you have to move anything or remove any—lay anything inside? A. With my hand working—left-handed there, the contents were pushed back. The body was in Trendelenburg—with the feet higher than the head.

Mr. Mott: The doctor said he did not find any fetus and he looked for it.

The Court: In the abdomen. He said he didn't look in the uterus.

Q. What was it that you pushed aside before you got to and looked into the uterus. A. Coils of small intestines.

Q. Was there any fecal matter in the abdomen? A. Fetal?

Q. Fecal? A. Fetal, no, sir.

Q. Fecal? A. Fecal?

Q. Yes. A. No, sir; not a bit.

Q. And you have already said there was no odor whatever? A. Not a bit.

Q. Now, you have spoken of a tear in the left side of the uterus. Was anything protruding through that tear? A. Nothing protruding; nothing entering it; there was nothing in it.

Q. Nothing at all. Describe the opening as to whether it was closed or gaping? A. It was closed.

Q. Closed.

The Court: What is that, this tear or the cervix?

Mr. McCarter: I mean the tear in the uterus, your Honor.

Q. You have spoken of having packed the vagina. Describe that operation, showing us how tightly you packed it and how much gauze was put in. Plain words, now. A. It was loosely packed. I may have used three or four yards of a roller bandage—the two inch roller bandage. I don't know exactly, but packed loosely. The normal vagina will hold fifteen yards of three inch gauze packed tightly. This was packed very loosely.

Q. Did you enter the uterus with the gauze or was it confined to the vagina? A. No; it was just in the vagina.

Q. Just into the vagina. And the vagina is located where with reference to the womb or uterus? A. The vagina leads up to the mouth of the womb.

Q. Was the nurses there during the opening of this abdomen? A. Every minute.

Q. What nurses were there at that time? A. Miss Speicher and Miss Regan.

Q. When was the incision closed up? A. When Dr. Simmons told me to close her up.

Q. Did you then proceed to close it up? A. I did.

Q. How did you do it? A. With a continuous through and through suture of cotton.

Q. What kind of material? A. Of the cotton Miss Speicher brought me.

Q. Was that a spool of cotton? A. Yes, sir.

Q. What became of that spool? A. The spool I gave to the prosecutor.

Mr. McCarter: Have you got that, Mr. Mott?

Mr. Mott: It is in the office; I haven't got it here.

Q. You gave him the spool of cotton when you were down here on one of these occasions? A. Yes, sir.

Q. Now, describe again how you sewed up that incision? A. The needle is put through—that (indicating) would represent the opening in the abdomen. You go in this side and out. You tie that first loop. Then, you go on and on and on until you finish—get close to the end—and then there is another knot at the end. From end to end it is continuous without any knot.

Q. And the material you used for sewing was what? A. Was cotton.

Q. From the spool which you gave to the prosecutor? A. To the prosecutor.

Q. About how many stitches did you make? A. Probably five.

Q. I understand it was one continuous stitch, one continuous sewing, not broken? A. Yes; not broken at all.

Q. But about five? A. Over and over, five points of entrance with that needle.

Q. And Dr. Simmons was present, was he not? A. Yes, sir.

Mr. McCarter: Prosecutor produces a spool of cotton.

Q. Look at it and see if you recognize that as being the spool of cotton you gave him and the thread which you used on that occasion? A. It looks like it. Do you want me to compare it with the piece I have?

Q. Yes. Now, did you yourself keep a piece of the same cotton you gave the prosecutor? A. Yes, sir. In the presence of Dr. Willet Brown I removed from that spool a section of that cotton.

Q. When was that—how long after the operation? A. It was after the exhumation of this body. I do not remember the date of that.

Mr. Mott: The State will admit that that is the one.

Mr. McCarter: Very good.

The Court: Then you offer it in evidence?

Mr. McCarter: Yes, sir.

Spool of cotton marked Exhibit D-7.

Q. Did Dr. Simmons look at your instruments as they lay there? A. Yes, sir; he inspected them.

Q. What, if anything, had happened to them in the meantime? A. They had been washed and dried.

Q. By whom? A. By Miss Speicher or Miss Regan. I don't know which one.

Q. By the nurses? A. By the nurses.

Q. Why had that been done? A. In the interval from the time I left the room to go out and take care of Dr. Truesdell, to telephone the police, to telephone Dr. Simmons and until the time he came.

Q. Had you given any instructions? A. No, sir.

Q. What had happened, if anything to the pail? A. When I went back into the room the instruments—the pail had been emptied.

Q. The pail had been emptied? A. Yes, sir.

Q. And had you given any directions to have it emptied? A. No, sir.

Q. The nurses had cleaned that up, too? A. Yes, sir.

Q. Now, after an operation is over what is the usual and customary thing for nurses to do, Doctor? A. To clean up the instruments—to clean up what is to be cleaned up of the room.

Q. Did you have with you the ordinary and usual instruments for proposed operation, Doctor? A. Yes, sir; I had the instruments I used.

Q. Did you have with you the instruments for a laparotomy or opening of the abdomen? A. No, sir.

Q. And the sewing of the intestines? A. No, sir.

Q. What conversation did you have, if any, with Dr. Simmons, while you and he were engaged in making this autopsy?

Mr. Mott: I object unless it is to contradict something Dr. Simmons said and if it is then the specific thing should be asked.

Mr. McCarter: I think that the conversation between Dr. Simmons and him is competent. Apart from that, your Honor, Dr. Simmons was there, the representative of the State exactly as if Mr. Mott had been there.

The Court: That would not make it competent. The State is not represented by anybody or bound by anybody; but hadn't you already asked him that and hadn't he already answered it? You asked him what he told Dr. Simmons and he says, "I told him about this operation exactly as I have stated it this morning to you."

Mr. McCarter: That was before they went in the room and had the autopsy; that was out in the other room explaining the situation. Now, they go into the room and have the autopsy and Dr. Simmons has been examined with reference to it.

The Court: This is in the room after the incision in the body had been made.

Mr. McCarter: During the proceedings of the autopsy. Dr. Simmons is there as a representative of the State. The theory upon which the conversation would not be permissible is that no representative of the State was present.

The Court: It would not make any difference whether a representative of the State was there or not. This is after the alleged offense and it is a self serving declaration, unless it is part of a denial or something of something that Dr. Simmons has said. Now, Dr. Simmons has testified to this conversation.

Mr. McCarter: I offer to prove by this witness a conversation that occurred between him and Dr. Simmons as part of the *res gesta* while the autopsy was being conducted under Dr. Simmons' direction.

Mr. Mott: I object to it, but I do not object to any specific contradiction of anything that Dr. Simmons may have stated.

The Court: Why isn't this the proper way, Judge Mott, to introduce this conversation? If his attention was directed to a particular matter he would be confined to mere denial. He is entitled to state the

whole conversation with Dr. Simmons. I think Dr. Simmons testified to it. Dr Simmons said that Dr. Young made some statements to him. It does not appear whether Dr. Simmons testified he made the statements before or after he got into the kitchen. Dr. Young said he thought he had ruptured the uterus; he said he got very little out of the uterus; and there was other things said. Now, he may deny that. Objection overruled.

Q. Can you recall any conversation that you had other than the mere description of the operation, which I do not care to have you re-detail, with Dr. Simmons that day? I mean while he was at the autopsy.

The Court: Your question that I sustained was in the kitchen.

Mr. McCarter: That is what I mean.

The Court: Answer first as to the kitchen and then your counsel can refer to something else afterwards.

A. May I have the question again?

Q. Do you recall any particular conversation that you had with Dr. Simmons while you were both in the kitchen? A. I asked him to the cause of her death. He said, "there was no hemorrhage. I don't know why she died. Some people stand more than others; some go more quickly—more easily than others," and walked up and down the floor—"I guess it was shock."

Q. While you were engaged in shoving aside the intestines so that you might expose to view the uterus and see, what, if anything, had happened to it where was Dr. Simmons looking? A. Right down in through the incision.

Q. Now, Dr. Young, did you go and see the prosecutor about this matter? A. Yes, sir.

Q. Anybody request you to go or did you go voluntarily? A. I had—I don't know whether it was a request or a suggestion that I go to him.

Q. By whom? A. I got a telephone message that came in to my office.

Q. From whom? A. I don't know. That the prosecutor would see me sometime after two o'clock—maybe it was four; I don't remember that.

Q. When was it you came down? A. It was about the time of the second Grand Jury investigation.

Q. That does not mean anything? A. I cannot give you the date.

Q. About how long after the death? A. Two weeks and some days.

Q. You came down here? A. First week in March.

Q. You came down here in response to some telephone message? A. Yes, sir.

Q. Did you receive the telephone message yourself? A. No, sir.

Q. You received a report that a telephone message came that Mr. Mott would talk to you? A. That he would see me after four o'clock.

Q. And you came down? A. Yes, sir.

Q. Did you see him? A. Yes, sir.

Q. What occurred? A. I began to tell him what I knew of my case and he said, "you are talking like a wild man; not that you are talking unintelligently but I would prefer to have some of my staff of medical men with me. Wait a minute and I will telephone Dr. Washington." Dr. Washington

said he was on his way to New York but if it was absolutely necessary he would come right up. I replied that I had had the strain of that for some days, I could stand it over night and that to-morrow at any time they made the appointment that I would come down.

Q. And did you come down the next day? A. Came down the next day.

Q. Will you please state what you said to Dr. Washington and Mr. Mott on the next day? A. I began to tell my story. They began to crossfire me with all sorts of questions, and after that they got out of me just the answers to their questions; I stopped telling them things.

Q. What did you say with reference to this—your conclusion at the time of the operation touching this mass of tissue that you have referred to this morning? A. I told them that I believed I was in the abdomen of the fetus.

Q. And that the intestines that you spoke of was what kind of intestine? A. Small intestine.

Q. As between maternal and fetal, I am speaking of? A. That it was fetal.

Q. How long were you with Dr. Washington and Mr. Mott? A. And Dr. McKenzie.

Q. Dr. McKenzie, too, yes? A. Why, probably an hour.

Q. Had you up to that time employed your lawyer? A. No, sir.

Q. At that time was any suggestion made to you or by anyone that most all of the large—or of the small intestines and a large part of the large intestines had been taken from that body? A. The newspaper's report—

Q. No, at this interview? A. Yes, sir; they threw that into me.

Q. At that time? A. Yes, sir.

Q. This was after the exhumation, was it? A. Yes, sir.

Q. And they spoke of that. And what did you say with reference to that? A. Didn't say anything.

Q. Mr. Wolf testified yesterday that you had a conversation with him the day that Mrs. Truesdell died. Did you hear his evidence? A. Yes, sir.

Q. Did you have a conversation with him that day? A. Yes, sir.

Q. Where was it? A. In the front room of Dr. Truesdell's apartment.

Q. About what time? A. It was shortly after his arrival, before Dr. Simmons came in.

Q. What time do you think it was that Dr. Simmons got there? A. It must have been a little after four.

Q. Will you relate the conversation you had with Mr. Wolf? A. He asked me if the operation were necessary and I told him it was. He asked me the cause of her death. I told him I didn't know, that we were waiting for Dr. Simmons.

Q. Is that all that you recall? I don't know of anything more myself. A. I don't know of anything more.

Q. Now, he says that at this conversation you told him that the operation was a curetting for the removal of a dead fetus and that you discovered that the fetus had dropped from the womb into the bowels, and that you were protected by medical records in what you did. Did any such conversation take place between you and him? A. Not in words of that import.

Q. Tell us what you said? A. I can't tell you word for word.

Q. I don't mean word for word. A. As I told the husband that it was necessary—

Mr. Mott: I object.

Q. The question is—listen to this—did you tell him—Wolf—that the fetus had dropped from the womb into the bowel? A. No, sir.

Q. That you had a record and were protected by the medical records to upon that kind of a situation? A. No, sir.

Q. Anything of that kind? A. No, sir.

Mr. McCarter: I think that is all. There must be something I have forgotten but if so I will—

The Court: Do you want to renew your offer about the size of the intestines of the fetus on the previous occasion?

Mr. McCarter: Yes, sir; I would like to renew that.

The Court: Now, he has stated that he thought that this was the intestine or intestines of the fetus, on that other occasion, now he can state what there was about that that made him think so, if that is what you are after.

Mr. McCarter: Thank you, your Honor.

Q. Referring, Dr. Young, to the presentation of this piece of tissue and to the fact that you concluded that it was fetal intestine, won't you please tell us what this previous experience was which, as I understand you, led—confirmed you in that impression? A. Tell that experience?

Q. Yes, A. The case was the same, fetus in arrested development, and on opening—after opening—dilating the mouth of the womb in the manner and the same instruments—

The Court: Do not go all through that. Come to the point.

Witness: A notch of small intestine—what seemed to be small intestine—presented; that it had the same characteristics, the lack of lustre—the lustre being dull—no evidence of life and collapsed; and it came to my mind and I spoke of it in the kitchen that morning while at work on this last patient.

Q. We haven't got to that, yet. The question is what it turned out to be in the previous case. What was it? A. This was my first coroner's case.

Q. What was this thing that did protrude? A. Why it belonged to the fetus.

Q. That is, exactly, yes. Now, do I understand that during the process of the operation that morning in the kitchen—that is the operation now on Mrs. Truesdell—that you spoke of that previous experience? A. Yes, sir.

Q. In the presence of the nurses? A. Yes, sir.

CROSS-EXAMINATION by Mr. Mott:

Q. Doctor, this previous occasion in which you say you brought down some fetal intestine was how long ago? A. That is two or three years ago.

Q. And then you were performing what sort of an operation? A. The same as I have described here.

Q. You were then performing what kind of an operation? A. To deliver the uterus of a dead fetus.

Q. How far advanced in your judgment at that time was the dead fetus that you were delivering on this previous occasion? A. About six months.

Q. And in the course of curetting did you draw out the— A. No, sir.

Q. How did you come to do it? A. After the use of the dilater, the manual dilater.

Q. Then on the previous occasion by the use of the dilater you brought out the fetal intestine? A. Yes, sir.

Q. On the previous occasion? A. Yes, sir.

Q. No doubt about that? A. No doubt about that, no, sir.

Q. How old did you think the fetus in the case of Mrs. Truesdell was at the time you performed the operation? A. By my measurement of the depth of the uterus I concluded it was in the sixth month.

Q. That is about the same age as the other case, is it? A. Yes, sir.

Q. Would you call that disemboweling the fetus? A. Yes, sir.

Q. Now, you say that the time you performed this operation on Mrs. Truesdell you were guided and influenced in your methods by the fact of your previous experience in disemboweling the fetus? A. Yes, sir.

Mr. McCarter: He hasn't said so. That is not so at all.

Mr. Mott: Yes, he has.

Mr. McCarter: No. He was guided in his conclusion as to what this thing that was exposed was. Very different thing.

Q. Then you say that you were guided in your conclusion as to what the exposed loop was by your previous experience of disemboweling this fetus? A. Yes, sir.

Q. Did you not say during the course of this op-

eration when that loop first appeared, "This is the first time I ever disemboweled a fetus"? A. No, sir.

Q. Or an infant? A. No, sir.

Q. You did not say that? A. I did not say it.

Q. Doctor, you said at the interview that you had with Mr. Truesdell and his wife on November 8th, or about that time, Dr. Truesdell told you that "Emine" had been taking something, did he? A. Yes, sir.

Q. And you said to him, "Paul that is bad," or something to that effect. Did he tell you at that time what she had been taking? A. No, sir.

Q. Did you inquire? A. No, sir.

Q. How could you know whether the effect of what she was taking was good or bad unless you knew what that was? A. That it is unwise for a woman in that condition to meddle with anything in the way of a drug.

Q. Do you mean that? A. In the way of a drug to upset her pregnancy. Yes, I mean it.

Q. You were her physician? A. Yes, sir.

Q. And if you were informed by her husband that she had been doing this unwise act why didn't you find out what she had been doing? A. I didn't think that essential. I told her to stop what she had been doing.

Q. Knowing that you had a patient that was taking something that in your opinion was deleterious you simply told her to stop it and did not make any inquiry to find out what it was? A. No, sir.

Q. You then assumed that it was bad, did you, in its effect? A. Yes, sir.

Q. Did you as a matter of fact assume that the drug that she was taking was deleterious in its effect upon her? A. Yes, sir.

Q. Knowing then or assuming then that your patient who was in the delicate condition of being in the family way was taking a deleterious drug on the 8th of November, did you not consider it a part of a prudent physician's duty to find out what that drug was? A. No, sir; when I told her to stop my duty was done.

Q. You mean that, do you, Doctor? A. Yes, sir.

Q. And that is one of your standards in the practice of your profession, is it? A. Anything of that sort, yes, sir.

Q. Do you not know, sir, that that woman might at that time have been taking something that was actually endangering her health? A. Do I know what?

Q. Do you not know that some drug that she might be taking might actually have been endangering her health? A. Yes, sir.

Q. If she was taking a drug that was actually endangering her health wasn't it your duty to find out what that drug was so that you could apply the proper antidote? A. Not unless her condition presented symptoms indicative of the poisoning of that drug.

Q. Then if you have got a patient that is taking poison you wait until symptoms appear before you give your antidote for the poison, do you? A. Unless I know the amount she has taken.

Q. But if you have got a patient that is taking poison do you refuse to ask them what the poison is before the symptoms appear? A. Oh, no.

Q. Then, why didn't you do it in this case? A. Because it is the experience of every man practicing medicine—

Q. Pardon me, sir.

The Court: You have asked him why, go on, Doctor.

Mr. Mott: I want to submit to your Honor that I do not see how this man can be influenced by what others do.

The Court: I don't know. The human mind is very peculiar. He might be influenced by something done in China.

A. Because it is in the experience of every man practicing medicine that women in the early months of their pregnancy have usually resorted to all sorts of means to upset it.

Q. That is what you say the experience of physicians is, that women generally do that? A. Yes, sir.

Q. That women generally try to produce an abortion upon themselves when they find that they are pregnant? A. It is a common experience.

Q. That women generally do that? A. Yes, sir.

Q. Dr. Young, do you mean that? A. I mean it.

Q. Dr. Young, are you not slandering womanhood and motherhood when you say that? A. Not one bit.

Recess.

Q. Did you find the fetus at any time, Doctor? A. No, sir.

Q. You say you looked in the abdomen for it? Yes, sir.

Q. Didn't you find it there? A. Didn't find it.

Q. Did you examine the uterus? A. Yes, sir.

Q. Was it in the uterus? A. I didn't open the uterus. I just showed Dr. Simmons the tear and stopped.

Q. From what you saw were you able to say whether or not the fetus was in the uterus? A. No, sir; I cannot say.

Q. It might have been there? A. I didn't see the inside. It may have been there.

Q. Well, Doctor, would it have been possible for you to have punctured the uterus and draw out the fetal intestine without enabling you to say whether the fetus was in the uterus or not? A. I don't know the contents of that uterus. I didn't open it, you know.

Q. In order to have drawn down the fetal intestine you must have punctured the uterus, mustn't you? A. Fetal intestine?

Q. Yes. A. No, sir.

Q. How would you get that without doing that? A. The fetus is within the uterus and that would not necessitate a puncture of the uterus.

Q. How would you draw down the fetal intestine without puncturing the uterus—rupturing the uterus? A. The mouth of the womb is open. The fetus is up inside.

Q. Yes. A. I am supposed to be going directly through the mouth of the womb into the body of that fetus. That does not imply a rupture of the uterus.

Q. Then you supposed, did you, that you had inserted the instrument through the mouth of the womb? A. I know that I did.

Q. And drew the fetal intestine down that way? A. Yes, sir.

Q. Is that it? A. Yes, sir.

Q. Do you think you could have got a sufficient grip on the fetus in the uterus to have drawn down the intestines without drawing the fetus out of the uterus through the mouth? A. Yes, sir.

Q. Well, of course, Dr. Young, you know when you see it the difference between the fetal and maternal intestine, don't you? A. Yes, sir.

Q. And this was fetal intestine? A. That was my conclusion.

Q. Well are you sure about it? A. Yes, sir.

Q. It was a settled opinion with you, wasn't it? A. Yes, sir.

Q. You pushed the loop back, you say, into the vagina. Did you say that? A. No, sir.

Q. What did you do with it? A. I let the loop alone.

Q. You never restored the loop? A. No, sir.

Q. Did nothing to do that? A. No, sir.

Q. What became of the loop, Doctor? A. One end of it fell free outside of the body.

Q. Yes. Well, what became of the rest of it? A. I continued my search up alongside of it for the fetus.

Q. Yes. Well, what became of the intestine? A. I continued my work, inserting the sponge forcepts up inside, opening them and closing them and retracting, drawing out what I believed was—

Mr. McCarter: Speak louder. I haven't heard a word you said.

Q. What became of it, Doctor? A. The one end came out, fell free into the sterile towel on the

Kelly pad and I continued my search with the sponge forceps.

Q. What became of it? A. You mean at the end?

Q. I am asking the plain, simple question, what became of the exposed part of tbe fetal intestine? A. The last that—the last stop of my operation that there was an end protruding and that—I packed around that with the gauze; left this protruding down through the mouth of the womb into the vagina, to the outlet of the body.

Q. How far was it protruding? A. Just to the outlet.

Q. Well, how far? A. That is probably two and a half or three inches from the mouth of the womb.

Q. Two and a half or three inches in full view, then? A. Yes, sir.

Q. And you left it there? A. Yes, sir.

Q. And it was there when Dr. Simmons went there? A. Yes, sir.

Q. Did you call his attention to it? A. No, sir.

Q. Well, you knew it was there, didn't you, Doctor? A. Yes, sir.

Q. Why, didn't you call his attention to it? A. I told him step by step—I was—I had given him the report of my case. I did then whatever he told me to do.

Q. Why, didn't you call his attention to this exposed fetal intestine that was hanging down there two or three inches? A. I can't tell you that. I don't know.

Q. Did you want him to know it was there? A. I told him it was there.

Q. Oh. Why, Doctor, you told us a moment ago you did not call his attention to it? A. When he first came in I gave him the report of my case, of the protrusion of what I thought was fetal intestine, down through the cervix.

Q. I asked you a moment ago if you called Dr. Simmons' attention to the fact that fetal intestine was exposed—protruding, as you have described, and you said no. Do you wish to change that answer? A. I wish to explain it. I thought your question was at the time of the autopsy.

Q. It was at the time—A. I called his attention to it when he first came in. I recited it to him when he first came into the house.

Q. Tell us what you said, please. What did you say to him about it? "Recited" doesn't mean anything very definite. What did you say to Dr. Simmons about it? A. I told him step by step of my operation, of my dilatation, of the presentation at the mouth of the womb of this small knuckle of intestine which I examined as well as I could.

Q. Again I ask you what did you say to Dr. Simmons about the exposed fetal intestine? A. I told him that after my dilatation of the mouth of the womb that a small bit of tissue presented. I told of my examination of it. I told of my search for the fetus. I told him of the packing of the vagina, the administration of the drugs—the saline, of calling Dr. Bunn.

Q. And that is all you said to Dr. Simmons about the exposed fetal intestine? A. I believe so —I think so.

Q. Why didn't you call his attention to it, in terms? A. I did call his attention to it.

Q. Please tell me the words you used, or substantially, not verbatim. I don't mean literally. A. I told him that after my dilatation of the mouth of the womb there appeared a bit of tissue which I believed to be fetal—fetal intestine, small intestine.

Q. Well, there appeared yes. Well, what else did you tell him? A. Then I told him of my search for the fetus.

Q. Did you tell him that three or four inches of that fetal intestine was at that time exposed to view? A. Yes, sir.

Q. Did he look at it? A. No, sir.

Q. Did you tell him you had ruptured the uterus? A No, sir.

Q. With what idea did you send for Dr. Bunn? A. My patient was bad. I didn't know why.

Q. Did you have anything in mind that you wanted Dr. Bunn to do or to assist you in doing? A. I knew the possibilities.

Q. The possibilities were what? A. Internal hemorrhage.

Q. From what? A. Possibly rupture of the uterus.

Q. Then you did have in mind the fact that you may possibly have ruptured the uterus, did you? A. Yes, sir.

Q. Anything else in mind that you thought might be necessary to attend to? A. No, sir.

Q. The only thing you had in mind then when you sent for Dr. Bunn was the general condition of your patient and the fact that you thought that possibly you may have ruptured the uterus? A. And had internal hemorrhage.

Q. And had internal hemorrhage. What made

you think you had possibly ruptured the uterus? A. That was one of the possibilities of the case. I had no evidence that I had.

Q. Well, do you mean to say that it was mere speculation on your part? A. Yes, sir.

Q. Didn't you think it a matter of some importance to find out whether you had or not? A. I had ruptured the uterus?

Q. Yes. A. Yes; that is what I sent for Dr. Bunn for.

Q. Coudn't you do that immediately without waiting for him? A No, sir.

Q. To determine whether you had ruptured the uterus? A. No, sir.

Q. Why not? A. That meant opening the abdomen.

Q. And when Dr. Bunn got there the patient was dying, was she not? A. Yes, sir.

Q. Beyond repair? A. Yes, sir.

Q. Nothing could be done? A. Yes, sir.

Q. There was no odor of this intestine, I believe? A. No, sir.

Q. You said that, did you not? A. Yes, sir.

Q. Of course, you know the difference, don't you Doctor, between fetal and maternal intestines? A. I thought so.

Q. I asked if you do or not? A. Yes, sir; I believe I do. I do not mean to quibble on it.

Q. Do you remember having a conversation with me the first day you came to the prosecutor's office in the presence of Mr. Hargan of the Prosecutor's office? A. You had one of your men there. I don't know who he was.

Q. (Stand up Mr. Hargan.) A. Yes, sir; that is the man.

Q. At that time did you say to me and to Mr. Hargan, "There is something about this case that I did not understand, but I am beginning to see light," do you remember saying that? A. Yes, sir; I don't know whether it was word for word.

Q. But substantially? A. About that; yes, sir.

Q Did you say this, "I understand that a bottle of ergot has been found and I am now satisfied that Mrs. Truesdell had been taking or someone had been giving her large doses of ergot"? A. Yes, sir.

Q. "I am satisfied that that is what caused the rupture of the uterus"? Did you say that? A. Yes, sir.

Q. "And that the intestines were down in the uterus when I put the sponge forceps into the uterus"? A. Yes, sir.

Q. "And got hold of the intestines instead of the dead fetus which I supposed was there"? A. Yes, sir.

Q. Is that still your opinion? A. Yes, sir; I haven't any reason to change it.

Q. What leads you to conclude that the uterus ruptured—I mean medical facts within your knowledge—from the use of ergot? A. That there were present in that woman other symptoms of ergot besides the possible rupture of the uterus before I began my work.

Q. Tell us what they were? A. Ergot produces tonic spasms, the rigidity of the abdominal muscles, the difficulty I had in opening the mouth of the womb, that it was unusually long and slow dilatation that the dilatation of the opening of the mouth of the womb was attended with much less blood than is usually present in the normal proceeding.

Q. You had a hard time in getting in through the mouth of the womb, did you? A. It was a slow dilatation, yes, sir.

Q. Did you say to Dr. Richman that you had "A hell of a time getting in"? A. Yes, sir, I did.

The Court: Dr. Who?

Mr. Mott: Richman.

Q. Now, coming to the interview that you had in my presence the next day with Dr. Washington and Dr. MsKenzie, I think you used this expression substantially, "They threw into me that all the large intestine was gone." That is substantially what you said to you at that interview? A. Yes, sir.

Q. Who said that to you? A. I think it was Dr. McKenzie.

Q. Was anything said to you, Doctor, by either Dr. McKenzie or Dr. Washington, or myself as to what the autopsy disclosed? A. Yes, sir.

Q. What was said? A. Dr. McKenzie said, "Repair? How could you repair when she was practically eviscerated? Could you repair that?"

Q. What else was said? A. Dr. Washington told me on my question—I told him that the newspaper men had held it over my head that the woman was not even pregnant and asked him about it. "Oh, yes," he says, "There is no doubt she was pregnant, and much further along than you diagnosed."

Q. And can you recall anything else? A. No, sir.

Q. What did you say when Dr. McKenzie asked you how did you expect to repair the damage if she was completely eviscerated, or whatever he said in that respect? What did you say? A. I said nothing.

Q. Going back now to the fetal intestine again, you spoke of it first as a loop that came down? A. Yes, sir.

Q. Do you mean by that it had an end exposed? A. No, sir; a loop.

Q. When did the end become exposed? A. That was several minutes later, after I had determined that it was fetal intestine and I continued my search for an arm or a leg of the fetus.

Q. During the progress of the operation were sheets and towels saturated with blood taken from the operating room and put in the sink? A. No, sir.

Q. When you went over to Dr. Truesdell's house on the 15th, did you take your full surgical equipment with you? A. Yes, sir.

Q. What did that consist of, generally? A. Why, it consisted of everything that I found necessary in the case of an obstetrical case.

Q. Well, what besides instruments would that include? A. Well, my suture material, ergot, package or two of sterile sponges, the iodine, umbilical tape—

Q. What is suture material? A. Catgut.

Q. And what is umbilical tape? A. That is used in tying off the umbilical cord.

Q. If you had suture material with you why did you send out and get a spool of thread? A. In the first place question of economy.

Q. What? A. The thread is—thread costs very little. Strand of catgut costs a little more—not a great deal more.

Q. Let us see about this economy. What would a strand of catgut cost? A. I don't remember.

Q. Well, approximately? A. No.

Q. Was the difference enough in the cost, Doctor, to have wasted the time of a nurse to go out and get the thread? A. Cotton is usually—

Q. Please answer my question. We will come to that. Was there difference enough in the cost so that from the standpoint of economy it paid to send a nurse out to get the thread? A. No, sir.

Q. Then, you did not send out to get the thread for the purpose of economy, did you? A. No, sir.

Q. Then, why did you say so? A. You asked me for a reason.

Q. Yes. A. And you have proven that there isn't reason enough. Cotton is usually used—cotton or thread on autopsy work. Catgut is not.

Q. I know, but I asked you for the reason why you sent out and got the spool of thread when you had catgut suture with you and you said for purposes of economy. Now, you say there was no economy in it and I ask you why you gave me that answer. A. Do you want me to answer that question again?

Q. Yes. A. A spool of thread is commonly used in autopsy work. I did not attach any significance to it.

The Court: Answer the question only why you made the statement at one time and now you make another statement. You said it was economy. Where does the economy come in? What is the reason you made the statement?

Witness: I think it is one of my habits that I wouldn't break open a box of catgut—break open a tube when a spool of thread was available.

Q. How far did the nurse have to go to get the spool of thread, do you know? A. No, sir.

Q. How long was she gone? A. Probably five or ten minutes.

Q. And economy is the only reason you can suggest for sending out and getting the spool of thread when you had the catgut? A. Economy and the fact that a spool of thread is commonly used.

Q. Commonly used because it is cheaper? A. It is cheaper.

Q. What? A. It is cheaper, yes, sir. It might mean to open three or four tubes of catgut.

Q. You are still of the opinion that this loop which came down was fetal intestine? A. Yes, sir.

Q. And you said that this loop that came down was about the size of your finger, did you not? A. Yes, sir.

Q. Don't you know, Doctor, that fetal intestine is not any larger than a quill or a lead pencil? A. I have seen fetal intestine twice and it has been different size. The piece of gut presented at the cervix was much smaller than any adult piece of gut that I have seen.

Q. Could you tell in any way what part of the intestine of the fetus it was that came down? A. That is pretty difficult because the sections of intestine merge one into the other, gradually. I believe tnat this was the small intestine, the jejunum.

Q. And you believe that the small intestine—the jejunum of a fetus is the size of your finger, do you? A. Not normally, no, as it is laid out under —normally—as the body of a fetus would be opened without pressure without any distension—I believe it would be smaller.

Q. Well would pressure or distension tend to increase or decrease the fetal intestine as you drew it down? A. The tension would tend to de-

crease the calibre of it, distension with gas would increase it.

Q. Doctor, was this fetal intestine that came down the size of your finger not of sufficient size to have put you immediately upon your guard to have discovered whether or not in fact it was fetal or maternal intestine. A. I did my best to determine that.

Q. What did you do? A. I broke my technic by putting my sterile hand up over the abdomen of my patient in an area that had not been disinfected; I used the index finger of the right hand up in through the mouth of the womb trying with the bi-manual method to again determine the size of that uterus.

Q. And to determine what else? Whether— A. The nature of that—the intestine.

Q. Whether it was fetal or maternal? A. Yes, sir.

Q Then, you were in doubt about it, weren't you? A. Yes, sir.

Q. Are you in doubt about it still? A. Yes, sir.

Q. Then it may have been maternal intestine? A. Yes, sir.

Q. Did you not say to me—or rather not to me, but in my presence, but to Dr. Washington and Dr. McKenzie that the intestine which came down in the loop was put in the pail? A. Yes, sir.

Q. Was it? A. Yes, sir.

Q. Why, Dr. Young, I thought you said a few moments ago that you left that intestine protruding from the uterus and that you called Dr. Simmons' attention to it? A. I told him of the intestine protruding down through. I did not invite his inspection of it when we went into that kitchen.

Q. But, Doctor, if you put it in the pail, how could it have been protruding from the uterus when Dr. Simmons was there? A. That portion of it must have been cut through and dropped, thrown into the pail.

Q. About how much of it do you think was thrown into the pail? A. I didn't measure it.

Q. I don't expect you to be accurate. A. I can't be more accurate with it.

Q. No, I am just asking you—A. From the part that was down there might have been sixteen inches.

Q. What did you mean then, Dr. Young, when you said on your direct-examination in answer to Mr. McCarter's question what you did with the loop of fetus that came down that you pushed it back into the vagina and packed it with gauze? A. I didn't say "loop" according to my memory.

Q. Go by your memory rather than mine. What did you say? A. That the portion of bowel, of intestine, of tissue protruding from the vagina was packed around loosely with gauze.

Q. Well, how could that be when you took it off and threw it in the bucket? A. I didn't say that I took it off.

Q. How can that be when it was thrown into the bucket? A. That would mean that there was another cut in it.

Q. I don't understand that. What do you mean by that answer, Doctor? A. The intestine is one continuous tube with coils. To take off a piece you are free at both ends. It means that it is separated at both ends, in two places, and the intervening part was put in the pail.

Q. And then, what you meant was that the ends of the portion of the intestine that remained in the body protruded out and that is what you packed, is that what you mean? A. Yes, sir.

Q. Well, of course you put this in the pail before Dr. Simmons came? A. Yes, sir.

Q. What did you mean, Doctor, when you said, as I recall you did that you called Dr. Simmons' attention to the fact that there was this loop protruding from the body? Two ends do not make a loop do they? A. No, sir.

Q. What did you mean by that statement? A. I told him in the early part of my proceeding of this loop or knuckle of tissue presenting at the cervix.

Q. Well, now, it is your judgment, Doctor, that you removed at that time about sixteen inches of intestine and put it in the pail? A. Yes, sir.

Q. Of course, you would not say that that is the correct length, would you? A. No, sir.

Q. It may have been considerably more than that? A. Not much more than that.

Q. Well, of course, Doctor, the removal of sixteen inches of maternal intestine means certain death unless the damage is repaired, doesn't it? A. Yes, sir.

Q. Did you tell Dr. Simmons that you had thrown into the pail some sixteen inches of intestine? A. No, because I didn't know that there was absolutely sixteen inches there.

Q. Did you tell Dr. Simmons that you had thrown into the pail a piece of intestines which was approximately sixteen inches? A. I cannot remember that I gave him any figures at all, or that I told him—

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Q. Did you tell him—A. I don't remember that.

Q. Did you tell him that you had thrown any of it into the pail? A. I don't remember.

Q. Why? Wasn't that an important fact that you should have revealed to the county physician? A. I may have told him. I do not remember that part.

Q. Did you draw out from the body besides this intestine any membranes of any kind? A. Membranes?

Q. Yes. A. No, sir.

Q. Or anything else besides intestine? A. In the jaws of my sponge forceps I got two small pieces of a yellowish, very thin tissue that I thought was omentum.

Q. What did you do with those? A. It went into the pail.

Q. How large were those pieces? A. Probably about the size of a quarter.

Q. And do you remember how many there were of them? A. I do not recall.

Q. Were there two or three or half a dozen? A. Two or three.

Q. Just two or three? A. Two or three.

Q. Well, the omentum is in the abdominal cavity, isn't it? A. Yes, sir.

Q. Then, you did think that you had gone into the abdominal cavity with your instrument, did you not? A. No, sir.

Q. Then, will you tell me how you thought you had drawn down part of the omentum? A. The omentum that belonged to the fetus.

Q. Oh, you thought this was the omentum of a fetus, did you? A. Yes, sir.

Q. Did you ever see the omentum of a fetus of four or six months? A. No, sir.

Q. Doctor, don't you know that you could not have drawn from the omentum of the fetus a piece of membrane as big as a quarter? A. I don't know anything about the omentum of a fetus. I don't know just when it begins to appear.

Q. Well, then, Doctor, will you tell this jury why you say you thought this membrane was a membrane or omentum of the fetus? A. It was extremely thin and I believed it was omental tissue.

Q. But you never had seen omental tissue? A. No, but I believe that it exists. I may be wrong in that. I haven't looked it up.

Q. With your—pardon me for the word I use now; I do not mean it offensively—with your limited knowledge—I do not mean that offensively, Doctor—with your limited knowledge of omentum of the fetus, when you found you had pulled down this tissue that you thought was omentum, do you not think that you should have known that you were in the abdominal cavity? A. No, sir.

RE-DIRECT-EXAMINATION by Mr. McCarter:

Q. I omitted to ask you one question on your direct-examination which I want to ask you before I take up the re-direct. In the talk that you did have with Dr. Simmons and before the body was opened did you tell him that you thought you had ruptured the uterus? A. No, sir.

Q. You have spoken of the exposure of a piece of what you thought was fetal intestine after the dropping of what has been called the loop. How

long is the vagina? A. About two inches and a half.

Q. Now, do I understand that by exposure you mean some—

Mr. Mott: I object.

Q. What do you mean by exposure? Where do you locate the piece that still hung after the loop had dropped? A. The piece that protruded from the cervix down into the vagina was left there with gauze.

Q. One moment. Did it protrude out of the mouth of the vulva?

Mr. Mott: Objected to.

The Court: Objection sustained.

Q. How far through the vagina did it extend? A. To the outlet.

Q. Have you given them the limitation? A. Yes, sir.

Q. To the outlet? A. Yes, sir.

Q. Now, Mr. Mott had evidently a typewritten statement which he read to you and which you said you had made to him and somebody else, Mr. Hargan. Do you remember what that statement was that you made? Can you recall it now, what it was? If so, I wish you would tell us. A. Give me the cue for it, if you will.

Q. It starts like this, "There is something about this case that I did not understand but I am now beginning to see light. I understood something about a bottle of ergot." Does that give you the cue? A. Yes, sir.

Q. Just repeat what it was? A. That I believed that the administration of ergot to this girl explained the situation that I met.

Q. What is that? Mr. Mott said something to me and I missed it. A. That the administration of ergot to this girl, this patient of mine, explained the difficulty that I had—the situation that I had to contend with.

The Court: How can he be asked about that when he said on cross-examination that he did make that statement? Do you want to amplify it or explain it or modify it?

Mr. McCarter: I want to ask him something with reference to it.

The Court: You may go on.

Q. Did you speak of your satisfaction in connection with the rupture of the uterus at the time with reference to this ergot? A. Yes, sir. that that explained it to me.

Q. That explained what? A. The rupture of the uterus.

Q. What is the relation between the unscientific use of ergot and a rupture of the uterus? A. One of the most frequent causes of rupture of the uterus is the unintelligent use of ergot—ergot given to a woman before the mouth of the womb is open. Under the use of ergot the contractions are brought on and the uterus ruptures at its weakest point. It cannot force down through the stronger contracted mouth and it will rupture at the weakest point, which is up through the left broad ligament where this tear was found on post mortem.

Q. This remark which you made and which you stated frankly to Mr. Mott which you did make to him and his assistant was made after you had seen the rupture in the uterus? A. Yes, sir.

Q. At the autopsy conducted by Dr. Simmons and yourself? A. Yes, sir.

Q. How large an orifice did you expect would be made or directed to be made by Dr. Simmons in making a complete autopsy? A. Sometimes that extends from the lower extremity of the sternum all the way down to this pubic bone, around the umbilicus.

Q. How much larger an orifice would that have been than the one that was actually made? A. Double.

Q. Double. Do you know whether or not—do you know any reason, in other words—I don't know whether you have had enough experience in autopsies to answer this—if not, do not answer—do you know of any reason in reference to absorption that impels the use of thread rather than the catgut in sewing up bodies after autopsies?

Mr. Mott: I object, as leading.

The Court: Objection sustained.

Mr. McCarter: I did not mean to be leading. I withdraw it.

Q. Do you know—are you familiar enough with the practice in connection with autopsies to know why it is, as you say, customary to use thread and not catgut? A. Yes, sir.

Q. Why is it? A. Catgut is a material that is readily absorbable by the fluids of the body. The cotton is a permanent suture unaffected by the fluids of the body.

Q. When you take in your kit, as you call it, of obstetrical instruments, and paraphernalia, catgut, how is it carried? A. It is carried in small sealed tubes, about a dozen in a box.

Q. Why sealed? A. To preserve its integrity, the prevention of infection—it is in a disinfecting solution.

Q. If the seal were removed and the box were exposed, could you use it thereafter? A. The question again, please.

Q. If the seal were removed and the gut exposed would it be proper to use it thereafter? A. No, sir.

Q. After catgut absorbs what would happen to the wound? A. The wound would open.

The Court: Would the body absorb it after death?

Witness: I believe it would soften it enough so that if there were any tension or strain on it from gas or process of putrefaction, that the wound would open.

Q. Now, you stated that if you were mistaken in your diagnosis as to this piece of tissue being fetal gut and it turned out to have been maternal gut and a piece of it had gone into the pail or been taken out, if you prefer, and left in the pail, that unless something was done, certain death would result. How soon would such result occur, particularly in view of the statement that at the time there was no hemorrhage? A. Not inside of forty-eight hours.

Q. Why is that? A. Without hemorrhage the only process possible is that of sepsis—infection—of blood poison, and that is a process that will take forty-eight hours for that to become established.

RE-CROSS-EXAMINATION by Mr. Mott:

Q. Just one question, Doctor, do you mean to tell this Court and jury that dead tissue will ab-

sorb catgut? A. The fluid in dead tissue—will not absorb it, it will soften it; softening is a part of absorption.

Q. Well, I want you to answer my question, please. Do you say that dead tissue will absorb catgut? A. It will soften it, not absorb it.

Q. What is the objection to softening? A. What is the objection?

Q. Yes, so far as its use is concerned? A. Absorption is the total disappearance of it.

Q. Then dead tissue will not do that, will it? A. It will soften it.

Q. It will not absorb it? A. No; I do not think it will.

Q. Then why did you tell Mr. McCarter a moment ago that the reason you did not want to use catgut was that if you did the body would absorb it?

Mr. McCarter: He did not say that.

Q. Didn't you say that? A. I would like the record of the stenographer. I do not remember saying it.

The Court: What is your memory.

Witness: I do not remember saying it.

Q. Then what is the reason you gave for not wanting to use catgut?

Mr. McCarter: He was not asked that question. You will not find that I asked him why he did not use catgut.

Q. Did you not say on your re-direct-examination by Mr. McCarter that you did not use catgut because the body would absorb it? A. I do not think that I said absorb.

Q. What did you say as you recall it? A. That I do not recall.

Q. Then let me ask you why you did not use catgut? A. Cotton—thread is usually employed in the few autopsies that I have seen.

Q. Why? A. There is more of it in the first place; it is less expensive; I believe that it is more suitable for autopsy work than catgut.

Q. Well, we have disposed of the ecomomy theory and I ask you now why on the 15th day of February last you did not use on the body of Mrs. Truesdell, catgut? A. I do not recall the amount of catgut—the number of tubes that I had in my kit. Sometimes it is difficult to replenish that and I do not think that I would use the catgut when the thread was right at hand.

Q. But the thread was not right at hand. You had to send out a nurse that took five or ten minutes to go get it, according to your statement, and I ask you now why you did not use catgut. A. And I will tell you that I would not use all the catgut in my bag on autopsy work.

Q. That is for economy sake? A. Not only economy but you always like catgut in your kit and if it happened I couldn't get it down town as I went back I would be without it.

Q. Then, Doctor, wouldn't it be safer to leave your catgut at home and not take it along with your surgical instruments? A. No, sir.

Q. Do you say that the proper incision was not made in the body of Mrs. Truesdell for the autopsy? A. Proper?

Q. Yes; in size? A. Oh, no.

Q. Well what did you say about that? I thought you said that usually the incision was larger than the one you made? A. That some times it is larger.

Q. Well, you were the operating man there, were you not? A. No, sir.

Q. Didn't you make the incision? A. I made it at Dr. Simmons' suggestion. I was passive. I was working under his direction.

Q. You were the man who had the knife in your hand, weren't you? A. Yes, sir.

Q. And you asked Dr. Simmons whether he would make the incision or whether you would, didn't you? A. Yes, sir.

Q. Did you make the proper incision to make a proper autopsy? A. I made the usual—

Q. Please answer my question. Did you make the proper incision to make a proper autopsy? A. Now, by "proper" do you mean a complete or the usual order of procedure in autopsy? I have seen both. I have seen them with the opening from the navel down and I have seen the body split open.

Q. I ask you if on the 15th day of February last, when you, at the suggestion of Dr. Simmons, with the knife in your hand, made the incision on the body of Emma Truesdell—did you make a proper incision for the purposes of a proper autopsy? A. Consistent with my experience at autopsy work, it was.

Q. Then it was a proper incision? A. As far as my experience extends, yes, sir.

Q. You recall, Doctor, that you said in your review with me and Mr. Hargan that you learned that a bottle of ergot had been found and you said, " I am now satisfied that Mrs. Truesdell had been taking or someone had been giving her large doses of ergot." That is right, is it not? A. I do not remember saying large doses.

Q. Well what do you think you said? A. That she had been given ergot.

Q. Not in large doses. You had not heard that. A. I do not recall. I may have said it. I do not remember.

Q. Had you heard that she had been given—A. Ergot.

Q.—large doses or just that she had been given ergot? A. Been given ergot.

Q. Just ergot. Do you understand that ergot has any effect on the uterus or the womb in the early stages of pregnancy? A. I think it would have effect on all stages of pregnancy.

Q. Equal? A. No, sir.

Q. When you say that you understood that the doses of ergot were given her, you mean ordinary liquid ergot? A. Fluid extract.

Q. Fluid extract. And is it your opinion that ergot tends to deteriorate—weaken the tissues and muscles of the uterus? A. No, sir.

Q. Then what bearing did your belief that she had been taking ergot have on the conditions that you found? A. On the tonic spasms, the rigidity of the fingers, the intense rigidity of the abdominal muscles that prevented my determination of the size of that uterus, the presence of the rupture on Dr. Simmons' examination, the absence of blood from the generative tract while I was dilating.

Q. What relation is there between the rupture of the uterus which you found on Dr. Simmons' autopsy and the taking of the ergot? A. That among the causes of rupture of the uterus the commonest of all is the unintelligent use of er-

got—ergot administered to the patient before the mouth of the uterus has been opened.

Q. Do you know what chronic ergotism is? A. A little.

Q. Without intending to be technical at all what do you understand chronic ergotism to mean? A. It means the condition of the body which follows the administration of ergot, the time of the administration of the ergot and the amount of it will vary with the susceptibility of the patient.

Q. I said chronic ergotism? A. That would be, ergotism—ergot administered in sufficient doses to so change some of the natural phenomena of the body without necessarily producing death.

Q. Did you think Mrs. Truesdell was the subject of chronic ergotism?

Mr. McCarter: When?

Mr. Mott: On the day of the operation.

A. No, sir.

Mr. McCarter: It does not appear that he knew anything about the ergot then.

Q. Do you think now that she was? A. Yes, sir.

Q. You think now she was the subject of chronic ergotism, do you? A. Yes, sir.

Q. And to produce the condition of chronic ergotism how much ergot would have to be taken? I mean approximately? A. That I can't tell you.

Q. You can't tell me because you are not familiar with the subject? A. I know a little about it, but I don't know the amount that would have to be administered before that condition would be produced. That would vary with different people.

Q. Don't you know that chronic ergotism never is and never can be produced by fluid extract of ergot? A. No, sir.

Q. You think it can, do you? A. I don't know that it cannot. I know that ergot whether fluid extract or tincture—

Q. I asked you, do you?

Mr. McCarter: It comes to me that this is not proper. I do not understand that the witness has pretended—I think counsel has misapprehended the evidence—that he supposed at the time of the operation that this lady was using ergot.

The Court: There isn't any misunderstanding about it. There isn't any open question on the record.

Q. When you were at the prosecutor's office and had your interview with Mr. Hargan and myself did you then think that Mrs. Truesdell was the subject of chronic ergotism? A. Yes, sir.

Q. And all you knew at that time was that a bottle of ergot had been found, is that not true? A. No, sir.

Q. What else did you know? A. I knew that—I have got to tell you what she said and what he said.

The Court: That opens the whole question. What else did you know.

Mr. McCarter: Tell the whole story.

Witness: That is a considerable story.

Mr. McCarter: Well, tell it.

Witness: I know that in trying to explain the cause of this girl's death, that on the fourth day, Saturday, that a friend of mine came in and with

the report that her husband was eager to get back to the house to recover a bottle of ergot that he had been giving her regularly and that this story was repeated in the presence of my friend and his wife and brought out the query that the—first the speaker said to the husband, "Did you give her ergot on Dr. Young's advice?" and he said, "No;" and then I went over the conditions, the trouble that I had with my patient, the rigidity of the abdomen, the lack of blood on dilatation and her sudden snap—her death, and I believe it fits in the story.

Q. In what way? A. In every way, with the exception of one thing, Dr. Hick's testimony was that the heart stopped beating in systole; that the heart ceased in diastolic arrest, that is open; systole means contraction, as you clench up your fist, diastole means the opening of the heart, the expansion of it.

By Mr. McCarter: Q. Anything more that you heard? A. About the ergot? The husband told me that as he entered the Grand Jury room his brother-in-law, Fred Wolf, had taken his chair—taken his seat by the door leading into the Grand Jury room, and as Dr. Truesdell's name was called and Dr. Truesdell walked across the witness room going into the Grand Jury room, that his brother-in-law reached up, took his arm and said, "Paul, I got you, I am going to put it on you; here is the ergot you have been giving her without prescription."

By Mr. Mott: Q. Anything else? A. I know that my friend immediately telephoned the Chief of Police of Montclair.

Q. I mean information that came to you.

The Court: Evidence as to the amount of ergot upon which you base your opinion that she was suffering from chronic ergotism.

Witness: From another family I got substantiation.

Q. What family? A. Family of Mr C. C. Cormanly.

Q. From what member of the family? A. Mrs. Taylor, his mother-in-law, Mrs. Cormanly, his wife, that she had had considerable ergot—I don't know how much—but it verified the other story.

Q. Anything more? A. Of ergot?

Q. Yes, That you want to tell. A. Tell? Why, I will tell everything. I have nothing to conceal.

Q. Well, is there anything? If not, I am going to ask you another question.

Mr. McCarter: Do you remember anything about the purchase of ergot? That you have heard?

Witness: I have heard the ergot was bought from a druggist in Montclair. I believe on his books is the record of the sale of ergot back in October. From other people I have tried to verify the fact that ergot had been bought repeatedly from a clerk who is now out of town.

Mr. McCarter: What you know, not what you have tried to verify.

Witness: I don't know. I have not seen the druggist's books.

Mr. McCarter: What you have heard and what you know.

Q. My question is this, Doctor, in your opinion

is chronic ergotism ever produced by liquid ergot? A. You mean by "liquid" fluid extract. I know it is by ergot. I don't know about fluid extract. I can't answer that.

Q. And have you ever heard about a rupture of the uterus at four months' development produced by the use of ergot? A. I don't know of that classification, no, sir.

Q. Doesn't the anesthesia overcome the effect of the ergot in relaxing the muscles? A. No, sir. The apprehension, the fear, the mental state of the patient, about to go under the anesthetic will accentuate the use of ergot, some of the phases of it.

Further Re-DIRECT-EXAMINATION by Mr. McCarter:

Q. What do you mean by chronic ergotism as spoken of here? A. Symptoms that would be produced by a sufficient quantity to modify the normal functions of the body, or the normal conditions, without necessarily resulting in death. A condition in which they might live for days.

Q. That would mean or involve the use of doses or continuation of doses for how long a time? A. I have never—I can't tell you that. Ergot is used—teaspoonful of extract, sometimes after labor to prevent post mortem hemorrhage, the hemorrhage that comes after the delivery of the child; sometimes two or three doses so as to contract that uterus and hold it in tonic spasm.

Q. That is the difference between acute and chronic ergotism? A. Yes, sir.

Q. What is the difference? A. The acute form you would have the constitutional symptoms in

tne form of purging, diarrhea, vomiting—common to the use of any poison.

Q. Now, let me ask you when was it you first heard these rumors about the use of ergot? A. I believe it was the day of the burial of this girl, Saturday following my operation.

SUSAN L. COX, sworn for the defendant:

Direct-examination by Mr. McCarter:

Q. Miss Cox, you are the Miss Cox who has been shown to be the office nurse of Dr. Young? A. I am.

Q. How long have you been filling that position with him? A. Why, I have worked for Dr. Young about seven or eight years.?

Q. You are his cousin? A. Yes, sir.

Q During those seven or eight years working with him what have you done and learned to do? A Why, I have taken—

Q. By way of assisting him? A. I have done all Dr. Young's book work, I have assisted him in the office, in the examinations; I have given anesthetics for him; for this last two years, done his laboratory work, principally urinalysis.

Q. Have you done any special study in New York or elsewhere to equip you for laboratory work and urinalysis? A. I have.

Q. What study? A. With Dr. Heitzman of New York, the pathologist of the Homeopathic College and Hospital.

Q. And had a regular training course with him? A. Yes, sir; as a special student.

Q. Have you administered anesthesia for anybody else besides Dr. Young? A. Yes, sir.

Q. For whom? A. Dr. Bunn, Dr. Willet Brown—

Q. Did you make two of the urinalyses of the specimens of Mrs. Truesdell? A. I did.

Q. Have you that book with you? A. I did have it with me. I don't know where it is now.

Mr. Mott: Can you tell without looking at the book?

Witness: I remember the first one was a mild—acute mild pyelonephritis.

Q. When was that made? A. Sometime in January, Mr. McCarter.

Q. Would the date appear? A. January 6th.

Mr. Mott: Pardon me. Is this woman going to testify as to the practice of medicine? May I ask the witness a question or two as to qualification?

The Court: Certainly, if she is going to tell us the result of her analysis.

By Mr. Mott: Q. Are you a graduate of any training school? A. No; I am not.

Q. Are you a licensed nurse? A. No.

Mr. Mott: I object.

Further DIRECT:

Q. Do you have to be neither a graduate of any training school or a licensed nurse to make urinalysis? A. Not that I have ever heard of, no.

Q. And what work under Dr. Heitzman have you done to prepare you to do that particular work? A. Why, I have studied with Dr. Heitzmann, taken special work with him for the past two years.

Q. With other students? A. Yes, sir.

Q. What was the character of this study of education? A. Why we were trained to make a very thorough urinalysis according to the Dr. Heitzmann method.

Q. What was done to train you? A. I studied there directly under Dr. Heitzmann; learned to make the chemical urinalysis, also the microscopical.

Q. Who is Dr. Heitzmann? A. Why, he is, I believe, the authority on urinalysis. His text books are used in the colleges all over the country. His father was a noted scientist and he has followed in his father's work.

Q. Where is his laboratory where you for two years studied? A. I have studied in his private laboratory in his own home and in the private laboratory at the college, Homeopathic College, Sixty-third Street.

Mr. Mott: Just one question. I understand your course of study with Dr. Heitzmann was directed to the making of analysis of the urine?

Witness: Yes, sir.

Mr. Mott: That was the purpose that you were there for?

Witness: Yes, sir.

Q. What date did you make that first urinalysis that has been referred to? A. The first one that has been referred to is January 6th.

The Court: Do you want me to rule on the question as to whether she is an expert?

Mr. Mott: I will not make any objection to this witness testifying to the result of the analysis of urine, but she first started

out and is giving strictly medical testimony, which I do object to.

The Court: What medical testimony has she given?

Mr. Mott: She has said that this woman was suffering from some long term of nephritis.

The Court: Pyelonephritis?

Mr. Mott: Yes.

The Court: No; she did not say she was suffering from it; she says the result of my analysis does show that—we don't know what that is, whether it is a disease or what it is. We haven't been told yet what it is. It was in response to the Court's question so the Court will have to take the responsibility for that.

Q. When was the analysis first? A. January 6th.

Q. Have you the data before you? A. Yes, sir.

Q. Now, read slowly what you reported as a result of that analysis. A. Specific gravity 1021, total amount 24 hours, 32 ounces; reaction, alkaline albumin, 1/40 of one per cent and indican no excess. The microscopic examination, sediment red blood cells—corpuscles; pus corpuscles; pelvic epithelia; epithelia from the pelvic of the kidney; epithelia from convoluted and tubules—

Mr. Mott: I object to it. The young lady is giving strict medical testimony.

The Court: I will take the answer and then I will rule on your motion afterwards.

Witness: Epithelia from the uterus; complete triple phosphates. My diagnosis was acute pyelonephritis.

The Court: Now make the motion.

Mr. Mott: We ought to know whether the specimen of urine she had was voided or catheterized from the bladder. I am told it makes a very great difference in the result.

The Court: You were going to make a motion to strike out something.

Mr. Mott: I move to strike out all of the witness' testimony so far except that which is within the scope of the examination.

The Court: You will have to specify in your motion what you want stricken out. I suppose Mr. McCarter will agree with you by consent that her diagnosis of pyelonephritis must go out.

Mr. McCarter: I don't care anything about that.

The Court: That goes out by consent. What else do you want out?

Mr. Mott: I won't take up the time.

Q. When did you make a second urinalysis? A. The 2d of February.

Q. Give us that? A. Specific gravity 1026; reaction moderately acid albumin distinct trace; indicans, slight excess; red blood corpuscles; pus corpuscles; epithelia of pelvis of kidney; epithelia from convoluted tubules few; epithelia from uterus and the calcium oxalate crystals abundant.

The Court: Any albumin?

Witness: Albumin, distinct trace.

The Court: Is that what it says, distinct trace of albumin, February 2d?

Witness: Distinct trace. Diagnosis was oxaluria.

Mr. Mott: I object to the diagnosis.

Q. Can you compare from your memory refreshed by reference to the two analyses that you have there the extent of the albumin? A. Why, yes; the first one was one-fortieth of one per cent in the first and the other is a trace.

Q. I want to know which is the greater?

The Court: You want to know whether a trace is more than one-fortieth of one per cent.

Witness: Trace is very very little; in fact one-fortieth of one per cent is a small amount.

The Court: Is that one-fourth or one-fortieth?

Witness: One-fortieth.

The Court: It is less than one-fortieth of one per cent?

Witness: Very much less.

Q. Did you give these reports to Dr. Young at the time you made them? A. Yes, sir.

Q. These tests that you made include both chemical and microscopical tests? A. They did.

Q. Were they accurate, generally, so far as you know, and were able to do it? A. According to all the teaching I have had.

Q. Now, what experience have you had in administering ether? A. Why, I have anesthetized about two hundred patients, I should say.

Q. For whom? A. Dr. Young, and I have given, as I have told you, anesthetics for Dr. Bunn and Dr. Brown.

Q. Do you recall the fact that you were requested to go to Mrs. Truesdell's residence on the 15th of February last? A. Yes, sir.

Q. For an operation? A. Yes, sir.

Q. What time did you reach there, Miss Cox? A. I went with Dr. Young; must have arrived there somewhere around half past eleven. I cannot say definitely: I think it was half past eleven when we left the office, so it would make it a little more than that.

Q. Who was there when you got there? A. Miss Regan, nurse, Dr. Truesdell, Mrs. Truesdell, and I learned later it was Mrs. Truesdell's mother, Mrs. Wolf.

Q. Did you know Miss Regan before that? A. I had never met Miss Regan.

Q. Never met her before. Were you present during the time that Dr. Truesdell went away again and while preparation was being made—Dr. Young went away again and preparations were being made? A. Yes, sir.

Q. Did you take any part in those preparations or see any of them done? A. Why, as nearly as I remember the room was about prepared.

Q. I beg pardon? A. I think the room was prepared when I got there. I do not remember doing much except to place the towels for Dr. Young to put the instruments on; I remember that.

Q. You found Miss Regan there when you got there? A. Yes, sir.

Q. Were you there when the H. M. C. was administered? A. Yes, sir.

Q. About when was that administered and by whom? A. It was administered by Miss Regan shortly after I arrived there.

Q. How? A. Hypodermically.

Q. And at that time Mrs. Truesdell was where? A. Why, I think Miss Regan went into the bedroom to give that to Mrs. Truesdell.

Q. And had she reached the kitchen, which was temporarily an operating room before Dr. Truesdell's return—Dr. Young's? A. Why, yes, sir. As I remember it she was giving the hypodermic out of the kitchen, which was used as the operating room and then came into the operating room and was put on the table and lay there—usually a patient goes to sleep, and they lay quiet—they are supposed to be kept quiet after the hypodermic is given until the operation.

Q. Well, did you see Dr. Young come back into the room? A. I did; yes, sir.

Q. And prepare himself for the operation? A. Yes sir.

Q. Do you know what there was in the way of a receptacle there at the table? A. There was a pail which I did not see until after the operation.

Q. And there was this Kelly bag— Kelly pad, that has been spoken of. A. It is there always on operations.

Q. Yes. Now, how soon after the doctor got back and had himself sterilized, as he has described, which I will not take the time to repeat—did the operation—did you commence to administer the ether? A. Why, I think I must have begun giving the ether about twenty or twenty-five minutes after twelve. Dr. Young usually washes up while I am doing it—giving it.

Q. How did the patient take the ether—have you any recollection of that? Normally or otherwise? A. Why, normally, I should say, there wasn't much—most of them resist some—it isn't unusual.

Q. Now, won't you go on and tell us what you do when you—did you administer the ether that

day? Probably some of these jurors have never seen it done. A. I inquired in the first place whether the patient had any teeth on a plate—false teeth; then I placed the mask over the patient's face, with a small towel wrapped around it—the edge of it; this mask is covered with some material like gauze and a bit of cotton under it; the ether is dropped on that drop by drop and the anesthetic is continued until the patient is properly anesthetized for the physician to begin operating—then it is—then I continue my anesthetic while Dr. Young operated.

Q. What do you do besides continuing the anesthetic? What do you do with your other hand? A. Why, watch the patient's pulse.

Q. You remember we do not know anything about this. A. Watch the patient's pulse—color.

Q. Yes. A. Respiration.

Q. Yes. A. Breathing; of course watch to see if there is any kind of rigidity.

Q. Yes. A. Which must not be—the physician cannot operate in those conditions—when there is much rigidity.

The Court: Is there any particular place where you look for that rigidity?

Witness: Several places. Test that by raising the arm if it drops too heavily without resistance—but I usually use the eye as a guide.

Q. The eye? A. Yes, sir; seems to be more sensitive. Raising the eye-lid. If there is any twitching there is rigidity—if there is any rigidity you have got twitching.

Q. Twitching of the eye-lid? A. Yes, sir.

Q. Is that what you did that day? A. Yes, sir.

Q. Now, is your attention pretty well absorbed

on your work? A. Well, it is pretty well, not so much so that I cannot hear some things that are said, particularly.

Q. Just go on and describe as well as you can remember just what you can recall of that performance, who was there—was Dr. Truesdell in the room? A. Dr. Truesdell was in the room, Miss Regan—

Q. Where was Dr. Truesdell and what was he doing? A. Dr. Truesdell stood on the right of the patient supporting one knee, Miss Regan stood at the left of the patient supporting the other.

Q. The other knee? A. Yes, sir.

Q. Did the patient have shoulder straps on? A. Yes, sir.

Q. And the object, as you understand it of these human supports is what? A. Why, to take the weight away from the shoulder, and there might be some interference with circulation if it was pulling too tight.

Q. Now, just go on and tell the jury your recollection of what transpired; what you found with reference to the heart or anything that you heard or saw. A. Why, under the ether the pulse improved, became better; the pulse was slightly rapid before I began my anesthetic, I suppose due to nervous condition; the pulse slowed down, improved, after I began my anesthetic. Do you want me to tell you things that I heard?

Q. I want you to tell everything that you heard that day that transpired in that room prior to the death of the patient. You were there when she died? A. Yes, sir.

Q. Now, I want you to describe as well as you can everything that you can recall which you saw

or heard? A. The first remark I heard was Dr. Young calling attention to the violet tint of the cervix. I had never heard that before and it impressed me. The next thing—I remember I heard him say was about the tightness of the cervix.

Q. Go on. Anything that you can recall. A. A little later—I don't know how much later—some time later Dr. Young made the remark "This uterus must be deeper than I had imagined it—than I thought it was." Following that he had Miss Regan attempt to make pressure over the uterus and she made the statement that the muscles,—she could not move—I do not know just what her words were but it conveyed the impression to me that she could not feel the uterus, that the muscles were so rigid—tight; her having spoken about rigidity I immediately administered more ether to relax the patient,—I did give more ether and it had no effect.

Q. From your experience are you able to tell or conclude whether or not the subject is suffering from hemorrhage internally?

Mr. Mott: I object.

Mr. McCarter: Question withdrawn.

Q. Was the operative field, that is to say were the manipulations of Dr. Young in your line of vision? A. No; it wasn't; only once that I could see what Dr. Young was doing and that was when he broke his technique and made pressure over the abdomen itself.

Q. The rest of the time it was out of your line of vision? A. Yes, sir.

Q. You may proceed and just tell what occurred.

The Court: You left off by saying that Miss

Regan said she could not reach the uterus because of the rigidity; you noticed the patient's rigidity and you gave her more ether and she seemed to continue rigid.

A. Later Dr. Young made pressure over the abdomen and spoke of the same rigidity.

Q. You may proceed. A. Later on, I heard Dr. Young make the remark—I think the first one was—"I would give a dollar for an arm or a leg." That was later raised. Later he said, "I would give $10 for an arm or a leg." I think that is about the only remark I heard him make. I do not remember any other remark that he made except to ask me at one time how her pulse was—how the patient's pulse was—I told him that it was good. He asked me to count it and I told him it was ninety. Later on I reported that the pulse was somewhat rapid and was told to discontinue the anesthetic—I had already done so. In the meantime Dr. Truesdell had left the room, I believe giving as his reason that he could not stay in the room any longer. I do not remember what his words were but they were to the effect that he could not stand it any longer, and he was told by Dr. Young—Dr. Young suggested his asking his mother-in-law,—or he asked if his mother-in-law would be any good—if she could help—he went out of the room and came back and said, "No, she could not stand it. Dr. Young realizing, of course—knowing that we needed more help —needed an assistant—someone at each side of the table—Dr. Young told Dr. Truesdell they needed another nurse. He 'phoned, I believe,—I don't know how many—Mountainside Hospital among others—and Miss Speicher came.

Q. Who came? A. Miss Speicher, the second nurse.

Q. Did she arrive? A. Yes, sir.

Q. Did you know her before? A. No, sir; I had never seen Miss Speicher.

Q. Now, in what condition was the patient, as you recall it, when Miss Speicher arrived? A. The pulse had been for a very short time rapid—somewhat rapid—as Miss Speicher came into the room I noticed that the pulse was weak—was becoming weak. I attempted to take the pulse by the facial artery up here and failed to get it; then I tried at the carotid artery.

Q. Where is that? A. In the throat, and could distinguish it, but it was weak,—very weak. Miss Speicher had gotten in the room by that time and was supporting the knee and felt the pulse, and we both agreed—she says "I cannot get it at the wrist;" I said, I can at the carotid. Of course we reported to Dr. Young that it was very weak and he stopped his operating, whatever he was doing, and measures were used to resuscitate the patient.

Q. What was done with the table? A. The lower part of the table was raised—lower end of the table,—the foot.

Q. Do you remember how that was accomplished? A. The two nurses—I think with books, I am not sure.

Q. Were you there when Dr. Bunn arrived? A. I was.

Q. Did the patient die—she died, didn't she? A. Yes, sir.

Q. Will you describe what character of death it was. How did she breathe in her death? A.

Why, the respiration was good until almost the end, then there were a few gasps—is the best I can describe it—and she died.

Q. After you lost the pulse or heart did the breathing continue? A. Yes, sir.

Q. Dr. Bunn was in the room—in the death chamber? A. Yes, sir.

Q. Now, how long after her death did you remain there? A. Why, I should say about fifteen minutes, not longer—might not have been that long.

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

Q. Did you notice whether there was any blood on the floor? A. No; I didn't notice any.

Q. What do you mean by that? A. I did not see any blood.

Q. There was no— A. No; I didn't see any blood there.

Q: Did you see any blood in the sink? A. No.

The Court: Did you look in the sink?

Witness: I did not look in the sink.

Q. If it had been on the floor would you have seen it? A. I would have seen it if it had been on the floor; I probably would not in the sink.

Q. Did you see any blood on newspapers in the scuttle? A. No, sir.

Q. Did you see any—did you see a pail there? A. I saw a pail. Miss Regan had the pail in her hand when I saw it. I don't know whether she was picking up sponges or what she was doing, but I saw her with that pail in her hand.

Q. Did you see any signs of twenty-one feet of intestines? A. No.

Q. What? A. No; I did not.

Q. Did you see any signs of three and a half feet of large intestines? A. No.

Q. Beg pardon? A. No; I did not.

Q. No. About how long is your best judgment that the operation continued? A. Why, I am not particularly clear on that, Mr. McCarter. I began to operate about twenty or twenty-five minutes after twelve.

Q. That is you began to— A. I began the ether about twenty or twenty-five after twelve. Takes about four or five minutes to properly anesthetize a patient—that is the point of surgical anesthetic.

Q. Have you any idea what time it was when you stopped or Dr. Young told you to stop and you had already stopped administering ether? A. It was not very long after one. Just how long I do not remember.

Q. Was there any fecal odor in that room? A. Absolutely none.

Q. Any odor of anything besides the ether? A. No, any odor.

Q. Well, you left, as you said, about half past two? A. I think it was about half past two.

Q. And went where? A. Home.

Q. Home to the office? A. Yes, sir.

Q. Did you see the pail that Miss Speicher had in her hand? A. Miss Regan had.

Q. Miss Regan. A. Yes, sir; I just glanced at the pail and that is all.

Q. Were there twenty-one feet of intestines in it? A. No, sir; there could not have been.

Q. Were there? A. No, sir.

Q. No. Was there three feet or more of large intestines? A. I did not see anything of the kind.

Q. What did you see in the pail, if you saw anything? A. Why, I should say when I looked

at the pail—it was but a glance that I had in it—it was about a third full, maybe a little more.

Q. What did it seem to be? A. It looked like it was a solution—color of iodine solution as near as I could judge, with cotton sponges, that is all that I saw.

CROSS-EXAMINED by Mr. Mott:

Q. Miss Cox, after you stopped giving the ether how soon did the patient die? A. I stopped giving the ether sometime after one and—not very long after one—and it was 2:15, according to my watch, when she died.

Q. Did you see in the pail any intestines at all? A. No, I saw nothing but what I have told you.

Q. Did you see any intestines in the pail? A. No.

Q. Did you see sixteen inches of intestines in the pail? A. No.

Q. During the operation did you hear Dr. Young say "This is the only time I ever disemboweled an infant"? A. I do not remember hearing Dr. Young say anything of the kind, no.

Q. You testified before the Grand Jury? A. Yes, sir.

Q. You were under oath there? A. Yes, sir.

Q. You were asked that question? A. Yes, sir.

Q. Did you reply "I think so, but I am not sure"? A. No; Mr. Mott; I did not. I said I did not—

Q. Wait a minute. I am just asking you, Miss, only— A. No; I did not.

Q. Now, will you just stop and think, please.

Mr. McCarter: Of what?

Mr. Mott: Of what she said before the Grand Jury.

Q. Whether you did not in reply to that question before the Grand Jury while you were testifying under oath, say, "I think so, I am not sure." A. No; I do not remember saying that. I think my exact words "I do not think I heard Dr. Young make that remark."

Adjourned until to-morrow morning at ten o'clock.

FOURTH DAY

May 11, 1916.

Appearances as before stated.

SUSAN L. COX, re-called for further direct-examination:

By Mr. McCarter: Q. You have testified that on the day of the operation you went back to the house and office of Dr. Young? A. Yes, sir.

Q. I think you said about half past two? A. Half past two.

Q. Were you there when Dr. Young reached home? A. I was.

Q. Do you know what time it was? A. It was sometime after five sometime; not long after five I do not think.

Q. Do you know what he did after that? A. He laid down on the couch in the parlor just in front of his office and was there until seven o'clock—until his office hour—slept right through.

Q. While you were in the room and before you left did you see any nurse wipe up any blood with newspapers? A. No; I did not.

RE-CROSS-EXAMINATION by Mr. Mott:

Q. You wouldn't say that some nurse did not do it? A. I didn't see it done.

Q. You wouldn't say they did not do it? A. I don't know that I would. I simply say that I did not see a nurse wipe up any.

Q. You would not say they did not do it.

Mr. McCarter: I object to it on the ground that it is repetition.

The Court: She has not answered it yet.

Mr. McCarter: What can she answer, your Honor?

The Court: She can answer whether or not she can say whether they did not do it.

Q. You say you did not see it.

Defendant's counsel prays an exception to this ruling of the Court.

The same is allowed and it is signed and sealed acordingly.

Judge.

Q. You say you did not see it done? A. No.

Q. Will you say that some nurse did not do it? A. No; I would not say they did not. All I can say is I did not see them do it.

The Court: Before counsel proceeds with the next witness the Court desires to state that upon reflection it has reached the conclusion that its ruling yesterday in reference to the question as to the successful

practice of Dr. Young in something like 300 cases, I think it was, is doubtful; the Court sustained the objection of the prosecutor upon the ground that he could not keep an allegation of gross negligence by showing care in other cases, but that is not the only cause upon which the competency of the question might be shown. It may be that it is entirely competent to prove the ability of the defendant to testify as an expert witness and therefore the Court has concluded to reverse its ruling and allow the question to be asked of Dr. Young. You can put him on the stand any time you please.

ANNA F. SPEICHER, sworn for the Defendant:

Direct-examination by Mr. McCarter:

Q. Where do you live, Miss Speicher? A. 65 Union Street, Montclair.

Q. Are you a trained nurse? A. I am.

Q. And where did you receive your training? A. Mountainside Hospital, Montclair.

Q. And how long have you pursued your vocation as a trained nurse since your graduation? A. Five years.

Q. In Montclair? A. Yes, sir.

Q. Are you the Miss Speicher that has been spoken of as having come in reply to a telephone call to the house of Dr. Truesdell on the 15th of February? A. I am.

Q. Previous to that occasion had you ever worked under or in association with Dr. Young? A. I had not.

Q. You did receive a telephone call? A. Yes, sir.

Q. Where were you at the time? A. At my home, 65 Union Street.

Q. Do you recall what time it was you reached the Truesdell apartment—got into the sick room? A. It was between one and quarter after. I could not say definitely.

Q. What was the situation that you observed as you went into the room and saw what was going on—just describe as well as you can from the picture on your mind what you saw? A. The patient was on the table unconscious under anesthesia; Dr. Young was still exploring the uterus, although he stopped within probably a minute after I came in. Dr. Young asked me to support the limb—I was to take Dr. Truesdell's place—I took the left foot in my hand and raised the—took the right foot rather in my hand and raised the knee up to hold it steady; I reached down for the arm—the left arm—that was hanging at her side and drew it up; there was just the faintest flutter of a pulse then, and the next instant it was imperceptible; I was not able to count it at all. Miss Cox at that time reported to Dr. Young that she could not count the pulse, it was irregular; he packed the vagina with a piece of surgical bandage—roller bandage—sometimes called gauze—it is gauze, but it is cut in strips—and he asked Miss Regan to fix a solution of—a salt solution which she did and put in the douche bag; she handed it to Dr. Young and he gave

the—injected the solution himself; he gave the patient a solution that he prepared there; he didn't say at the time what it was; he dropped—poured some medicine in a glass and added some water and gave her a teaspoonful—or I wouldn't say positively whether he gave it or the nurse gave it—but it was given and he said to repeat it in fifteen minutes. That was done. There was a hypodermic of strychnia given to the patient. Dr. Young came in—or he looked at the patient and said give her the medicine at ten minute intervals—which was done. By the time the second ten minute dose was given she was practically lifeless. There was—she was—

The Court: Did you finish your sentence?

Witness: Practically lifeless.

Q. Had any change been made in the position of the table? A. Oh, yes. Dr. Young asked me to get some books or something to lift the feet off the table. I went in the other room, looked around; I didn't find any large books so I took the two telephone books and an armful of magazines; I put the two telephone books under the one leg of the table and the pile of magazines under the other, which elevated the table I should say—oh, four or five inches—at the foot.

Q. Now which way did the window face of this apartment? A. There was a window at the back of Dr. Young.

Q. And having in mind the point of the compass the window was on which side of the house, if you can tell? A. I should say it was east, but I am very poor—

Q. Now, you have a picture of that scene, have you, in your mind, with the table, the patient ly-

ing on it, her feet towards the window, stretched apart, of course, and her legs up? Now, on which side of the patient were you? A. From her head down I was on her right side.

Q. Did you see Dr. Bunn? A. I did.

Q. I do not know that you referred to him coming in? A. No; I did not.

Q. Just tell us if you can what you knew about his expected coming or whether he was expected or simply walked in as far as you knew. Did you know he had been sent for? A. I cannot say positively whether I remember Dr. Young mentioning that he had sent for Dr. Bunn or not.

Q. At any rate you saw Dr. Bunn in the room? A. I saw Dr. Bunn come in.

Q. At about what stage of the affair as you described it did Dr. Bunn arrive as you recall? A. As I recall it, he came in just about as she died.

Q. Now, Miss Speicher did you see anything of twenty-one feet of gut in that room? A. I did not.

Q. Do you know the difference between the big and little intestine? A. I do.

Q. Did you see three or four feet of large gut or intestine? A. I did not.

Q. Did you see spots of blood on the floor? A. I did not.

Q. Did you see any blood in the sink? A. I did not.

Q. Did you see anybody while you were there wash up any blood on newspaper? A. I did not.

Q. Was there any blood on the floor? A. There was not.

Q. Was there any blood in the sink? A. There was not.

Q. Or the coal scuttle? A. There was not.

Q. After the patient died you remained in the room? A. I did.

Q. Were you later sent out for any purpose? A. I was.

Q. By whom? A. Dr. Young.

Q. For what purpose? A. A bottle of milk and a spool of thread.

Q. You got them both? A. I did.

Q. Where did you get the bottle of milk? A. At that little—I don't know whether it is called Clover Dairy or Clover Lea Dairy—something of that sort—very near the corner of Valley Road and Bloomfield Avenue.

Q. And did Dr. Young drink the milk? A. He did.

Q. And where did you get the spool of thread? A. At Woolworth's just around the corner.

Q. I show you a spool of thread that has been marked in the case and ask you if that looks like the spool that you procured that day? A. It does.

Q. And to whom did you give that? A. I gave it to Dr. Young.

Q. Now, do you recall the arrival of Dr. Simmons? A. I do.

Q. Before he arrived what did you and the other nurse, Miss Regan do? A. Cleaned up as much as we could around the—

Q. Recite what you did. A. Miss Regan said, "What will we do with this stuff in the pail?"

Q. Yes. A. And I said, "Why, I don't know, we had better pour the water off of it and throw it in the fire," and so she did. She poured the water in the sink and we—then she carried the

pail down to the furnace and emptied it. In the meantime I took out the two hand towels which were washed and left in the laundry tub.

Q. So that you yourself took out from this pail two hand towels? A. I took out two hand towels.

Q. Now, what was there in the pail? A. There was some cotton which had been used as swabs and a solution that was dirty brown looking solution, that was afterwards said to be iodine solution. It looked very much like it. There was—I wouldn't say positively, but I think there was a little piece of gauze in it, but it was principally cotton; I didn't see anything else.

Q. And the two towels you spoke of? A. And the two towels I took out.

Q. With the two towels in there and the other contents how full was it? A. It was not more than half full including everything.

Q. What was this liquid that you saw Miss Regan pour into the sink? A. I was not there when the liquid was used. I could not state definitely, but it looked like an iodine solution.

Q. Was it blood? A. It was not.

Q. What else was done in the way of tidying up? A. We took the sheets—they were somewhat stained—small stains, and rinsed them out in the laundry tub; left them in the tub. We ran fresh water on them and left them soaking there. We gathered up the newspapers that had been spread on the floor to protect it, and burnt them.

Q. Now, did you see any evidence of hemorrhage, whatever, at that time? A. I did not.

Q. The newspapers were taken with the pail and put into the furnace, were they? A. They were put into the furnace,—I will take that back. I

am not positive whether we put them in the furnace or the kitchen stove, but we burned them.

Q. You burned them? A. We burned them.

Q. They were not left in the coal scuttle? A. They were not left in the room.

The Court: How much of this pail did you say was covered? You said one-third or two-thirds or half?

Witness: The pail including everything that was in it when I first saw it was not more than half full.

Q. How large were these towels? A. Just the ordinary hand towels.

Q. Ordinary hand towels. Now, had the room been tidied up as you have just described and the pail emptied before Dr. Simmons arrived? A. I think it was before Dr. Simmons arrived.

Q. And had you procured the milk and the thread before Dr. Simmons arrived? A. Yes, sir.

Q. Do you know whether anything was done with the instruments themselves? A. We cleaned the instruments.

Q. Were you directed to do this cleaning as you have described or was that done in the regular course of events? A. That is part of the nurses' work to clean up after an operation. We did it without any orders.

Q. What was the condition of the instruments before they were washed? A. The same as any other instruments after they have been used. They were stained.

Q. Much or little? A. Not very much.

Q. No. Now, do you remember Dr. Simmons coming in? A. I do.

Q. Will you describe as much of what occurred after he came in as you can recall, please. A. Dr. Young asked him if he wanted to make the incision because he had his apron on and he said yes, he wished he would, so the doctor made an incision and Dr. Simmons said I wish you would make it a little bit larger, so he cut further, and he—so they stood looking into the abdomen, and Dr. Young lifted the uterus so that he could show it,—show the tear; they saw it and I stood a little bit back of Dr. Young looking over his shoulder.

Q. Go on and describe what more you saw and what you did. A. I was not close enough to look down into the abdomen but I saw the top of the uterus as Dr. Young held it up. I saw the top of the tear in the uterus—the tear across the top. I did not see down the side of the uterus; I did not see into the abdomen, I was too far away to look down in.

Q. You said the uterus was exposed to view. Was it raised out of its position? A. He lifted it a little so that he could show it to Dr. Simmons.

Q. And where did Dr. Simmons stand? A. On the right side of the patient, if I remember correctly. I have not given that a thought, but as near as I remember it was on the right side of the—

Q. Yes. Now, after they had examined the—oh, —while this performance was going on, that you have just described, did you smell any fecal odor? A. Not the slightest.

Q. Did you see any blood? A. No.

Q. Did you see any evidence of the saline fluid or otherwise in the abdomen? A. No.

Q. Running out of the hole, I mean? A. No.

Q. Did you see Dr. Young sew up the incision? A. I did. Before that I saw him take a piece of cotton—it was half of a roll—half pound roll of absorbent cotton—he took a piece—altogether was probably eight—well it was not more than eight or twelve inches of the ordinary absorbent cotton—half pound roll—no, it wasn't twelve inches—ten inches would be large—and he took it off of that and put it into the abdomen, brought it out and it was stained, but I couldn't say saturated with blood, then he put the other part in—it was all the cotton that was left there—and brought that out in the same condition. I saw Dr. Young sew up the abdomen.

Q. Yes. What did he use to sew up the abdomen? A. This white thread.

Q. Are you sure of that? A. Sure of it.

The Court: Referring to the spool that has been referred to.

Mr. McCarter: Yes, sir; Exhibit D-7.

Q. And what kind of stitches or sutures did he make? A. What is known as a continuous suture.

Q. Was it in three separate sutures or threads or knots; were they knotted at the end of each? A. They were not.

Q. How late did you remain there, Miss Speicher? A. It was between half past four and five o'clock as near as I can remember that we left there.

Q. Did Miss Regan go with you? A. She did.

Q. And Dr. Young was there? A. Dr. Young was still there when we left.

Q. Now, how was the body left by you? A. We straightened the clothing down, put the feet toge-

ther on the back of a kitchen chair, and left it in that condition.

Q. One chair or two? A. One chair.

Q. It has been testified that there was a Kelly pad—that rubber cloth—there? A. Yes.

Q. Was that removed—put away? A. That was removed.

Q. You had to raise her body in order to remove that? A. We did.

Q. Was there any blood under the body? A. Not of any account. There might have been a slight stain but not of any account.

Q. You have attended curettages before? A. I have.

Q. How did the quantity of blood that you found on that Kelly pad compare with the amount of blood that you would ordinarily find in such an operation? A. Not as much as usual.

CROSS-EXAMINATION by Mr. Mott:

Q. Mis Speicher, how long before Dr. Simmons came was it that you went out for the thread? A. I couldn't say definitely.

Q. I don't suppose that you can. A. It was in the interval between her death and Dr. Simmon's arrival—probably half the time between. Three o'clock, possibly. I couldn't state definitely.

Q. Well, that would be—what time do you say Simmons got there? A. Oh, I do not remember.

Q. Well, then, about how long—I mean was it ten minutes—fifteen minutes—half an hour? A. Oh, probably half an hour. I couldn't state definitely, but approximately.

Q. Is approximately right? A. Yes, sir; approximately.

Q. You did not see any intestines there at all? A. No, I did not.

Q. You are sure there were none? A. Where do you mean?

Q. Were any intestines taken from the patient? A. I didn't see any intestines taken from the patient.

Q. And there were no intestines in the pail? A. There were no intestines in the pail.

Q. Neither fecal or maternal? A. To my knowledge there were no intestines in the pail; I did not see—

Q. I did not mean to interrupt you. A. I did not examine the contents of the pail thoroughly, there might have been a small piece in there that would not have been noticed.

Q. Did you see Dr. Young draw down sixteen inches of intestines? A. I did not.

Q. Neither maternal or fetal? A. I did not.

Q. Did you see Dr. Young put sixteen inches of maternal or fetal intestine in the pail? A. I did not.

Q. You would not say he did not do it? A. I could not say he did not because I was not there through the whole operation.

Q. When did you get there? A. He was just finishing the operation when I came in.

Q. Then, you would not say that there was not sixteen inches of intestines in the pail? A. I couldn't say there was not.

Q. Did you examine the sink at any time? A. The sink?

Q. Yes. A. No, I did not examine the sink.

Q. Did you look at it? A. Yes, sir.

Q. What occasion did you have for looking into the sink? A. Because we emptied the contents—the water-fluid from the pail into the sink.

Q. You testified before the grand jury, didn't you? A. Yes, sir.

Q. And you were asked to tell there all you knew about this transaction, were you not? A. I answered all the questions that were asked me.

Q. You were asked to tell all that was done there that day, were you not? A. I don't know that that question was put to me or that I was asked that.

Q. Well, don't you recall that you were asked to describe all that was done, all you saw and all you did? A. Yes, sir.

Q. Did you say before the grand jury one word about the going out and getting thread? A. I did not. To the best of my knowledge I did not.

RE-DIRECT-EXAMINATION by Mr. McCarter:

Q. How many times were you down to the Court house here? A. Once.

Q. Did you have a talk with Mr. Mott? A. I did not.

Q. You were in before the grand jury alone? A. Yes, sir.

Q. Had you ever been in before a grand jury before? A. No, sir.

DR. CARL E. SUTPHEN sworn for the defendant:

Direct-examination by Mr. McCarter:

Q. You are a practicing physician? A. I am.

Q. In Newark? A. In Newark.

Q. How long have you practiced? A. Since 1896.

Q. If there is any distinction between the old and new school, that is between the allopathic and homeopathic school, so-called, to which of those two do you belong? A. The old school.

Q. What hospital experience have you had? A. I was trained in the Roosevelt Hospital, New York City; since then I have been visiting surgeon for fourteen years at the Newark City Hospital, and connected with the St. James' Hospital, Orange Memorial Hospital, Presbyterian Hospital of Newark,—various other institutions as consultant.

Q. You have had then considerable experience in surgery? A. I think so.

Q. It has been proved in this case, Dr. Sutphen, that in the course of the operation that was performed by Dr. Young previous to the death of Mrs. Truesdell on the 15th of last February, in which operation he was engaged in removing what he believed to be a dead fetus from the womb of the patient, he, in separate stages of the operation, used the three instruments I show you— could, a patient under anesthetic with a tear of any size through the wall of the womb, the womb measuring at an autopsy held later four and a half inches in length—using instruments as shown there, or the hand and fingers,—in your opinion is it possible to extract twenty-one feet of the small intestine and approximately two feet of the large intestine, with their mesenteries, through

the rent in the womb? A. I do not think it is possible.

Q. Why not? A. My experience in trying to pull the intestine out of other wounds, such as operations on the rectum and so forth,—it is a very difficult thing to pull the intestine down to that extent and if one did it with such instruments as this, or the hand, he would do it without the entire mesentery and all its attachments.

The Court: Just a moment. The instruments shown the witness are Exhibits D-4, 5, and 6, the curet, by-valve and sponge forceps?

The Witness: Yes, sir.

Q. Would the fact that the operation to which I have referred consumed not in excess of forty-five minutes, strengthen or weaken the opinion you have just expressed? A. It would have no influence on it whatever.

Q. How long have you known Dr. Young? A. I never knew Dr. Young until about—since until last Sunday.

Q. For a physician or surgeon to undertake to remove a dead fetus from a womb what would you say as to the propriety of the use of three instruments, whose numbers have been given, and which are supplied before you? A. They would be the ordinary instruments used in such an operation.

Not cross-examined.

DOROTHY E. REGAN sworn for defendant:

Direct-examination by Mr. McCarter:

Q. Miss Regan, are you the Miss Regan that has

been adverted to here as being the nurse in attendance on this operation? A. I am.

Q. You are a regularly trained nurse? A. I am.

Q. Where were you trained? A. Part of my training was in the Hackley Hospital, Michigan, and I finished it in Cooper's Hospital, New York State.

Q. When did you graduate? A. A year ago last March.

Q. After your graduation where did you go to pursue your practice? A. Montclair, New Jersey.

Q. And have been there ever since? A. Yes, sir.

Q. Previous to the call on the case of Mrs. Truesdell, on the 15th of February, last, how many times, if at all, had you ever nursed or served in any capacity under Dr. Young? A. I had one case for him.

Q. Do you remember when that was? A. I think I took it in the middle of August last.

Q. When did you get your first call on this Truesdell case? A. I can't state exactly, but Dr. Young called me two or three days before—or I called him and was talking to him about something else and he asked me if I was busy; I said, "No; I am not busy, but I am on call." He says, "Well, I may have a case for you but I do not want you to turn anything else down for the case because I am not sure about it."

Q. Well, did the call finally come? A. It came.

Q. On what day? A. February 15th.

Q. The day of the death? A. The day of the death.

Q. The day of the operation. What time did you reach the house? A. As near as I can remember about 9:30.

Q. Had you ever seen or known Mrs. Truesdell before? A. I had not.

Q. Never know any of her family? A. I did not.

Q. After you reached there what did you do before the doctor arrived, if anything? A. The first thing I did was to put some water on to boil that we might have both hot and cold sterile water.

Q. Put it on to boil where? A. On the gas range in the kitchen.

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

Q. Had you yet been informed in what apartment the operation was to take place? A. No, sir; I selected that myself.

Q. Did you in fact know what the operation was to be? A. No, sir.

Q. Did you know it was to be a uterine operation? A. I judged so.

Q. You judged so? A. I judged so.

Q. Well, you put the water on to boil. Go on, now, and try to recall as well as you can the steps that you went through that morning. A. Later I selected the kitchen for the operation, because it had good light and seemed the better place to have it, and I removed some things that were on the kitchen table and prepared the table with newspapers—padded it with newspapers and covered the newspapers with a sheet—and I think that was all the preparation I gave the table; and then, while the water was boiling I went into the living room and talked about different things until just a little while before Dr. Young came. I said to Mrs. Truesdell "If you have a pair of white stockings you better put them on because the doctor will probably be here soon"; and we did that.

Q. Well, the doctor arrived? A. He arrived.

Q. Yes. Then, what occurred? A. He brought his instruments in and set his bag down in the kitchen and gave me a little vial of H. M. C. tablets and told me to give one of them hypodermically. I took Mrs. Truesdell and put her on the bed in the bedroom and gave her the H. M. C., and Miss Cox suggested that it would be better to have her on the operating table and then there would be no disturbance caused. The H. M. C. was given to quiet her. And that we did. We put her on the table. Dr. Young left and said he would be gone about half an hour, as he had some calls to make; and in the meantime we put the instruments on to boil, wrapped them in a towel and put them on to boil, and they were boiled, and when he came they were removed from the sterile water and placed on some clean towels used—wrapped in the towels in which they had been boiled. Dr. Young returned and prepared for the operation.

Q. Finally got himself in shape? A. Got himself in shape.

Q. Did he put anything on his hands? A. He removed his clothing—his coat and vest and shirt; put on a rubber apron—sterile gown over that, I think, and scrubbed his hands. He asked me to sterilize the parts which I did, with lysol solution and then he poured an iodine solution over that, and then the patient, as soon as she was under the anesthetic, was put into the stirrups and he finished the sterilization of the parts and commenced his operation.

Q. Did you see a pail located at the foot of the Kelly pad? A. I placed it there.

Q. Where is that pail? Does that look like that pail? A. That looks like it.

The Court: You have not put that in evidence yet.

Mr. McCarter: I do it now, and I also offer in evidence, lest I forget it, all the exhibits that have been marked for identification.

The Court: You offer D-1. That is the pail.

Mr. McCarter: I offer that in evidence.

Pail marked Exhibit D-1.

The Court: The copy of the death certificate. That is Exhibit D-2.

Marked in evidence Exhibit D-2.

Mr. McCarter: And then the three instruments, are they in?

The Court: They are in. The only thing that will not be offered is Exhibit D-3 for identification, which consists of a number of notes of Dr. Young which he used.

Q. Now, Miss Regan, do you recall that Dr. Truesdell was in the room? A. He was.

Q. Had he been there during the forenoon while you were waiting for Dr. Young to arrive and preparing the patient? A. Part of the time.

Q. You had never met him either, I suppose? A. Yes, sir; I had.

Q. You had? A. Yes, sir; I had met Dr. Truesdell.

Q. Well, I do not want to go into too much detail. Who administered the ether? A. Miss Cox.

Q. Where were you located when the operation commenced? A. On the left, near her head.

Q. Left of the patient near her hand? A. Near her head.

Q. Head. Near her head. Where did Miss Cox stand or sit—or which did she do, or don't you know? A. I don't know. I think she sat at the head of the patient.

Q. And tell us your function during the course of the operation? A. I relieved the left leg from pressure of the stirrup and had my hand on the pulse of the patient.

Q. The patient, as I understood it, was so placed as that she was lying over on a table—of course not a handsome table like this—ordinary kitchen table—and her both knees right up as far as they would go? A. They were.

Q. Way up, and separated? A. They were.

Q. Separated so as to expose the vulva and so forth? A. Yes, sir.

Q. Now, please go on and describe all that you can recall that occurred after that? A. Well, after she was put up into the stirrups she was draped with a sheet, at the thigh and then after I draped the patient I left the operating field. I was not—

Q. Excuse me just a minute. I do not believe the jury understand what you mean by leaving the operating field. A. I left the place where Dr. Young was operating. I was not sterile.

Q. So you got out of the operating field? A. I got out of the operating field.

Q. Was the operating field—the immediate operating field in view of the position of the patient's leg within your vision? A. No; because the sheet obscured my vision of the operating field.

Q. Now, if you can recall, I wish you would go on and describe so far as you can what you noticed? A. Well, I was watching the giving of the anesthetic and the condition of the patient and the next thing I remember was that Dr. Young asked me if I would place my hand on the abdomen of the patient, see if I could push that uterus down, which I did.

Q. With what result? A. And I could not push it down, and I told him it was so rigid that I could have no effect upon it.

Q. How did its rigidity compare with the normal condition of affairs at the abdomen under such circumstances? A. Well, it was very rigid; I could make no impression upon it.

Q. Could make no impression upon it at all? A. No.

Q. Do you remember Dr. Truesdell leaving the room? A. Well, he left the room; yes, sir; once or twice, I think. I can't remember just how many times but he was very nervous and unable to support the limb properly.

Q. And what was done to supply his place? A. Dr. Young said to him he must have another nurse.

Q. And he procured one? A. Yes, sir.

Q. You remember, of course, the arrival of Miss Speicher? A. Yes, sir.

Q. Now, before she came is there anything more that occurred that you recall? You may speak of it? A. After Dr. Young asked me to make pressure on the abdomen and I made the impression on it, he did it himself—or tried to do it.

Q. He tried to do it? A. He tried to do it.

Q. Did he say anything with reference to his success in feeling the uterus? A. He said it was very rigid.

Q. Very rigid. What did he say was very rigid? A. The abdomen—the muscles of the abdomen.

Q. Well, do you recall anything else? I am not permitted to remind you, I have to draw on your memory. A. You mean after the arrival of Miss Speicher or before? I do not recall anything else.

Q. No. Well, when, if at all, did you first notice or comprehend that the heart of the patient was, what I believe you call, bad or weak? A. Well, that was after Miss Speicher came.

Q. Do you remember the arrival of Miss Speicher? A. Yes, sir.

Q. Did you know who was coming? A. I did.

Q. And had you met her before? A. I had.

Q. She came and placed herself where? A. On the right of the patient to support the right leg.

Q. You may go on and describe now just what occurred as you saw. A. Well, Miss Speicher took Dr. Truesdell's place and supported the right leg of the patient with her hand on the front, and soon after her arrival—I should say from five to ten minutes—she reported that the pulse was very feeble. Dr. Young immediately stopped operating and began measures of resuscitating the patient.

Q. What measures did he use? A. He asked me to get ready a normal saline solution.

Q. Did you do it? A. I did.

Q. What did you put it in? A. Put it in the douche bag and Dr. Young gave it.

Q. Do you know what else he did? A. He ordered a sixtieth of strychnia hypodermically and asked me to give it, which I did.

Q. And what else did you do or he do? A. Well, he ordered—he fixed some medicine—prepared some medicine and ordered a teaspoonful of it given every fifteen minutes and one of the other nurses gave it.

Q. Do you remember the arrival of Dr. Bunn? A. I do.

Q. Did you hear anyone give directions to send for Dr. Bunn? A. No; Dr. Young did that himself.

Q. You saw Dr. Bunn come in the room? A. Yes, sir.

Q. How soon after Dr. Bunn came in the room did the patient die? A. Two or three minutes I should say.

Q. Did you notice which stopped first, the respiration or the heart? A. The heart.

Q. How did you know that? A. I had my hand on the pulse.

Q. Now, at this time the patient was dead. Did you smell any fecal odor in that room? A. I did not.

Q. Did you see any blood on the floor? A. I did not.

Q. Did you see any blood on the newspapers that were left in the coal scuttle? A. I did not.

Q. Did you see any blood in the sink? A. I did not.

Q. After the patient died and before the arrival of Dr. Simmons what did you and Miss Speicher proceed to do? A. Cleaned up the room.

Q. Yes. Did you have to remove the patient in order to remove the Kelly pad? A. I did.

Q. Was there any unusual display of blood on the pad or under the patient? A. There was not.

Q. Had the table been left horizontal or had it been raised as described by Miss Speicher this morning? A. It had been raised.

Q. You have stated that the immediate field of operation was obscured from your vision from your position because of the position of the sheet? A. Yes, sir.

Q. Were you able—I don't know whether you were—to see enough or near enough to it to be able to say whether or not you saw any manifestation of great force or power exercised—used by Dr. Young? A. I do not remember seeing him use any great force.

Q. Was there any movement to the body under your hand? A. No, sir.

Q. It remained stationary? A. It remained stationary.

Q. Now, Miss Regan did you see twenty-one feet of small gut or intestine in that pail or in that room? A. I did not.

Q. Did you see three or four feet of large intestine? A. I did not.

Q. With the mesentery? A. I did not.

Q. You know generally the difference between the small and large intestine? A. Well, I have never seen either, but I imagine one is larger than the other.

Q. After the doctor went out of the room while you were waiting for Dr. Simmons, what became of the pail? A. Miss Speicher and I finished

cleaning up the room and debated as to what we should do with the contents and decided that the best place for it was the furnace, and it was taken down and placed in the furnace.

The Court: Who did it?

The Witness: Who did it? I did it.

Q. Were there any towels in the pail? A. I didn't see any towels.

Q. If they were there they had been removed before you took it down? A. Been removed.

Q. Do you mean to say you only saw one piece of membrane in the pail? A. Well, now, I couldn't be positive about that; it might have been one or two.

Q. And the size of that membrane that you saw, how large was it? A. Well, I should say an inch and a half or two inches.

Q. Square? A. No; I couldn't tell you the shape of it, because I didn't pick it up and examine it.

Q. When you were before the grand jury did you tear out a piece of blotter to show the grand jurors the size of it? A. I did.

Q. And do you think you tore a piece about— A. I think that was about right, to the best of my ability to remember at that time.

Q. Yes. And this time.

The Court: What are you exhibiting to the witness?

Mr. McCarter: The secrets of the grand jury that is what he is exhibiting.

Mr. Mott: I am showing the witness and ask her if she remembers that she tore out from a blotter a piece about that size and she says she did.

The Court: The question has been asked and answered without objection and in order to have it clear on the record as to what was torn out of the blotter the Court is making this inquiry.

Mr. McCarter: I am not objecting to the Court's inquiry at all.

The Court: The question I want to ask you is this. You were shown an ordinary blotter with an inch and a half square torn out of it. Do you mean that the part that is torn out of that blotter that you have is about the size of the tissue that you saw?

The Witness: I do.

Mr. McCarter: I want to call the Court's attention to the fact that I understand that what transpired in the grand jury room is not the subject of comment or evidence.

Mr. Mott: May I have this blotter marked?

The Court: It is not necessary. The witness says that the piece which she tore out from the blotter before the grand jury was about an inch and a half square. That is correct, Miss Regan, is it?

The Witness: As near as I can remember. I did not measure it.

Q. When you were asked, Miss Regan, with what Dr. Young sewed up the wound after the autopsy with Dr. Simmons what did you say? Do you recall? What was your answer? A. The question that Mr. McCarter asked?

Q. Yes. A. Why, linen thread.

Q. Didn't you say, "As I can remember, to the

best of my recollection it was white linen thread"? A. Yes, sir.

Q. Well, have you a recollection about the matter? A. I remember that she brought the linen thread in positively and that was what it was brought there for.

Q. All right. You remember positively that Miss Speicher brought in a spool of thread? A. Yes, sir.

Q. But have you any recollection of your own as to what was used to sew up this cut? A. Yes, sir; I believe I have, Mr. Mott.

Q. And what is that recollection? A. White linen thread.

Q. You saw the doctor use that? A. I did not; but we washed that wound off after he had finished sewing it up, and as I remember it was white linen thread.

Q. Now, then, you have no recollection, Miss Regan, as to what the doctor used at the time that he sewed up the wound? A. No.

Q. Subsequently you saw the body—you washed it off? A. Yes, sir.

Q. And your recollection is that you then saw that it was sewed with— A. Linen thread.

Q. Linen thread. Was there anything to direct your attention to the kind of suture that was used to sew up the wound at that time? A. I don't exactly understand the question, Mr. Mott.

Q. When you washed off the body was there anything that directed your attention to the kind of thread or material that was used? A. No.

Q. To sew up the wound? A. No; nothing special.

Q. It is just a recollection that you have? A. Yes, sir.

By the Court: Q. Do you remember anything about the number of stitches? A. I do not.

Q. At what point in the transaction as you have described it, was this remark made by Dr. Young which you have stated he made? A. May I ask your Honor what that remark was?

Q. The remark about this being the first time I ever disemboweled an infant? A. Well, it was sometime while he was operating; I can't tell exactly.

Q. Well, was it before or after Dr. Truesdell left the room? A. I couldn't say that either, I do not remember.

Q. Was it before or after Miss Speicher arrived? A. It was before.

Further CROSS:

Q. You did not see any intestine at all that day, either maternal or fetal? A. I did not.

Q. And do you know whether there was any intestine in the pail or not? A. I do not.

Q. There might have been some there and you not see it? A. There might have been a small piece there and I not see it.

RE-DIRECT-EXAMINATION:

Q. Was there twenty-one feet there? A. I do not think so.

Q. No. Do you realize that twenty-one feet would be as long as from me to the foreman of the jury? A. I do.

Q. Was there? A. No.

Q. Was there four feet of a round hose like looking substance two or three inches in diameter —four feet—

The Court: She has already answered that.

Mr. Mott: Answered it how?

The Court: She answered it on direct-examination; said she never saw any and then Mr. McCarter described what he understood to be intestine and she said she never saw anything like that.

Q. I want to tax your memory. I would be glad for you to think if you can about the matter and give me your best recollection of the remark that you recall Dr. Young making which Mr. Mott referred to? A. Dr. Young did not make this remark to me.

Q. No; he made some remark that you overheard him make. See if you can recall what it was. A. Well, to the best of my ability to remember it is as it was given.

Q. By Mr. Mott? A. Yes, sir.

Q. You seemed, in the first reply you made to Mr. Mott, to express some hesitation as to exactly what the remark was—some little trouble of memory. A. Now, that day I had no occasion to remember the remarks that were made.

Q. No. Did you hear him make any remark about an arm or a leg? A. Not that I remember.

Q. Do not remember that. That is all.

DR. CHARLES W. BANKS, sworn for the defendant:

Direct-examination by Mr. McCarter:

Q. You are a practicing physician and surgeon, Doctor? A. Yes, sir.

Q. Where? A. East Orange.

Q. How long have you practiced medicine? A. Twenty-six years.

Q. Where were you graduated? A. Bellevue Hospital.

Q. Have you had any hospital experience? A. Yes, sir.

Q. Will you describe it briefly without blowing your own trumpets too much? A. I was house surgeon Bellevue Hospital first.

Q. Bellevue, New York? A. Yes, sir; and for ten years I have been chief surgeon of St. Mary's Hospital, Orange.

Q. St. Mary's, Orange? A. Yes, sir.

Q. Chief Surgeon? A. Yes, sir.

Q. Do you belong to the Allopathic or Homeopathic School? A. Allopathic.

Q. How well do you know Dr. Young? A. I don't know him at all; never met him.

Q. Do not know him. It is in evidence in this case, Doctor, that on the 15th of February, last, Dr. Young was engaged in an operation desiring to remove from the womb of a woman who was testified to have been about five feet tall and to weigh normally under 100 pounds; that the patient was under an anesthetic; with a tear of any size you may want through the wall of the womb the womb measuring at an autopsy held

after the operation four and a half inches in length; during the operation used the three instruments which are now exhibited to you; I ask you if using them or the hand which was gloved, is it possible to extract twenty-one feet of the small intestine and approximately three feet of large intestine, with their mesenteries, through the rent in the womb, the operation lasting about forty-five minutes? A. I should think that would be impossible.

Q. Why, Doctor? A. Because the mesentery is rather a tough organ. I have seen cases where the intestines have been stripped of the mesentery but never where the mesentery was intact. It seems to be an impossibility.

Q. Could twenty-one feet of small intestine and three feet of large intestine be stripped of their mesenteries without a hemorrhage? A. I think not.

Not cross-examined.

DR. FRANK C. BUNN, sworn for the defendant:

Direct-examination by Mr. McCarter:

Q. You are a practicing physician and surgeon? A. Yes, sir.

Q. Where do you practice, Doctor? A. Orange.

Q. How long have you practiced in Orange? A. Twenty-five years.

Q. Are you Allopathic or Homeopathic? A. I am Homeopathic graduate, belong to both societites.

Q. What experience have you had since your graduation twenty-five years ago? A. Well, I had two years interne-ship in the hospital and since then I have had the usual experience of the more or less busy man; in the last fifteen years exclusively surgery.

Q. What hospital appointments have you had? A. I am now surgeon to the Homeopathic Hospital in Newark, consulting surgeon of several hospitals; I have done Orthopedic surgery in Flower Hospital in New York.

Q. Did you ever do any instructing in any hospital? A. Yes, sir; I was lecturer on surgery in the Homeopathic College in New York.

Q. Have you any connection with the Amercian College of Surgeons? A. I have been accepted as a fellow in that college. I have not yet received the degree.

Q. What are your personal and professional relations to Dr. Young? A. He is a very close and dear friend.

Q. Have you worked with him? A. Yes, sir.

Q. Seen him work? A. Yes, sir.

Q. Over how long a time? A. During the entire time he has been in practice in Montclair. If I remember rightly it is nine years. In fact I knew him as a medical student.

Q. From observation of his work what do you know about Dr. Young's ability as a surgeon? A. He is a very able surgeon, sir, and a very careful surgeon—a very gentle surgeon.

Q. How many times do you suppose you have seen him operate? A. I cannot tell you in figures. Very frequently. All his early, important opera-

tions, in this part—since he has been in Montclair—I stood on the other side of the table instructing, and since he has stood on his own feet I have frequently assisted him and he has frequently assisted me in major surgical work.

Q. Did you receive a call to go to Dr. Truesdell's residence on the 15th of February last? A. Yes, sir.

Q. Where were you at that time? A. In my office.

Q. Was it a hurry call? A. It was.

Q. Was this your office hour? A. Yes, sir.

Q. Do you know whether Dr. Young was aware of that? A. Yes, sir; he knew it was my office hours.

Q. Did you obey the call at once? A. Yes, sir.

Q. How long do you suppose it took you to get up to the place? A. I did not look at the time myself. My chauffeur says eight minutes—four miles.

Q. I am afraid you violated the law? A. I did.

Q. What request did you receive from Dr. Young? A. I cannot give you the words. The gist of it was that he had a patient that seemed to be going wrong or that was going wrong under an operation and would I please come there as fast as I could and I did not wait. I said "All right" or something of that kind and hung up the receiver to give the call and get my chauffeur right away and get started.

Q. You reached the place? A. Yes, sir.

Q. By automobile? A. Yes, sir.

Q. Describe what occurred? A. Dr. Truesdell opened the door to let me in, my impression is,

without giving me time to ring the bell. At any rate instantly. I started upstairs on the run and Dr. Young met me at the top of the stairs and just motioned me to slow down, and led me into the kitchen, and as soon as I got into the kitchen I realized why he had suggested to slow down, that is the patient was then just dying; so that I was too late to be of any service to him. Do you want me to go on and describe?

Q. Yes. A. As I went in there the patient lay on the kitchen table as many witnesses have described and she was just at the last moment of life. In fact I don't know exactly whether she was living or dead when I got into the room. I know that by the time I had gotten to the patient and heard a word or two I touched her pulse and found her pulseless, and I noticed that respiration had stopped. Now, whether she was still alive when I entered the room or not it is impossible for me to say. The surroundings in the room—I remember Miss Cox was sitting at the head of the table at the patient's head, for the purpose of anesthetic, undoubtedly, and I remember one other nurse—I don't know which—was standing at the patient's left. Where the third nurse was in the room I have no memory. I did not specially notice the nurses. The patient was covered at that time. Dr. Young then described—then told me the gist of what he had done there in the operating room in a quick way—described what he had done and the instruments—and that he suspected that the uterus was ruptured. I said to him, "John, you never ruptured that uterus." That was all our conversation. The patient was

dead and Dr. Young asked me to speak to Dr. Truesdell, or possibly I offered to speak to Dr. Truesdell—I don't know which—but anyway, being the older man, I went into the little sitting room and broke to Dr. Truesdell what had happened, and then, being of no further service, I left the house.

Q. Did you notice any fecal odor in the room? A. There was none. The room smelled slightly of ether. No other odor.

Q. You know fecal odor? A. I certainly do.

Q. Could it be there and you not recognize it? A. No, sir.

Q. Did you see a mass of blood on the floor? A. There was no blood visible in the room as far as I could see. May I modify that, please?

Q. Yes. A. On the instruments as they lay on the towel on top of the stationary tubs, I believe—were more or less spotted with blood. I noticed that there was what you would expect to find on instruments used in an operation. Few spots of blood on the towel and instruments. That is the only blood I saw.

Q. That was the only blood you saw? A. Yes, sir.

Q. Have you performed the operation for the removal of the large intestine? A. I have.

Q. If you cut away the large intestine from its attachments without tying off the blood vessels how long would the patient live? A. I suppose until I got six or eight inches of it separated from the attachment—perhaps a foot.

Q. How long would that take? A. Three or four or five minutes. Long enough to empty the life out through those enormous vessels.

Q. I do not believe the jury hear. A. I say long enough to empty the life blood out through those vessels that supply the gut.

Q. That is when you use an instrument and cut it? A. Yes, sir.

Q. What would she die of? A. She would die of hemorrhage.

Q. What precautions do you use to prevent such an occurrence? A. The vessels— in the course of operations those vessels are tied before they are cut.

Q. What? A. They are tied—ligated before they are cut; that is surrounded with a piece of catgut or some similar material. If one is not tied it is immediately clamped with a forceps to prevent this hemorrhage.

Q. You have heard the evidence in this case, Dr. Bunn? A. Yes, sir.

Q. What effect upon the peritoneum would the insertion of the hand—would the attempt to insert the hand of an operating surgeon into the vagina have had? A. That depends on the individual patient.

The Court: How can he state what he bases his opinion on when he says, "I have heard the testimony in this case." We do not know what he remembers or what he is impressed with or what he bases his opinion on.

Mr. McCarter: I will withdraw the question.

Q. Doctor, given a patient under an anesthetic with a tear of any size through the womb, the womb measuring at an autopsy subsequently held

four and a half inches in length using the three instruments before you or the hand and finger, is it possible to extract twenty-one feet of small intestine and approximately three feet of large intestine with their mesenteries through the rent in the womb? A. It is absolutely impossible, sir.

Q. Why? A. On account of the strength of the attachments of the large intestine and the strength of the root of the mesentery of the small intestine.

Q. How far would it be possible to get the hand through under these conditions? A. You could not get the hand through a rent into the uterus of that size at all, I do not believe, possibly. I may be mistaken on that, but in a woman of the size described here who had never borne a child and in from four to six months pregnancy, it is very doubtful if you could get your hand into the womb, and if it were done and gotten far enough into the abdomen to reach anything there would be tears showing in the vagina and vulva, either in the mucous membrane or sub-cutaneous tissue which would have shown at the second autopsy made had those parts been examined.

Q. Look at the instruments before you, the different ones, four or five or six, and tell me if they are the proper and regular instruments to have been used for such an operation as was undertaken here? A. They are.

Q. Did you hear the evidence of Dr. Young descriptive of what he did during this operation? A. Yes, sir.

Q. What have you to say as to whether or not in

your judgment he did or did not manifest care and ability?

Mr. Mott: I object.

The Court: How do you vindicate that question?

Mr. Mott: The objection is you are asking a hypothetical question.

The Court: The question is incompetent and irrelevant.

Mr. McCarter: I have not heard the objection made.

The Court: He said, "I object." It is so perfectly plain I want to hear what your reason is why you offer the question.

Mr. McCarter: I think the Court has a different conception of the reason of the objection to the question from counsel. Counsel seems to think that the hypothetical question was wrong in that it had not recited all the facts. I understand the Court thinks it is irrelevant.

The Court: I haven't stated what I think yet. Have you any other grounds of objection?

Mr. Mott: I object on the ground stated by Mr. McCarter as well on the other ground, because I understand you cannot ask a witness whether he heard certain evidence and from that predicate and answer because the attention of the witness must be called to the particular fact from which he is testifying.

(Argument.)

Mr. McCarter: I will modify my question.

Q. Dr. Bunn, is the procedure in case of the expected removal of a dead fetus from the womb of a woman well known? A. Yes, sir.

Q. What is such procedure? A. It depends on the period of development of the fetus.

Q. Assuming that the doctor had diagnosed the case as a pregnancy between five and six months with a fetus whose life was arrested at a period of about three or four months, what would be the proper procedure? In the first place is it proper to remove the dead fetus? A. It is necessary to do it.

Q. Why so? A. Because, left in there it may produce very serious conditions for the mother.

Q. Assuming therefore that the conclusion to remove is correct, what would be the proper procedure to set about to do that? A. At that age the neck of the womb should be dilated and, by means of forceps and curets, the fetus and enveloping membranes, and the parts which would later develop into placenta—which had not yet devoloped into true placenta—should be removed and the lining membrane of the uterus be cleaned out by curetting, which is scraping by a small sharp instrument like this.

Q. Which one of those are you referring to? A. Why, D-4. I might say that in doing this the dead fetus—it is by no means usual to attempt to dilate the uterus so largely as to remove the fetus entirely. It is a matter of perfectly good practice to remove that fetus with forceps in sections, so that to get—when one makes a grasp with the

sponge forceps, that is this (indicating), or tool of the same sort in the uterus one may get the fetal head or arm or leg or may get into the fetal body as far as that goes.

Q. What have you to say with reference to the propriety of the use in such case of the three instruments, four five and six, which are before you? A. Only one criticism of them. They are hardly of sufficient size and strength for the work that we find to do in some cases. This is a much lighter dilator than is usually used and this sponge forceps is hardly the size and strength for handling good sized fetal parts. I think the doctor's instruments would have been better if they had had a little more strength to them.

Q. Better, Doctor? A. Yes, sir. This dilator— I don't know the name of it—the one that is ordinarily used—the Goodell dilator is a much more powerful dilator than this. Much more powerful.

Q. Assuming that in the course of the operation that we have been referring to a loop appeared, with no attachment—no membrane attachment to it—would it make any difference whether you cut it off or shoved it back? A. Yes, sir.

Q. Describe what difference? A. Why, in this way. If it were part of the fetus, better cut it off and get it out of the way. If it is maternal intestine cut it off because it is entirely probable that it has lost its life, that the intestine, stripped of its mesentery is dead; it must have been torn off.

Q. What would set in? A. Oh, that piece of intestine would die—would mortify.

Q. It would become gangrenous, would it? A. Yes, sir. And furthermore that piece of intestine has been out of the body, out of the private parts, and it may possibly have become dirty. If that by any chance is maternal intestine the proper procedure is to cut it off, pack the cut ends into the vagina and prepare the case as quickly as possible for an abdominal operation and suture the two ends of the intestine above and below the damaged part including the bleeding vessels of the mesentery.

Q. How long a time would normally be permissible—of course I recognize the importance of speed—A. Yes, sir.

Q. But how soon must such an operation be performed? In order to prevent blood poisoning or septisemia? A. It should be done just as quickly as the surroundings and arrangements can be made.

Q. Death would result from what if you do not do that? A. Either from hemorrhage or from septisemia—from blood poisoning.

Q. If it were blood poisoning how soon would that set in? A. Probably in about forty-eight hours. Thirty-six to forty-eight hours. That is a little indefinite, Mr. McCarter.

Q. Does the kit of tools known as the uterine kit include instruments necessary for an abdominal operation? A. No, sir.

Q. What additional facilities are needed other than these—different instruments—to perform an abdominal operation to accomplish what you said should be done? A. That is difficult—a little difficult proposition to answer categorically because

I don't know what is usually in the doctor's kit. Naturally an abdominal operation requires some different instruments from a vaginal operation, but they are not extensive and not very elaborate, but the preparation of the patient and room and all that kind of thing is a matter to be gotten ready and a question of assistance, of course, nurses, needles and proper suture material would come in there as well.

Q. Do you recall the fact that Dr. Young made a visit to the prosecutor shortly—A. Yes, sir.

Q. Sometime after this occurrence? A. Yes, sir.

Mr. Mott: I would like to ask the witness if he was present. If he was not present how does he know.

The Court: We don't know if he was present or not.

The Witness: No, I was not present.

Q. Did you have anything to do with his going there? A. Yes, sir.

Mr. McCarter: I want to prove that the going of Dr. Young to see the Prosecutor was a perfectly voluntary act.

Mr. Mott: May I admit on the record as I am glad to do, that Dr. Young came to me entirely voluntarily, of his own volition, and I did not send for him directly or indirectly requesting him to come nor did anybody else in the Prosecutor's office.

Q. Assuming that at the operation in question, Dr. Young observing a piece of tissue which he believed to be at the time fetal intestine, cut off a portion of it, some sixteen or seventeen inches in length and shoved the balance back in the va-

gina, where is was packed—which was packed, and that before anything more could be done the patient went bad, as we say, her heart gave out, and there was no evidence of hemorrhage, what more do you think should have been done than I have described as having been done in that situation?

Mr. Mott: I object on the ground that the question states that he believed the intestine was fetal intestine. Dr. Young said that he thought at the time it might possibly be maternal intestine.

Mr. McCarter: I do not so understand the evidence. I understood Dr. Young to say—I am not trying to shrink from anything on this—nothing to shrink from—but I think Mr. Mott is mistaken in Dr. Young's evidence. My understanding, subject to correction, of the evidence of Dr. Young yesterday is, that he stated that he thought and continued to think that it is fetal intestine. He was asked by Mr. Mott what he now thought and said he still thought it was fetal intestine, although he might be mistaken with all the light that has come since, but I do not understand there was any question in the mind of Dr. Young on the day in question when his action must be judged. If I am wrong on that I would like to be corrected.

Mr. Mott: Objection withdrawn.

The Court: My recollection is not as the Prosecutor's nor as defendant's counsel has stated. I thought he said he didn't know

what it was—hadn't made up his mind. He was in doubt, but you may answer the question. You mean, of course, by a skilled surgeon?

Mr. McCarter: Yes, sir.

Q. Assuming the surgeon to be a practicing physician and surgeon of hospital experience, who has for six or seven years—ten years—pursued his practice in this vicinity and who has had quite a general and surgical and medical practice? A. I see nothing to criticise in the way the case was treated.

Q. Do you know of any more that could have been done? A. No, sir.

Q. Now, Doctor, in that situation with no hemorrhage, assuming that the thing presented was maternal gut, would you tell us what more could have been done? A. Nothing more. The treatment was correct.

CROSS-EXAMINATION by Mr. Mott:

Q. What treatment do you understand was given her except to let her lie there and die? A. She was given camphor as a stimulant; she was given a normal saline solution by the rectum which are the usual stimulants used under those circumstances, I think.

Q. That is what treatment was given? A. That is the treatment.

Q. And that you think was proper and all that could have been done? A. It was all that could have been done. The patient was in collapse and that was all there was time to do before she died.

Q. I understood you to say, Doctor, that you

considered Dr. Young to be a very able and skillful physician and surgeon? A. I do.

Q. At the time you said to him "John, you did not rupture that uterus—"A. I said, "You did not rupture that uterus."

Q. Did you know then that he had drawn down through the mouth opening of it, through the vagina at least sixteen inches of intestine? A. No. I knew he had drawn something down. He said he didn't know what it was.

Q. Did you know that he had at that time drawn down sixteen inches of the intestine? A. No, sir; I did not know it.

Q. Do you think, Doctor, that a very able, and skillful physician and surgeon would be able to distinguish maternal intestine from fetal intestine, the fetus being from four to six—five to six months development but life having been arrested at about the third or fourth month.

Mr. McCarter: The hypothesis is that the size of it as evidenced by the measurement of the curet increased the age of the fetus and changed in the mind of the doctor the age of the fetus.

The Court: At one time he said he did diagnose the case in that way. I think he said in January.

Mr. McCarter: Early.

The Court: I think Dr. Young said somewhere in his testimony, possibly about January, that he thought that that was the condition that then existed. Something else may have changed his mind by the 15th of February and maybe since.

Mr. McCarter: Your Honor, has perhaps overlooked, as I understand the situation, and I want to be corrected again if I am wrong, that when he penetrated the uterus with the curet held between the thumb and the finger he got a larger uterus than he had anticipated and his conclusion was that diagnosis of a month or six weeks before was wrong.

The Court: Did he say he reached the back wall of the uterus at all?

Mr. McCarter: He reached what he supposed was the back wall of the uterus.

The Court: He reached something and that might have changed his mind, but this question is based upon a proper assumption of fact because at one time Dr. Young did say that this was his diagnosis of the condition of that fetus.

Mr. McCarter: But you must bear in mind that the use of the curet led him to conclude that the diagnosis was wrong and that the womb was larger and the fetus, therefore, larger than he had expected to find which changed his view.

The Court: That is a matter of argument. There is some testimony in this case tending to show that this was a five or six months child whose life had been extinguished at the end of three or four or five months.

Mr. McCarter: That was his first diagnosis.

The Court: There is some evidence to

support that fact; therefore it may be a fact upon which the hypothetical question may be asked.

Mr. McCarter: We are to judge, Dr. Young, by what occurred right then and there and not what had occurred two months before or six weeks before. He thinks that the uterus is so and so big and the baby so big and he measured the uterus with that curet and it is bigger and he at once jumped to the conclusion that his former diagnosis is wrong; therefore it is six months—that then the gut is the gut of a six months' baby and not a three months' baby.

The Court: If you accept that theory you have got to take nothing but what Dr. Young thinks to-day.

That is not the proper theory. Objection overruled.

Defendant's Counsel prays an exception to this ruling of the Court.

The same is allowed and signed and sealed accordingly.

WM. MARTIN.
(Seal) Judge.

Q. (Question read as follows:) "Do you think, Doctor, that a very able and skillful physician and surgeon would be able to distinguish maternal intestine from fetal intestine, the fetus being from four to six—five to six months development, but life having been arrested at about the third or fourth month?" A. Yes, sir.

DR. LOUIS L. DAVIDSON, sworn for defendant:

Direct-examination by Mr. McCarter:

Q. You are a practicing physician and surgeon? A. Yes, sir.

Q. Where do you practice? A. Newark.

Q. Are you a member of the Essex County Medical Society? A. Yes, sir.

Q. Are you Homeopathic or Allopathic? A. Allopathic.

Q. How long have you practiced? A. About fifteen years.

Q. Have you any official position in the Essex County Medical Society? A. I am secretary of the legislative committee.

Q. Given a patient under an anesthetic with a tear of any size through the wall of the womb, the womb measuring at an autopsy four and a half inches in length, using the instruments that are before you or the hand and fingers, is it possible to extract twenty-one feet of small intestine and approximately three feet of large intestine with their mesenteries through the rent in the womb?

The Court: Have you got the instruments there?

The Witness: Yes, your Honor. It is absolutely impossible to remove the mesentery with its powerful attachments to the vertebral column by the use of the hand or any of these instruments, through the uterus.

CROSS-EXAMINATION by Mr. Mott:

Q. Have you any other profession besides that of a physician? A. Yes, sir.

Q. What is that? A. Attorney—attorney-at-law.

Q. Which did you take first, physician or attorney? A. Physician.

Q. When were you admitted as a physician? A. The early part of 1902.

Q. And when were you licensed as an attorney? A. I think 1910—I believe.

Q. When did you begin studying for the profession of the law? A. My first few years in the practice of medicine.

Q. Have you practiced the profession of law? A. No, sir.

Q. You are a licensed attorney in the State of New York? A. State of New Jersey.

Q. State of New Jersey? A. Yes, sir.

RE-DIRECT:

Q. You are not practicing as an attorney, are you? A. No, sir.

OTTO LOWY, sworn for defense:

Direct-examination by Mr. McCarter:

Q. What is your profession, Doctor? A. Physician.

Q. How long have you practiced? A. Since 1900.

Q. Where? A. Newark.

Q. Have you had any surgical experience? A. In the beginning of my practice.

Q. Any pathological experience? A. Some.

Q. What does that mean, pathological experience? A. Pathological experience means a study of the diseased portions of the body.

Q. Please look at the three instruments that are before you there on the table, being the same ones that we have so frequently referred to in other inquiries, given a patient under an anesthetic with a tear of any size—any size—through the wall of the womb, the womb measuring at an autopsy four and a half inches in length, using those instruments or the hand and fingers, is it possible to extract twenty-one feet of small intestines and approximately three feet of large intestine, with their mesenteries through the rent in the womb? A. It is impossible to do that.

Not cross-examined.

DR. WIDMER E. DOREMUS, sworn for defendant:

Direct-examination by Mr. McCarter:

Q. How old are you, Doctor? A. Thirty-eight.

Q. Are you a practicing physician and surgeon? A. Yes, sir.

Q. Where do you practice? A. Practice in West Hudson and Essex County.

Q. And where were you graduated? A. From the New York Homeopathic Medical College and Flower Hospital.

Q. Have you any connection with the American College of Surgeons? A. My credentials for fel-

lowship in the American College of Surgeons has been accepted.

Q. What teaching experience have you had or do you hold as physician? A. I was two years lecturer in surgery at the New York Homeopathic Medical College.

Q. What surgical experience have you had? A. I have been attending surgeon to the Stumpf Memorial Hospital in Kearny, attending surgeon to the Homeopathic Hospital of Essex County—have my own private surgical experience.

Q. When were you admitted to practice? A. In 1901.

Q. Do you know Dr. Young? A. Yes, sir; I know Dr. Young.

Q. Have you ever seen him operate? A. I have.

Q. What have you to say as to his skill and ability as an operating surgeon? A. I think his skill as an operating surgeon is of the first class.

Q. What opportunity have you had to observe that? A. I have observed him operating in the Homeopathic Hospital of Newark where I have seen him remove the breasts for a cancer; I have seen him enucleate the tonsils; I have seen him remove the appendix; and I consider his technique and procedure as careful and good.

Q. Given a patient under an anesthetic with a tear of any size through the wall of the womb, the womb measuring at an autopsy four and a half inches in length, with the use of instruments as shown here before you, 4, 5, and 6, or the hand and fingers, in your opinion is it possible to extract twenty-one feet of small intestine and ap-

proximately three feet of large intestine, with their mesenteries, through the rent in the womb? A. Absolutely impossible.

Q. Why so? A. Because the hand—

Q. Slowly and loud? A. Because at six months in pregnancy the hand could not be introduced through the parts and through the rent in the womb sufficiently to extract the organs mentioned.

Q. What force would be necessary, in your judgment, to pull away all of these mesenteries? Have you made any experiment to indicate or illustrate? A. Yes, sir; I have made such an experiment.

Q. Tell us what you did? A. What I did? I have upon a cadaver—

Q. That is a body? A. Body—dead body—grabbed in my two hands the small intestine and mesentery in one bunch at the root of the mesentery and attempted to lift the cadaver from the table. I exerted in my estimation a pull of fifty pounds, at which time the mesentery began to give away.

Q. How did you get at the parts? A. I made an incision in the abdomen from the breast bone to the pubes—pubic arch and two lateral incisions across—one incision across, making it one on each side.

Q. So that you had the abdomen entirely open? A. Yes, sir.

Q. And the pull that you gave was through the opening in the abdomen? A. Yes, sir.

Q. Entirely different through the vagina and uterus if it were a female body? A. I couldn't pull it through.

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Q. You could not? A. Could not in any way get there.

Q. Yes. When was this occasion you have just referred to? A. That I made this experiment?

Q. Yes. A. On Tuesday night—last Tuesday night.

The Court: This week?

The Witness: This week; yes sir.

Q. Did you remove or attempt to remove a portion of the bowel and mesentery? A. Yes, sir.

Q. Did you accomplish your result? A. Yes, sir.

Q. Through the opened abdomen, now, is that right? A. Yes, sir.

Q. How did you accomplish the removal, by what means? By tear or otherwise? A. By holding the intestine with one hand and cutting the mesentery through at its root, with a knife.

Q. What appearance did the mesentery or remnant present after you had succeeded in making the separation? A. It was ragged and fringed—the edges of the mesentery were ragged and fringed.

Q. If you had not performed the operation yourself and were ignorant of how it had been accomplished and looked at the same thing that resulted after you did what you did, what conclusion would you have reached with regard to how the mesentery had been separated? A. I would believe that it had been torn loose.

Q. Did you make an effort to remove the large intestine on the same occasion? A. Yes, sir; I did.

Q. Through the open abdomen? A. Yes, sir.

Q. With what result? A. I removed the large intestine.

Q. What? A. I removed the large intestine.

Q. How? A. I removed it by traction upon it with my left hand and cutting its attachment with a knife with my right hand.

Q. Did you try to do it without a knife? A. I attempted to do it without a knife.

Q. Were you able to succeed? A. No.

Q. You were not? A. No.

Q. So you had to use a knife? A. I used a knife.

Q. Who was present with you? A. Dr. Willet Brown.

Q. And this was after you had heard the testimony of Dr. Washington in this case? A. Yes, sir.

Q. Where was this done? A. At Flower Hospital, New York City.

Q. I will ask you another question now. Could you remove twenty-one feet of the small intestine and approximately three feet of the large intestine, with their mesenteries with your fingers and hand or a dull instrument through such an abdominal incision as has been described as found in the abdomen of the body of Mrs. Truesdell after the disinterment, assuming that the attempt be made before the rigor of death established? A. I could.

Q. By rigor of death what is meant, Doctor? A. The condition or rigidity and inflexibility—hardening of the tissues of the body—that comes on after a patient has—the patient has died.

Q. How soon does rigor mortis or rigor of death, as we call it, ordinarily appear? A. From six to twelve hours.

By the Court: In answer you referred not to the cut as described was running all the way up to the breast bone but only an inch beyond the navel or about that? A. The cut as described, your Honor, after the interment of this body.

Q. I am asking you do you refer in answering that question to an incision in the body which ran up to the region of the navel, perhaps, an inch above it or two. or an incision which ran up to the breast bone? A. I refer to an incision which runs to the neighborhood of the navel.

Mr. McCarter: Cross-examine.

Recess.

Mr. Mott: I have no questions to ask the doctor.

Further DIRECT:

Q. Assuming that a rubber bag of saline solution had been injected through the rectum into the patient before death as one of the means to resuscitate her, and assuming that before then the twenty-one feet of small bowel and three or four feet of large bowel had been removed, and the abdomen was subsequently opened with an orifice of five or six inches long, would the fluid have presented itself? A. The fluid would have welled up through the incision.

Q. Welled up through the incision.

The Court: You do not describe how

much water was in the bag or the size of the bag.

Mr. McCarter: To be entirely candid with the Court I do not think that was proven.

The Court: She said it was an ordinary douche bag. We do not know what that is.

Witness withdrawn.

DORTHY E. REGAN, re-called for defendant:

Further direct-examination by Mr. McCarter:

Q. How large a douche bag was used? A. Two quart bag.

Q. And how much liquid was put in? A. It was full.

DR. WIDMER E. DOREMUS, re-called for further direct-examination by Mr. McCarter:

Q. I will put to you then, Dr. Doremus, the same question with the assumption that the liquid consisted of about two quarts of saline fluid, and under those circumstances, her bowel to be removed in the manner I have described and the orifice opened in the manner I have described, what do you say would have been the result with reference to that fluid? A. The fluid would have welled up in the incision would have appeared in the incision.

Q. And would the same be true of a quart—one quart? A. One quart; yes, sir.

Q. Now, one more question, whether or not in the course of professional experience of men patients sometimes suddenly die on the operating table from no given or attributable cause?

Mr. Mott: I think the question should be confined to this witness' opinion.

The Court: You say from the common experience of men.

Mr. McCarter: Well, I think that is a matter of medical history just the same as any other matter. It may never have happened to this man and yet he may know from reading what has happened.

The Court: I think you could ask him if in his opinion it could happen.

Mr. McCarter: I will ask him that.

Q. From your experience and knowledge of the situation do you think that it might happen that patients die upon an operating table with no attributable cause? A. Yes, sir.

Q. Has it ever occurred in your own experience? A. It has.

CROSS-EXAMINATION by Mr. Mott:

Q. Doctor, assuming that the time that the saline injection was made as stated in the question of Mr. McCarter's there was a large tear in the uterus, was there anything to prevent the injection from running out right through that tear and out through the vagina? A. The fluid would run out through the vagina—some of it.

Q. I do not hear you. A. I say it would—the fluid probably would run through the vagina.

RE-DIRECT-EXAMINATION:

Q. Have you in mind in making that answer that the vagina was packed with gauze and the feet elevated? A. No; I haven't that in mind.

Q. It has been proven that the vagina was packed with gauze and it has also been proven that the two legs of the table had been raised by putting books under them and that the patient was in St. Petersburg's, or some other place—Trendelenburg position—what effect would that have upon the fluid remaining in the abdominal cavity? A. The liquid would remain in the abdominal cavity.

RE-CROSS-EXAMINATION:

Q. But if after she died she was laid out on a flat table would not the liquid be absorbed by the packing and run out through the vagina? A. If the packing were not tight, not very tight, so that it would cork the opening, it would run out.

HARRISON S. MARTLAND, re-called by Mr. McCarter:

Mr. McCarter: I am going to ask Dr. Martland first a question on cross-examination, then I will ask him something as my own witness.

Q. I do not remember, Doctor, that I had the brains to ask you what was the thickness of the

walls of the uterus? A. I think I stated in the specimen that I examined that the wall of the uterus was a little over a centimeter in thickness.

Q. That is about two-fifths of an inch? A. That is a little less than half of an inch. A little over would go up to pretty near half an inch.

Q. How much of the uterus did you examine microscopically and grossly and how many specimens—separate specimens—did you make? A. I examined the entire uterus grossly, and with the naked eye, as far as you could reasonably examine with a complete naked eye examination, and I made from the walls of the uterus sections from three different places. For instance from one of those places that was cut on the microtome, that is just a machine for shaving off very fine sections to prepare for microscopic—

Q. Were any of these specimens—these three or four specimens you have spoken of—taken from a portion of the uterus where it appeared to have been the location of the attachment of the placenta? A. There was no indication with the naked eye to judge any definite attachment of anything in the uterine cavity. I have already described that as being in places shaggy—in places smooth. The sections that showed evidence of pregnancy were taken from the upper part of the uterus near one of the tubule extremities and there the inside of the womb was distinctly shaggy.

Q. Where did you find any placental cells in any microscopic sections? A. I found no placental cells in any of the microscopic sections.

Mr. McCarter: That is all on cross-examination.

The Court: Any re-direct on that?

Mr. Mott: No.

DIRECT-EXAMINATION by Mr. McCarter:

Q. You make a great many autopsies, do you not, Dr. Martland? A. I have already testified that I have made over 2000 autopsies.

Q. What do you ordinarily use to sew up the incison in the abdomen? A. We usually sew up the incision in the abdomen with a white cord; it is somewhat like a hard fish line in strength. It is not a linen thread but a white cord. Undertakers are often in the habit of using either black or white thread. They usually carry a spool of that in their kit. They are more apt to use that.

Q. In making an autopsy in the interest of a legal controversy which discloses the absence of a large part of one bowel and three feet of the large intestine, would you say that a failure to examine the stomach contents made that a complete autopsy? A. I do not understand what you mean by an examination of the stomach contents.

Q. Failure to analyze the contents of the stomach. A. To analyze it chemically?

Q. Any way? A. There is a distinct difference, whether the stomach is opened and a naked eye examination of the appearance of the contents of the stomach or whether there is to be a further chemical examination of the stomach which is a very costly procedure and takes considerable time. That depends upon the previous history of the case and suspicion.

Q. Supposing you have a medical legal reason

for the exhumation of a body and upon an autopsy you discover the absence of practically all of the small intestine and a large part of the large intestine, do you consider the autopsy complete which ignores the contents of the stomach? A. Unless there was some special gross evidence of changes in the stomach that would be suspicious or unless there was previous suspicion of the clinical history, I should regard the autopsy as complete, unless there was a possibility of poisoning—as complete without the examination of the stomach contents—without the chemical examination of the stomach contents.

Q. Would the absence of all of this large part of both intestines create no suspicion, making it judicious to examine the contents of the stomach? A. In doing medical legal autopsies or any other autopsy you have a notion of the clinical history of the case before and that guides you a great deal as to the procedure of the autopsy. If you find, for instance, evidence of death in the chest cavity very often you do not go further and examine the brain. The ideal, complete autopsy is the examination of everything as far as you can go. That is often impossible in some cases.

DR. BOND STOW sworn for the defendant:

Direct-examination by Mr. McCarter:

Q. You are a physician and surgeon? A. I have the title of physician and surgeon. I do not practice surgery. I practice medicine purely.

Q. What experience have you had in the medical world? A. I was graduated from the Chicago Medical College in 1899; I was six months interne in the St Luke's Hospital of Chicago, and I have had about three years' experience in the clinics in Europe, mainly in Vienna, chiefly in the study of pathology and internal medicine; and I was for seven years the pathologist, doing the autopsy work at the Metropolitan Hospital on Blackwells Island in New York City.

Q. When you say you were four years doing the pathological work in the hospital at Blackwells Island, New York City—A. Seven years—excuse me.

Q. Seven years—perhaps the jury may not understand what is involved in that? A. My duties at the time was to conduct all the autopsies and superintend the pathological work of the department.

Q. How many autopsies, if you know, have you performed? A. Well, several thousand, probably five or more. I have ceased to keep any record of them now.

Q. Where do you live? A. I live in New York City, 200 West Seventieth Street.

Q. And practice your profession there? A. I do.

Q. Before I forget it I want to ask you this question and see what you think about it. Assume for medical legal reasons the exhumation of a body and the discovery after making the usual incision in the abdomen of the absence of about twenty-feet of the smaller intestine, and three or four feet of larger intestine and a failure to examine the contents of the stomach, would

you consider that a complete autopsy? A. I would not.

Q. Why not? A. Because it is a medical legal case first of all and the question might eventually arise what was the condition of the contents of that stomach, and that question must be met, and therefore I would consider it essential to save the contents of that stomach in a vessel which would be specifically sealed and which I knew could not in any way contain any chemicals that could in any way have contaminated those contents.

Q. If the intestines were removed for a purpose, as, for instance, possibly containing poison, would the stomach possibly show the same thing? A. It might show the same thing and therefore I would preserve it.

Q. Exactly. What is the usual condition of the muscles of the uterus at about six months in pregnancy? A. The individual muscle fibers of the uterus under those conditions are very largely increased, what we call hypertrophied. The individual muscles themselves have to grow in size, both in length and in width, in order to meet the growing conditions of the child or the fetus, therefore the muscles would be much larger and the individual muscle fibers would be considerably larger than they would be under normal conditions.

Q. We, of course, have not got as much familiarity with the features and characteristics of a uterus with particular reference to one that is in pregnancy for six months. Won't you explain to the jury as to the extent of its rigidity, muscular power, contractual power and so forth? A. The

individual muscles—the individual muscle cells on the average increase from seven to ten times their normal size in length, and from three to five times their normal size in breadth. The increase in power is supposed to correspond with its increasing dimensions.

Q. And for what purpose does nature make that provision? A. Nature makes that provision in order that later it will have the power to expel the contents of the pregnancy.

Q. In other words the normal birth is caused by the contraction of the walls of this uterus, is that it? A. Yes, sir.

Q. Upon what authority did you base your statement with reference to the changed conditions of the muscles of the uterus at about six months pregnancy? A. Upon the authority of Professor Koellikar of Wertsburg, and upon a large examination of specimens of the uterus at this time.

Q. Is this Professor Koellikar a man of high authority? A. I know of none higher.

Q. And if the uterus has no evidence of inflammation do you think it is possible to puncture this set of muscles by the form of instruments that is presented before you, operated in a manner that was described by Dr. Young in his evidence?

Mr. Mott: You use the word "puncture." The uterus was not punctured, it was torn. There is a difference.

Q. Punctured or torn. I do not care which you say. A. If I may ask for the question again that I may get it clearly—

Q. Assuming that the uterus has no evidence of inflammation did you think it possible to puncture or tear this state of muscle in the uterus by the form of instruments that is shown you, operated in the manner described by Dr. Young in his evidence?

Mr. Mott: There again you go back to the testimony of Dr. Young. If counsel will briefly recite that I shall not be at all technical.

Q. Did you hear Dr. Young describe— A. I did.

Q. Just give your understanding of how he used or what description you have in mind.

Mr. Mott: I object.

The Court: Objection sustained.

Q. Assuming that—counsel of course for the state is endeavoring to embarrass me by my lack of medical knowledge—and the jury and Court will have to bear with me in my imperfection—assuming that the operating surgeon, Dr. Young, in measuring the uterus used the instrument marked D-4 and found a measurement of over six inches; that he then used the instrument marked D-5, inserting it up to the shoulder or marks indicated and dilated it to its full capacity, and that he then explored the uterus with the sponge forceps, which are marked D-6, for a fetus, which he supposes is within the womb; assuming that the uterus has no evidence of inflammation do you think that it was possible to puncture or tear the state of muscles you have referred to by the form of instruments that have thus been presented to you and whose use I have endeavored to describe? A. I do not.

Q. Please state why not? A. Because of the manner in which they were used.

Q. Anything more you want to say about that? A. I have heard the testimony of the manner in which they have been used.

Mr. Mott: I object. He was asked whether he thought it was possible, using those instruments to puncture or tear the uterus and the answer of the witness is "No; not in the manner they were used," and in making that statement he is going outside of the hypothesis of the question he is asked and is reverting to his recollection of the testimony of Dr. Young.

The Court: Isn't he presumed to be answering within the sphere of the question? In the question certain facts were related and those facts related to the use of the instruments, and isn't it the assumption that the witness based his opinion upon the hypothetical question.

Mr. Mott: If that is what the witness says all right.

The Court: Is that so?

Witness: That is, your Honor.

Mr. Mott: And disregarding everything else excepting the hypothetical question?

Witness: May I explain?

The Court: No, answer that. Do you disregard everything else except what is recited in the hypothetical question?

Witness: If the—

The Court: Please, do you?

Witness: Then you must go back. I must get

clear in my mind what is in your mind. I must understand.

Mr. McCarter: One minute. I suppose I am conducting this examination.

The Court: The Court permits the prosecutor to break in at this point to make the inquiry and the objection made by him. Now, the question that you will answer, Doctor, is this, whether or not in making the statement that you did in answer to Mr. McCarter's long hypothetical question, you made it on the facts stated to you in the question or upon something else or both.

Witness: I made it upon the information of the manner in which the instruments were used as testified by Dr. Young. In that manner he could not puncture the uterus—that nobody could puncture the uterus; yes, sir.

Mr. Mott: I ask that the answer be stricken out.

The Court: Strike it out and answer the question again because it states something that is not in the question. Read the question and only answer with relation to the things in that question.

Q. (Question read.)

Mr. McCarter: I will withdraw the question.

Q. Assuming that the operating surgeon, Dr. Young, in the effort to remove from the womb of Mrs. Truesdell, a dead fetus in assumed pregnancy of six months and that he dilated the uterus with the instrument marked D-5, extending it up to the shoulder or circular piece around it near the end; that after doing so he inserted the

instrument D-4 or curet, and got a measurement of about six inches, and then—

The Court: You mean in the uterus or outside? You mean six inches in the uterus?

The Court: All right.

Q. And then he hunted for the fetus with the sponge forceps that I show you, do you think that it was possible to puncture the state of muscles that you have referred to as characteristic of a uterus in six months of pregnancy, or to tear the uterus in that state of pregnancy? A. I do not.

Q. Why not? A. Because if he reached up about six inches, that he fairly reached the fundus of the uterus with his curet, which he used for the purpose of making an examination as regards the depth of the uterus and therefore he could not have still penetrated a resisting normally constituted muscle wall.

Q. In your judgment, is it possible for the instruments that are there presented to you through a wound in the uterus of any size, or, if you will, extending up the side and across the top to the medium line, to remove twenty-one feet of the small intestine and three or four feet of the large intestine? A. I do not.

Q. Why not? A. I think it would be a physical impossibility.

Q. Why? A. Because the first place an instrument of this sort operated at the angle in which it had to be operated, being smooth, it would be impossible to grab tissue of the nature of intestines or the mesentery, which is smooth, glistening and slippery, and to maintain a hold with

sufficient force against the natural resistance that he would meet with.

The Court: The witness holds in his hand the sponge forceps.

Witness: I hold in my hand the sponge forceps used—forceps that was supposed to have been used at this time.

Q. Is the surface of the intestines slippery? A. Yes, sir.

Q. What is the force of this adherence of the mesentery to its point of fixation? A. Do you refer to the point of fixation to the abdominal wall?

Q. Yes. A. Where it is fixed to the back portion of the abdomen along the vertebra?

Q. Yes. Also include in the answer the force of adherence of the large intestine to its base at the strongest point? A. Well, I have never made the experiment of measuring in pounds how much pressure it would resist, but it would resist a very great pressure.

Q. Do you believe it possible with any of the instruments on either the living or the dead, through a ruptured uterus, torn, if you will, from the mouth to the medium line at the fundus, to remove twenty-one feet of small intestine and three to four feet of large intestine? A. Not in a person who has recently died. Never in the living and not in a person who has recently died.

Q. Within what limit do you confine the word "recent"? A. Well, within two weeks—a month.

Q. Do you think in a uterus four and a half inches in size, as shown by the autopsy, it would have been possible in a state of assumed pregnancy of six months to have inserted the hand

and arm sufficiently far to have been able to have seized with the hand and muscles of the hand and arm have pul'ed away the length of the small intestine and mesentery and the length of large intestine and mesentery that has been so frequently referred to here? A. It would be impossible.

Q. Why is that? A. From the nature of the position he would have to be in to do it and because of the strong attachments of the mesentery to the abdominal walls.

Q. How is it customary in autopsy, Dr. Stow, to sew up the incision in the abdomen that is invariably made—by what material? A. Generally sewed up with cord—some cotton cord—and sewed up generally, as I have ever seen them sewed—ever seen them sewed any other way—except by a continuous suture, as being the quickest and shortest way in which you could get through with that portion of your work.

Q. Suppose twenty-one feet of the smaller intestine with the mesentery and three or four feet of the larger intestine with its appendages were removed and brought out what would you say as to whether there would or would not be a hemorrhage? A. They could not be brought out without a hemorrhage.

Q. What have you to say as to whether there would or would not be fecal odor? A. Could not be accomplished without the rupture and fecal odor.

Q. Suppose within three hours of the death of the patient the county physician—assistant county physician arrived and an incision was made in the abdomen, if twenty-one feet of the small

intestine and three feet of the large intestine and their mesenteries had been removed, would there be any blood in the abdomen? A. I think there would, yes, sir.

Q. How about their being a fecal odor? A. There would likewise be a fecal odor. Your Honor may I modify that last question.

The Court: Certainly.

Witness: I want to modify it in this way. I am assuming that the ends of the gut that have been removed are not tied. If it has been done in a very surgical manner there would be no odor under those conditions, but if the gut had been removed and the ends from which it had been removed left open there would necessarily be fecal odor.

Q. That was not in the question? A. It was not stated in the question.

Q. The proof being that the stump of the minor intestine and the stump of the larger intestine were both left open? A. Then there would be fecal odor.

Q. There could not help be? A. There couldn't help be.

Q. Have you ever in your autopsies come across an anemic brain when you know there has been no hemorrhage? A. Yes, sir.

Q. So that the presence of little or no blood in the brain wouldn't necessarily mean a hemorrhage? A. Yes, sir.

Q. How do you account for that, Doctor? A. There may be a vasomotor constriction of the blood vessel of the brain which would exude the larger portion of the blood from the brain and the

meninges, so that upon immediate examination after death there apparently would be little or no blood in the brain, and meninges.

EDWARD F. ADLER sworn for Defendant:

Direct-examination by Mr. McCarter:

Q. Where do you live? A. Forty-six William Street.

Q. What is your business? A. Undertaker.

Q. Did you accompany Mr. Roemmele to the residence of Dr. Truesdell in Montclair on the 15th day of February last? A. I did.

Q. Did you go up with him in the automobile? A. Yes, sir.

Q. What time did you reach the house? A. Why, I think it was very close to seven o'clock.

Q. Did you go up in the death chamber? A. Yes, sir.

Q. What did you find on the floor of the room, any blood? A. Yes, sir; there was a few blood spots there.

Q. Did you see any blood elsewhere in the room? A. Not that I can remember.

Q. Did you observe the way in which the body —did you notice the incision in the adomen of the body? A. I did.

Q. How was it sewed up? A. There was about three stitches in it, I should judge.

Q. What kind of stitches? How were the stitches fastened together and all that? A. I think it was continuous stitch, I think, I am not sure.

Q. What do you mean by continuous stitch? A. Well, there was just over and under until the end, that is all; there was about three stitches started on one end and ended on the other, as far as I can remember.

Q. Do you remember this gentleman, Mr. Creamer? A. Yes, sir.

Q. Didn't you tell him that you found three distinct sutures or stitches, each one tied? A. No; I do not think—

Q. You did not? A. I do not think I did.

Q. You did not think you did? A. No.

Q Don't you know whether you did or not? A. I am not positive.

Q. What? A. I do not really know whether I did or not. I might have been under the impression at that time from hearing the other man speak of it.

Q. Didn't you tell him that before the other man spoke of it? A. I don't know on what occasion.

Q. Didn't you see Mr. Creamer before this case commenced?

Mr. Mott: When and where? The witness is entitled to know.

The Court: Let us know—fix the time in your question.

Mr. McCarter: I cannot do it all at once your Honor.

The Court: Yes, you can; that is required of you. You should fix the time, place and circumstances and persons present.

Q. About three weeks ago on William Street between Halsey and Washington Street, in New-

ark, didn't Mr. Creamer meet you and didn't you tell him on that occasion and haven't you told him since this case has been tried in the Court room that what you found were these three distinct separate stitches in catgut?

Mr. Mott: I want to object to the question because it involves asking the witness whether he hasn't made this statement on two different occasions. If you strike out the latter part of the question, "And since."

Mr. McCarter: I will strike out the last part.

The Court: Answer with reference to William Street first, three weeks ago.

Witness: Yes, sir.

The Court: Did you make that statement to Mr. Creamer then?

Witness: I do not remember making that statement. I met the gentleman on William Street.

The Court: Did you or did you not make that statement?

Witness: I cannot say for sure.

The Court: Now, the gentleman in the audience who is pointed out, what is his name?

Mr. McCarter: Benjamin F. Creamer.

Q. Did you hear Mr. Roemmele testify in this case? A. I did.

Q. And in this court room, sitting next to Mr. Creamer after Roemmele had testified didn't you tell Mr. Creamer that what Mr. Roemmele testified to was correct? A. I do not remember saying that.

Q. You do not remember saying that? A. No, sir.

CROSS-EXAMINATION by Mr. Mott:

Q You have told us the manner in which the stitches were put in. What material was used? A. Why, I would say it was catgut the same as Mr. Roemmele said.

BENJAMIN F. CREAMER sworn for Defendant:

Direct-examination by Mr. McCarter:

Q. Mr. Creamer, what is your business? A. Undertaker and embalmer.

Q. And where do you carry on your business? A. Montclair, assistant—

Q. Yes. And how long have you carried on your business there? A I have been there about a year.

Q. Do you know Mr. Adler, that just left the stand? A. Yes, sir.

Q Did you see him about three weeks ago on William Street in this city, between Washington and Halsey? A. I did.

Q. Did he on that occasion tell you that the stitches that he saw in the opening—in the incision in the body of Mrs. Truesdell at the time he went into the room were three separate stitches sewed—fastened together separately with a knot? A. He did.

Q. Did he say how far apart they were? A. About two inches—two or three inches.

Q. And how were they tied? A. He said they were tied on the top.

Q. With a knot? A. Knot.

Q. Have you talked to him since the testimony of Mr. Roemmele? A. Nothing more than—

The Court: Yes or no.

Witness: Yes; I have talked with him.

Q. Did he say anything to you regarding the testimony of Mr. Roemmele? A. Nothing directly.

Mr Mott: I object.

The Court: Objection sustained. Fix the time and place, Mr. McCarter, to cover the foundation that you laid.

Q. When did he talk to you in this court room that you have in mind now? A. He never talked to me in the Court room.

Q. It was not in the Court room. Was it with reference to what Roemmele had testified to? A. In a way, it was.

Q. Just answer. I will come later to what it was. A. Yes, sir.

Q. Where was the talk? A. Outside, I don't just remember the exact spot.

Q. In the neighborhood of the Court house? A. Yes, sir.

Q. Do you remember when it was? A. Yesterday, I guess.

Mr. McCarter: Now, I would like to ask this man to stand up a moment.

EDWARD F. ADLER resumed the stand for further direct-examination by Mr. McCarter:

Q. I ask you now, if outside here, somewhere in the neighborhood of the Court house, you did not

have a talk with Mr. Creamer, on the stand, to the effect that you had heard Roemmele's testimony and that it was substantially correct? A. I do not remember speaking to him yesterday at all.

Q. Or the day before? A. Well, I think I did speak to him the day before going to lunch.

The Court: Did you say that. That is the question.

Witness: Say what?

The Court: What Mr. McCarter has already stated that Mr. Roemmele's testimony was correct with reference to the stitches?

Witness: I do not remember stating anything about it.

BENJAMIN F. CREAMER resumed the stand for further direct-examination by Mr. McCarter:

Q. What did he say?

Mr. Mott: I object.

Q. Did he say to you either yesterday or the day before outside here in the neighborhood of the Court house, that what Mr. Roemmele—substantially that what Mr. Roemmele had sworn to was correct? A. No, sir; because day before yesterday Mr. Roemmele had not testified.

Q. Well, then, yesterday? A. Yesterday; well, I couldn't say. I do not believe he said that it was correct.

Q. He did not use the word "correct"? A. No; he did not.

Q. What did he say? A. I can't just remember what he said; the whole drift of the conversation.

The Court: You cannot talk about the drift of the conversation.

Witness: The only time he told me about the stitches was—

The Court: That is all. You are not asked anything.

Mr. McCarter: That is all.

EDNA N. SWARTZ sworn for defendant:

Direct-examination by Mr. McCarter:

Q. You live where? A. Forty-seven Orange Road, Montclair.

Q. Do yon know Mrs. Truesdell, the mother-in-law of young Mrs. Truesdell? A. I do.

Q. Did you know her daughter-in-law, Mrs. Truesdell? A. I did.

Q. At the request of Mrs. Truesdell, did you the day after her death go to the apartment? A. I did; two days after.

Q. The day after the body was taken away? A. Yes, sir; the day after it was taken away.

Q. Did you go into the kitchen? A. I did.

Q. What did you find the condition of affairs there? A. I found blood on the floor, blood on the side of the tubs and blood on the side of the sink.

Q. Did you notice any coal scuttle? A. The coal scuttle was there but I think it was empty.

Q. Did you see any sheets around? A. I did.

Q. Where were they? A. They were in the tubs.

Q. What condition were they in? A. The tub was full of blood.

Not cross-examined.

MATILDA W. TRUESDELL sworn for defendant:

Direct-examination by Mr. McCarter:

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

Q. Did you take over some supper to your son that night? A. Yes, sir.

Q. Do you remember with reference to the fact of your arrival with that supper whether or not the undertakers had come? A. No, they had not.

Q. What time did you reach the house? A. A little before seven.

Q. Were you there when the undertakers arrived? A. No; I was not.

Q. They were not there yet? A. No.

Q. What time did you leave the house? A. About five minutes of seven.

Q. And the undertakers had not yet come? A. No, they had not.

Q. Had you been there before that afternoon? A. Yes, sir.

Q. Were you there when Dr. Young left the house? A. Yes, sir.

Q. Can you tell us about what time that was? A. That was about five o'clock.

Q. How late did you remain—how long did you

remain after that? A. I remained about ten minutes after six or quarter after; I don't know.

Q. And did Dr. Young return to the house? A. No; he did not.

CROSS-EXAMINATION by Mr. Mott:

Q. Mrs. Truesdell, you took the supper—what time was it you said you took the supper over to your son's? A. What time? I left the house half past six—my home.

Q. You left your home half past six? A. About half-past six, yes, sir.

Q. How long did it take you to go over there? A. About five minutes or so.

Q. Then you got there about—back with the supper to the house about five minutes to seven? A. Oh, no, about twenty-five minutes of six. It took me about five minutes from my home to go to my son's home.

Q. Then you got back with the supper to your son's home about twenty-five minutes of six? A. About twenty-five minutes of six.

By the Court: Q. To six or after six? A. After six—no twenty-five minutes of seven, that it what it was.

Q. The undertaker was not there? A. No.

Q. How soon did the undertakers come? A. I don't know.

Q. You didn't see them? A. No, I didn't see them.

Q. Then how long did you stay there at the house? A. Well, I set the table and I got things ready and I stayed there, I guess, about fifteen minutes or so.

Q. And then where did you go? A. I went right direct home.

Q. You were not there at all while the undertakers were there? A. No, sir; I was not.

Q. Who was there in the house while you were there? A. Fred Wolf and Mrs. Wolf.

Q. Are they the only ones? A. And my son.

Q. And your son? A. Yes, sir.

Q. They are the only ones? A. Yes, sir.

Q. Did you have your supper there at the house there that day? A. No; I did not.

Q. Were you there when the table was set? A. I set the table; yes, sir, and my son and Mrs. Wolf and Fred Wolf set down at the table before I left.

By the Court: Q. Did you go in the kitchen? A. No, I did not.

Q. Was the door between the room where you set the table and the kitchen closed? A. The kitchen is quite a ways from the dining-room, yes, sir.

Q. Well, was the door into the kitchen closed? Could you see into the kitchen? A. No; I could not see into the kitchen.

Q. You don't know whether anybody was in there or not, do you? A. No; I do not.

HENRY GALLAGHER sworn for defendant:

Direct-examination by Mr. McCarter:

Q. I want to ask you a single question, Chief. You are Chief of Police of Montclair? A. Yes, sir.

Q. Do you remember on the day of—evening, rather—late afternoon—that Mrs. Truesdell died, that Dr. Simmons called upon you at the headquarters? A. Yes, sir.

Q. I want to ask you this simple question because this is all I am permitted to ask you. You answer either yes or no, as the fact is. On that occasion did Dr. Simmons say to you that he was glad to see there was no blood in the abdomen of Mrs. Truesdell? A. Yes, sir.

Q. And that he had told Dr. Young that the absence of blood looked good for him? A. Yes, sir. he did.

Not cross-examined.

DR. JOHN H. YOUNG, re-called for further direct-examination by Mr. McCarter:

Q. Dr. Young, Judge Martin has announced his view that I may ask you a question that I was not permitted to ask yesterday and I will now ask you the nature of the results of your 380 odd birth cases with reference to maternal health or death. A. In the State of New Jersey, I have filed 389 birth certificates, of these has been but one maternal death and that was a case of a woman who had—

Q. And what did she die of? A. Labor pneumonia, contracted three days before labor set in.

Q. Did these cases that you have referred to include what is known as caesarean cases? A. Nine of them were delivered by caesarean sections.

Q. Explain that to the jury? A. That means the opening of the abdomen, opening the wall of the uterus, the child is abstracted from the abdominal wall instead of by the natural root.

Q. With what success? A. All those mothers went home with the exception of one, and four days after she was up and around the ward she had an attack of asthma, her heart dilated and she died a few minutes after being put back in bed.

Q. I would like you to tell the nature of your talk with Dr. Richman when you went to see him after the death of Mrs. Truesdell?

Mr. Mott: I object.

The Court: Dr. Richman made a statement of what Dr. Young said to him about having difficulty in trying to enter the cervix. Now, can't he state what that conversation was?

Mr. Mott: He has not denied it. I think he should be asked whether he said what Dr. Richman said he did.

The Court: Why do you confine him to a mere denial without stating in detail the whole conversation. I think he may state the conversation.

Q. Just state what the conversation was as well as you can remember—in the first place I am going to change my question. Can you locate the time of the conversation wih Dr. Richman with reference to the death and the report of the exhumation? A. Yes, sir; the date of my visit to Dr. Richman was sometime between the death of that girl and her first burial. It was on Tuesday she died. It was Wednesday or Thursday. I do

not remember the exact date. It was in the evening.

Q. Now, recite the interview. A. I told Dr. Richman of her death; of what I was undertaking to do, to empty the uterus of the dead fetus interrupted between the third and fourth month; that all that I knew of the girl previous to this time was that she had slight pyelonephritis that cleared up as to albumin. I do not remember that I told him about the oxaluria—the examination made on the third. I may have. I told him that the autopsy showed that there was a rupture of the uterus.

Q. You are referring to the autopsy that you and Dr. Simmons made? A. Dr. Simmons, yes, sir, and that there may have been a loop of small intestine down into that uterus. I asked him, with his connection with the Wolf family—my knowledge that he came through the previous operation the preceding May and in their grief I thought that he, knowing what I had encountered, that he might help them to some extent.

Q. And was it on that occasion that he made the remark that you have already said to Mr. Mott that you had a hell of a time to get into the uterus? A. Yes, sir.

Q. Is that about the extent of the conversation? A. He asked me if he should go to them—

The Court: That does not open up the rest of the conversation. He says that he did say what Dr. Richman said.

Q. Turning now to another subject. Reference has been made by someone to the fact that a spool of thread that has been referred to was taken by you to the prosecutor? Will you tell us how you

happened to do that? The newspaper men told me—

Mr. Mott: I object.

The Court: Objection sustained. The prosecutor said he voluntarily came, and you have accepted it as I understand it.

Mr. McCarter: The question is about the thread, not his going to the prosecutor.

The Court: You asked him how he came to go.

Mr. McCarter: How he came to take the thread down.

Q. Now, had you had any conversation with the prosecutor before you took the thread down? A. On the preceding day.

Q. Tell us what occurred? A. On the preceding day, as the prosecutor left the room, Dr. McKenzie and Dr. Washington told me of the horrible mutilation of this body; how that I knew that something had happened to that body from the time I left—

Mr. Mott: I object.

The Court: Objection sustained, and motion to strike out granted.

Q. Never mind what you know. You heard that? A. Yes, sir.

Q. Go on. A. Then I wanted—then I took the thread to him the next day.

Q. What did you say to the prosecutor, if anything?

Mr. Mott: I object.

The Court: How is that competent?

Mr. McCarter: What he said to the prosecutor in handing him this thread.

The Court: Yes, he took it to him and handed it to him.

Mr. McCarter: I think what he said when he handed it to him—

The Court: This is long after what happened, if anything did, on the day we are making our inquiry about.

Mr. McCarter: I offer to prove what he told the prosecutor with reference to the thread—why he brought it there.

The Court: It is not a denial of anything, is it?

Mr. McCarter: I don't know whether it is denial or in furtherance of I offer to prove what he said to the prosecutor when he took down the thread the day he took it and left it.

Mr. Mott: I object.

Objection sustained.

Defendant's counsel prays an exception to this ruling of the Court.

The same is allowed and it is signed and sealed accordingly.

WM. P. MARTIN, (Seal)
Judge.

Q. What time did you leave Mrs. Truesdell's apartment the day of the operation? A. About five o'clock.

Q. Did you go right home? A. Directly.

Q What did you do when you reached home? A. Threw off some of my clothing and laid down on a settee in the front room, first floor of my home.

Q. How long did you remain there? A. Until a little after seven.

Q. Then what occurred? A. Then, some people came into my office, my people wakened me and I got into my clothes and went into the office.

Q. And attended to your office business? A. Yes. sir.

By the Court: Q. Are you a specialist in obstetrics? A. No, sir; I am in general practice.

Q. Is this a part of the duty, as you understand of an obstetrican, or is it an ordinary operation? A. It is an ordinary operation.

Q. Usually performed by a surgeon? A. No, sir; by a man in general practice.

Q. Not by a specialist or an expert? A. No, sir.

Q. Caesarean section would require an expert surgeon? A. It would require a man with knowledge of surgical technique, knowledge of anatomy and practice—man who had given special attention to obstetrical work.

DR. WILLET W. BROWN sworn for defendant:

Direct-examination by Mr. McCarter:

Q. You are a practicing physician, Doctor? A. Yes, sir.

Q. Where do you practice? A. In Montclair.

Q. How long have you practiced? A. Since 1910.

Q. Are you a friend of Dr. Young? A Yes, sir.

Q. Have you had occasion in your practice to

employ him to assist you in obstetrical cases? A. Yes, sir.

Q. Why? A. To give anesthetics and to assist me in difficult cases.

Q. Because of your faith in his medical skill? A. Yes, sir.

Q. Were you with Dr. Doremus at the Flower Hospital in New York when some experiment was made with reference to the removal and test of the power of resistance of the mesenteries in connection wth the intestines of a corpse? A. I was.

Q. Just describe what occurred. A. We found a male body of about—small stature—and opened up the abdomen by a central incision. So as to get more freely at the intestines we slit the abdomen across, that is both down and across and opened the flaps so we had free access to them. First off—the sequence of events I am not absolutely certain of—but I think the first thing I think we did was I tried to pull the ascending colon, which runs on the right side of the body—up on the right side of the body—it is the large intestine—and I grasped it with both hands and made pressure on it and I was able to slide the body but the attachments of the colon did not give. Then Dr. Doremus took hold of the intestine—the small intestine and made pressure on the mesentery of the small intestine by raising up and he was able to move the body perceptibly at the hips. The mesentery seemed to give just as he raised the body, but not to tear—not to tear away at the spine at any rate. Then we made a further test by trying to pull down the transverse

colon or that section of the big intestine which lies across the upper part of the abdomen and found that it was practically impossible without an enormous pull to relieve this spleenic ligament or the fold of the mesentery—you might say mesentery of the large intestine which attaches this curve of the large intestine to the diaphragm and that section of the body—posterior wall.

Q. Was it finally removed? A. Yes, sir.

Q. By what means? A. Cutting.

Q And after it was cut how did the remnant appear? A. The remnant appeared, naturally, jagged edge to it.

Q. As if it had been what? A. Been torn.

CROSS-EXAMINATION by Mr. Mott:

Q. How much did the body weigh, Doctor? A. We had no scales there. We had no way of making a definite estimate. I should say probably a hundred and twenty pounds.

The Court: Man or woman?

Witness: Man.

The Court: Body of a man and how old?

Witness: That is equally hard to estimate, your Honor.

The Court: Well, about?

Witness: Approximately between 40—well, about 40, I should think.

The Court: Man about forty?

Witness: Yes, sir.

RE-DIRECT:

Q. Have you ever seen Dr. Young operate? A. Yes, sir; I have assisted.

Q Assisted? A. Yes, sir.

Q. In uterine or abdominal operations? A. Yes, sir; caesarean section; and I have also seen him do laparotomies for instance, retroverted uterus, that is uterus where it has dipped back in a posterior position. Uterus normally of a woman stands in rather a forward position. Sometimes they are dipped back and in those cases they are pulled up into their normal position. I have seen Dr. Young operate on those. I have seen him operate for an amputation of an arm too, where there was sarcoma of the arm.

Q. Is that a tumor or cancer? A. Cancer—form of cancer; I have seen him do breast amputations; I have seen him do appendix operations—operations for the appendix—appendicitis, I have seen him do tonsils and adenoids, and in fact he operated on my own wife for tonsils and adenoids.

Q. What skill have you found that he possesses as surgeon and operator? A. Well, I think that is best judged by the fact that I turned my own wife over to him to operate on.

Mr. Mott: I ask to have that answer stricken out.

The Court: Strike it out.

Witness: Excellent skill.

RE-CROSS:

Q. There are different schools of medicines, aren't there, Doctor? A. Yes, sir.

Q. To which school do you belong? A. Homeopathic.

Q. Do you know Dr. Stow? A. Yes, sir.

Q. What school does he belong to? A. Allopathic.

Q. He is an Allopath? A. Yes, sir.

Mr. McCarter: There was one prominent physician we expected. If he comes in I would like the privilege of calling him but with that exception we rest; Dr. James Spencer Brown.

Mr. Mott: No objection.

Defendant rests.

DR. H. HERBERT SIMMONS re-called for the state in rebuttal:

Direct-examination by Mr Mott:

Q. Doctor, when the partial autopsy was performed by you with Dr. Young did you remove anything before you could see the uterus? A. No, sir.

Mr McCarter: I object. This has been thoroughly gone into in the main case. Examined on both sides.

Mr. Mott: Not this question.

Mr. McCarter: On the whole subject of what happened in the main case.

Mr. Mott: Since then Dr. Young has gone on the stand and made some statement as to what Dr. Simmons did.

Mr. McCarter: Well, are you to go back and forth and go back and forth. Dr. Simmons has described what occurred at the autopsy in full, on direct-examination and fully upon cross-examination; Dr. Young also described what occurred at the same place. Now, there are the two stories. I

do not understand that you can call back on the man and have him describe again what occurred. If Dr. Young stated something that Dr. Simmons said on that occasion and the state proposes to have Dr. Simmons deny it, I should think that would be competent, but I do not think they can re-open on rebuttal of the facts and the acts that took place when they have been described on both sides in the main case.

The Court: The matter is one purely of discretion and it ought not to be allowed in the discretion of the Court unless something has been overlooked. Now, on the part of the state it may be very well urged that the state when Dr. Simmons was on the stand did not know the exact nature of the defense nor did it know what the defendant himself would say as to the extent of the examination of Dr. Simmons. I think under those circumstances it is fair enough to allow the matter to be reopened.

Defendant's counsel prays an exception to this ruling of the Court.

The same is allowed and signed and sealed accordingly.

WM. P. MARTIN, (Seal)
Judge.

(Question and answer read.)

Q. Did Dr. Young before you could see the uterus remove anything? A. No, sir.

Mr. McCarter: I make the same objection.

The Court: Same ruling.

Defendant's counsel prays an exception to this ruling of the Court.

The same is allowed and sealed and signed accordingly.

WM. P. MARTIN, (Seal)
Judge.

Q. As soon as the incision was made and the parts opened was the uterus in view without the removal of anything? A. The upper part of it.

Q. Were you present when the body was sewed up? A. Yes, sir.

Q. Who sewed it up? A. Dr. Young.

Mr. McCarter: That has all been gone into, your Honor, the whole thing.

Mr. Mott: Not one word in the testimony of this witness on the subject. I have a transcript of his testimony and there wasn't one word of testimony by Dr. Simmons in my transcript.

Mr. McCarter: You are inaccurate. Of course you do not mean to be, but this man has testified with reference to that. He said it was a continuous suture, in our notes here.

Mr Mott: The stenographer has handed me a transcript and it is not in it. He must have left it out.

(Testimony read.)

Q. Do you know what material Dr. Young used in sewing up this body?

Mr. McCarter: I object to that I do not see any reason for reopening that subject your Honor. He has been examined upon it.

Mr. Mott: Not on that subject.

Mr. McCarter: I certainly think there is some limit to a rebuttal. The subject of what occurred at that autopsy was fully covered by Mr. Mott and I endeavored to cover it as well as I could by the cross-examination.

The Court: There isn't any statement in the record as to what Dr. Simmons said the material was. He may be examined as to that.

Mr. Mott: At the time Dr. Simmons was on the stand before it never occurred to me that there would be any dispute as to the material used in sewing up the wound.

The Court: I think it is rebuttal but anyway if it is not, in the discretion of the Court, I think it is eminently proper to allow it in.

Q. What was used, Doctor? A. Catgut.

Q. What is your recollection about that matter? What do you base that on? A. Only from the looks of it.

Q. Did you see a spool of thread there at all? A. No, sir.

CROSS-EXAMINATION by Mr McCarter:

Q. Where did you see him take that catgut from? A. He reached over back of him and got it. I don't know just where.

Q. Back of him? A. Yes, sir.

Q. Had he washed his hands? A. Had he?

Q. Had he? A. I don't think so.

Q. Who threaded the needle? A. It was already threaded.

Q. Who threaded the needle? A. I didn't see anybody thread it.

Q. Did you see a needle? A. He reached over and got a needle.

Q. Did you see a needle? A. Yes, sir.

Q. Describe it? A. It was a regular operating—that is surgeon's needle.

Q. How near were you to the needle and thread, or needle and whatever it was that was used to sew up— to make the sutures? A. Well, I was as close to the body as I could get. I stood right up by the side of it.

Q. Have you described all that you heard or saw previous to the incident of the sewing operation? A. Why, there was very little said. I don't know just what I have said with reference to that.

Q. I mean with reference to the sewing? A. I do not remember just now.

Q. What? A. I don't remember just now what else was said or may have occurred.

Q. You recall nothing else, do you? A. Not just now, no, sir.

Q. What do you mean by not just now? A. Well—

Q. You either recall or you do not recall it? A. I do not recall it at this moment.

Q. Do you recall it? A. I do not recall anything else at this moment.

Q. Wasn't your hearing as good as your sight? A. Yes, sir.

By the Court: Q. How were the stitches, Doctor, that Dr Young took? Were they separate stitches; separately fastened or were they continued? A. Continued.

Q. With catgut? A. With catgut; yes, sir; over and over.

Q. Do you remember how many stitches there were? A. Why, three or four.

Q. You do not conduct autopsies, I think you said, Doctor? A. No, sir; not complete autopsies.

ANNA WOLF, re-called for the state in rebuttal:

Direct-examination by Mr. Mott:

Q. Mrs. Wolf, did you have supper at your son's house that night? A. Just a few spoonfuls of soup.

Q. Who was there at the time? A. Mrs. Truesdell, my son and Dr. Truesdell.

Q. Your son, what is your son's name? A. Fred.

Q. Do you remember the undertaker coming? A. Yes.

Q. Do you remember Dr. Young going away? A. Yes, sir.

Q Where were you from the time Dr. Young left the house until the undertaker came? A. I was in the side room off the dining-room.

Q. During the time from the time Dr. Young left and until the undertaker came, who was in the house? A. My son and Mrs. Truesdell—no, she left—my son and Dr. Truesdell and myself and a friend of his came, I think from Philadelphia, but I cannot recall the name.

The Court: That is the friend from Philadelphia?

Witness: I believe it was.

The Court: Your son Fred?

Witness: He was there, too.

The Court: And Dr. Truesdell, you said?

Witness: Yes, sir.

The Court: And some friend of Dr. Truesdell, you said?

Witness: Yes, sir.

Q. From the time that Dr. Young left until the time that the undertakers came did you see any one do anything to the body of Emma? A. No I did not. I do not believe anybody was in there.

Mr. McCarter: No. Not what you do not believe.

The Court: You make a motion to strike out "I do not believe"?

Mr. McCarter: Yes, sir; I do.

The Court: Motion granted.

Q. Where was her body during that time? A. In the kitchen.

Q. Were you in the kitchen at all during that time? A. No, sir.

Mr. McCarter: Already been asked and she said she was not there until after the body was prepared by the undertaker, at nine o'clock.

Q. Did you go into the kitchen at any time after the operation? A. I did not.

Mr. McCarter: She has been examined about this.

Mr. Mott: No, she has not.

Mr. McCarter: Pardon me. I want to finish my argument. I will say that the notes that my associate took show that this

lady said she remained in the front of the house during the evening talking to the different sons and that until the undertaker had prepared the body she did not go into the kitchen. I do not think it is proper or necessary for a case of this length to reiterate what she has already testified.

Q. Did the undertaker move the body from the kitchen into another room? A. Into the alcove.

Q. After that was done did you go into the kitchen? A. Well, I was in the kitchen after the body was removed.

Q. Did you see any tubs there? A. Yes, sir.

Q. What did you do with reference to them? A. Why, I looked into the wash tray.

The Court: What is that?

Witness: I looked into one of the wash trays.

The Court: You mean laundry tub?

Witness: Yes, sir.

Q. What did you see there? A. Why, it was filled with towels and sheets.

Q. What was their condition? A. Well, they were discolored.

Q. How? A. Well, it looked as though they had been washed out and blood had been on them.

Mr. McCarter: I object and move to strike it out.

The Court: Your motion is to strike it out because it states a conclusion?

Mr. McCarter: "It looked so and so." She did not see what happened.

The Court: She said it looked as of blood had been on them.

(Answer read.)

The Court: She cannot state "Blood on them." She can state it looked red, like the color of blood. I do not think she can say it looked as if blood had been on them. It might have been red ink or some other substance.

Mr. McCarter: My objection is not that it was red ink. My objection is for her to undertake to enter into any speculation as to what had been. She can describe what she saw, whether it was red, yellow, green or blue. As to any inference as to what it had been is improper evidence and I move it be stricken out.

The Court: Motion granted.

Q. Describe, Mrs. Wolf, just how those articles looked that you saw there? A. Well, they were darkened, they looked as if blood had been on them.

Mr. McCarter: I make the same motion. I do not think the witness ought in violation of the ruling to repeat the same answer.

The Court: You have got to extend a little leeway to a witness that does not comprehend well. Can you describe it without calling it blood, Madam?

Witness: I don't know what to call it.

The Court: What was its color?

Witness: Well, it was not red, but there had been blood on it.

The Court: Now, you are referring to the towels and sheets.

Witness: Yes, sir.

The Court: Did you ever wash blood off of a towel or sheet, human blood?

Witness: Yes, sir.

Not cross-examined.

FREDERICK L. WOLF re-called for the state in rebuttal:

Direct-examination by Mr. Wolf:

Q. Mr. Wolf, were you at your sister's house at the time Dr. Young left until the undertaker came? A. I was.

Q All the time? A. All the time.

Q. Who was there in the house during that period? A. Until the undertaker came?

Q. From the time Dr. Young left until the undertaker came. A. Dr. Paul Truesdell, Mother, myself and Mrs. Truesdell came in.

The Court: The mother of the doctor?

Witness: Yes, sir.

Q. Were you and Dr. Truesdell the only men there? A. Only men.

Q. During that time did you open the wound in your sister's abdomen and remove any of the parts? A I did not go into the kitchen.

Q. Well, did you? Answer my question. A. How could I?

Q. Answer my question? A. I did not.

Q. Do you know whether anyone during the time intervening—the leaving of Dr. Young and the arrival of the undertaker, was in the kit-

chen? A. Nobody was in the kitchen to my knowledge.

Q. Was there any man in the kitchen during that time? A. Not that I know of.

Q. What were you doing during that time? A. Trying to console mother.

Q. And where were you? A. In the room off the dining-room, side room.

Q. Where was Dr. Truesdell? A Part of the time in the parlor and part of the time in the bed room—wandering back and forth.

CROSS-EXAMINATION by Mr. McCarter:

Q. Will you give us the arrangement of that apartment, Mr. Wolf, please? A. Beginning from the front there was an alcove, and off the alcove there was the front room, then the dining room, and off the dining room a side sitting room; behind the side sitting room, a bedroom; alongside of that a private hall leading from the dining room into the kitchen—kitchen alongside of the bedroom; and between the private—between the bedroom there was a bath room and pantry off the private hall.

Q. So that between the front room and the kitchen there were how many different apartments? A. Between the front room and the kitchen there was a dining room, private hall and the bathroom on the left of that, as I am sitting now.

Q. Where was the dining room? A. I said the dining room, private hall and bathroom off the side of that.

Q. And you spoke of some sitting room; where was that? A. That was on the right—or let me

see that was on the side of the dining room; it was off the dining room. It was a sort of alcove room off the dining room.

DR. PAUL TRUESDELL re-called for the state in rebuttal:

Direct-examination by Mr. Mott:

Q. Doctor, were you in your home from the time Dr. Young left until the undertaker arrived? A. I was.

Q. What were you doing during that time? A. Why, the whole time that my mother was with me until she left for supper I was sitting in the front room, sitting in the morris chair with my mother on the same chair or in my lap, either of the two.

Q. Who was in the house during that period? A. Mr. Fred Wolf and his mother and my mother and myself.

Q. During that period did you go to the body of your wife and remove any of the organs from it in any way? A. Certainly not.

Q. Do you know of any one doing it during that period? A. I don't know of any one doing it.

CROSS-EXAMINATION:

Q. You are under indictment in this Court? A. I am.

Q. You have been promised or your counsel has been promised by the state if you testified in this case you will be relieved from that indictment,

haven't you? A. I believe that is the understanding, is it not, Mr. Mott?

Q. That is all.

RE-DIRECT:

Q. You are under indictment in this Court jointly with Dr. Young for performing a criminal abortion on your wife, are you not? A. Yes, sir.

Mr McCarter: I object as immaterial.

The Court: That is proper.

State rests.

JOHN H. YOUNG re-called in sur-rebuttal:

Direct-examination by Mr. McCarter:

Q. You volunteered the information yesterday that in your kit was some catgut? A. Yes, sir.

Q. In view of the testimony of Dr. Richman I want to ask you—Dr. Simmons—I want to ask you whether on this day—whether or not that catgut was laid out on the place there with the other instruments? A. No, sir; it was not.

Q. How was it carried? A. It is carried—in the first place my catgut in my obstetrical outfit is in a mailing case with a little screw top. Inside of that are a dozen tubes sealed in glass containing an antiseptic fluid.

Q. Now, to get a piece of catgut out of there what do you have to do? A. I would have to snap the tube—there would be a noise that would be heard throughout the room; put the tube in a

towel so that the glass would not cut my finger.

Q. Did any such performance take place that day? A. No, sir.

Not cross-examined.

Defendant rests.

Adjourned until to-morrow morning at ten o'clock.

May 12, 1916.

FIFTH DAY

Appearances as before stated.

Counsel summed up.

Recess.

Charge

MARTIN, J.:

Gentlemen of the Jury. The function of the Court is to instruct the jury in reference to the principles of law governing the case. The principles of law as charged should be accepted as a correct statement of law. The jury, however is the sole judge of facts, weight of testimony, credibility of witnesses, inferences to be drawn from the evidence and the ultimate conclusions to be reached upon all of the facts. The Court in re-

ferring to the evidence is not to be understood as deciding any fact but merely as attempting to illustrate or explain the application of the principles of law. If the Court errs in its statement of any evidence or assumes the existence of evidence that is not actually before the jury, the jury is to rely upon its recollection and not upon the recollection of the Court. If any part of the evidence is referred to, seemingly giving it particular emphasis, the jury is not to disregard other evidence which it may deem of equal or greater importance. It is the duty of the jury to consider and weigh all the evidence and pertinent proof bearing upon the question of the guilt of this defendant, not only the evidence that is mentioned by the Court but all of the facts which may appear by the testimony. If it has been suggested or stated during the course of the trial that some facts have or may have occurred, or matter has been offered as evidence and excluded, or matter has been presented and subsequently stricken out, the jury should disregard all such suggestions, statements, offers and excluded matter. The verdict can lawfully and properly be based only upon the testimony remaining in the case. In this connection there was one incident in the trial to which the Court ought specially to direct your attention. The defence called Adler, a witness who testified here, under oath, before the jury, to certain conditions which he observed about the stitches and material used in sewing up the incision. He was confronted, with an alleged contradictory statement, by the defendant's counsel, made three weeks ago on William Street; that is to say that the witness Adler was confronted by defendant's

counsel with an alleged contradictory statement made by Adler three weeks ago on William Street to one Creamer. This last statement, made elsewhere, was not under oath nor was it subject to cross-examination and therefore cannot be considered as evidence in this case of the truth of the facts which the alleged statement made elsewhere contained. The purpose for which it was admitted is to efface or neutralize the evidence which it discredits; and the jury may, if they think it worthy of that effect, conclude that it withdraws the evidence it tends to discredit just the same as if such evidence never had been introduced. In other words it may be permitted to wipe the slate clean, but it cannot substitute, as evidence, the statement of Adler to Creamer, for the evidence of Adler here under oath.

The law presumes that the defendant is innocent. This presumption can be overcome only by evidence showing beyond a reasonable doubt the guilt of the defendant, and the burden of proving the guilt of the defendant beyond a reasonable doubt is upon the State and does not shift from the State throughout the whole case.

> "Reasonable doubt is a term often used, probably pretty well understood, but not easily defined. It is not a mere possible doubt; because everything relating to human affairs, and depending on moral evidence, is open to some possible or imaginary doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of jurors in that condition that they cannot say they feel an abiding conviction,

to a moral certainty, of the truth of the charge. The burden of proof is on the prosecution. If upon such proof there be reasonable doubt remaining, the defendant is entitled to the benefit of it by an acquittal. The evidence must establish the truth of the fact to a reasonable and moral certainty, a certainty that convinces and directs the understanding, and satisfies the reason and judgment of those who are bound to act conscientiously upon it. This is taken to be proof beyond a reasonable doubt; because if the law should go further than this, and require absolute certainty, it would exclude circumstantial evidence altogether."

The defendant is presented here upon an indictment found by the Grand Jury charging him "for that he did feloniously kill and slay one Emma C. Truesdell, on the 15th day of February, 1916." The charge against the defendant is that he is guilty of manslaughter. There are two kinds of manslaughter, one voluntary and the other involuntary. The jury has to deal only with the latter, involuntary manslaughter, a killing without any malice and without any intention. If the jury finds that Emma C. Truesdell came to her death by reason of the gross neglect of this defendant with regard to a plain duty that rested upon him under the law, evincing a reckless disregard of human life, the defendant is guilty. The State must show, (1) that Emma C. Truesdell came to her death by reason of the injuries which she received at the hands of the defendant; (2) that there was some plain duty resting upon the de-

fendant at the time. A physician or surgeon undertaking the treatment of a patient is not required to exercise the highest degree of skill possible; he is only required to possess and exercise that degree of skill and learning ordinarily possessed and exercised by the members of his profession, in good standing, practicing in similar localities, and it is his duty to use reasonable care and diligence in the exercise of his skill and the application of his learning and to act according to his best judgment, and he is not responsible for a mere error of judgment or a mere mistake. (3) That the plain duty resting upon the defendant was grossly neglected by the defendant—not merely neglected in a manner giving rise to a civil action for damages, but in a gross and criminally negligent manner, a manner evincing reckless disregard of human life, and, (4) that as a result of this gross and criminal negligence, if the jury finds such existed on the part of this defendant, Emma C. Truesdell received injuries from which she died.

The evidence in this case has been voluminous, occupying the most of four days in its presentation. In the circumstances the Court will content itself by making only a few observations with reference to some of the matters which have finally been proven and some of the matters which each side contends have been shown by the testimony and other evidence in the case. There are some facts which seem to be established by the evidence: (In this respect the Court admonishes you, as heretofore stated, that the Court is stating only its opinion and it is for you to decide whether or not they are in the evidence); that Emma C.

Truesdell was the wife of Paul E. Truesdell; when she was married she weighed about 80 pounds and at the time of her death 100 or 110; she was about five feet tall only; twenty or twenty-one years of age; there is no evidence that she ever had a child, full grown, delivered prior to the occasion in question; (there is some evidence of a prior operation) that Mrs. Truesdell became pregnant last summer and that the child would probably have been born in the due course of nature about the 5th of May, this year; that evidently the fetus died and it became desirable and apparently eminently proper to remove the contents of the uterus; that on Tuesday, the 15th day of February, 1916, she did not apparently, so far as the testimony affirmatively shows, eat anything during the morning—her husband said she had nothing while he was there and he was out an hour—that shortly before the operation she was given a dose of H. M. C. and placed on the operating table; that the defendant arrived later and commenced his operation by dilating the uterus; that he discovered no fetus; that something of tissue looped out and later dropped into a pail; that the defendant subsequently packed the vagina with gauze, sent for another physician and surgeon, and that about the time of his arrival Emma C. Truesdell died; Dr. Simmons came later, about 4 o'clock, and the defendant made an incision in the abdomen five or six inches in length; the uterus was examined; a tear was found in the side extending over to the large end; the defendant sewed up the incision in the presence of Dr. Simmons, Miss Speicher and Miss Regan later the undertaker's embalmer Roemmele came with Adler and Roemmele cut

three stitches of catgut, which he says he found; that he sewed up the incision to make the cut more secure with a white thread, using a continuous "base ball stitch," and that he embalmed the body by introducing the fluid by a trocar into the upper and lower cavities of the body and by drawing off a small quantity of blood from the artery under the right arm; the body was buried on February, 19, 1916, and on March 3d it was exhumed, and Drs. Washington, Hicks and Richman, on March 4th, were present at what has been called a second autopsy, and later Dr. Martland examined the uterus and certain other parts of the body which were preserved in a solution, the possible effect of which was slightly to reduce the size of the uterus; the second autopsy showed that pregnancy had in fact existed; I think Dr. Hicks and Dr. Martland said that they found decidual cells in the wall of the uterus and that this diagnosis was confirmed by the history which this defendant has related and the fact that this defendant saw at the time he operated upon this woman a violet hue of the vagina; the uterus was, at the autopsy of Dr. Washington and Dr. Hicks, four and a half inches long, a tear existed from the cervix or mouth, commencing on the left side of the mouth and breaking through the mouth, along the left side of the neck up to the top, over the top and passing almost to the middle line of the uterus, probably longer than four inches and a half in length; about twelve to fifteen inches of the small intestine next to the stomach and the end of the large intestine from the sigmoid flexure to the rectum remained; that of the twenty odd feet of small intestines only a little more than a foot

remained and of the four to six feet of the large intestines only three feet remained; some of the attachments of the large intestines to the abdominal wall were present and some torn; the mesentery of the intestines were gone except some loose fringes where their site had been—in fact nothing remained of the entire intestinal tract except the two ends as stated.

The principal controversy in this case relates to the removal of the intestines. The State contends that this defendant, in a grossly careless manner without the exercise of any skill, judgment or diligence, removed the intestines and that the shock, bleeding or hemorrhage caused death, and that such gross negligence evinces a reckless disregard of human life, and that therefore the defendant is guilty as charged in the indictment.

The defendant, on the other hand, denies the alleged facts upon which the State bases its charge and states that at all events the State has failed to show beyond a reasonable doubt that he is guilty.

The State contends that the evidence shows that the dilator must have been used with great force and that it caused the tear; that on no other theory of the evidence in the case can the tear in the uterus be accounted for; that the loop which the defendant admits came down was not the intestine of the fetus because the rest of the fetus was never found, either by the defendant or by Dr. Simmons or at the second autopsy; that the defendant knew the difference between fetal and maternal intestine and knew the loop was maternal intestine; that he was the only person who opened the body before rigor mortis set in and

that as he was the only person who operated on the body the contention is that he removed the intestines; that this is supported by the evidence that the defendant told Dr. Simmons he thought he had ruptured the uterus; that Dr. Truesdell said the loop that came down was half an inch in thickness; that the defendant told Dr. Richman that he punctured the uterus, split the bowel and had a very difficult time, describing it in very emphatic language, to get into the uterus; that Dr. Washington said defendant stated to him that he tore the womb and part of the intestines came down, that the part of the intestines he removed he put in the pail; that when the incision was made in the presence of Dr. Simmons that Dr. Simmons said he looked into the opening and saw the uterus; that the intestines which apparently should have been there were not noticed by Dr. Simmons; and defendant admitted to Mr. Hargan later that he was satisfied that he had got hold of the intestines instead of the fetus; that while the expert for the State denied the ability of a person with his fingers to pull out so much of the intestines, it could be done with instruments; that Dr. Simmons saw the incision sewed up by defendant with catgut; that Roemmele and Adler saw this came catgut apparently, and Roemmele removed it, sewing up the incision tightly with a white thread, which in turn was apparently found by Drs. Washington, Hicks and Richman at the second autopsy on March 4th.

The State therefore contends that its charge is fully supported by the evidence that the intestines were not removed after death and from the time

the defendant left the body that fatal afternoon until Roemmele saw it no one touched it and that the intestines could not have been removed, without some evidence of mutilation on the body, at least up to the time that rigor mortis set in.

The defendant, as already stated, not only denies that he knowingly removed any of the intestines of the mother, and all of the other charges of alleged gross negligence, but also says that at all events, on the whole case, and by reason of many parts of the evidence, he has not been shown to be guilty beyond a reasonable doubt. The defendant's principal points of defense are (1) a denial of removing the intestines of the mother as alleged, (2) that it is utterly impossible for a man to pull the intestines down through the tear in the uterus, (3) that he sewed up the body with white thread in Dr. Simmon's presence, (4) that Roemmele found catgut stitches, therefore the body must have been tampered with by someone from the time the defendant left up to the time that the embalmer arrived; (5) that the cause of death has not been shown in the case—or at all events there is a reasonable doubt about it—and it may be that the deceased died of some cause not yet disclosed, because it is a known fact that patients die without any apparent cause while being operated upon under an anesthetic, and (6) that the intestines may have disappeared in some way not yet explained. In support of these various contentions the defendant has testified at considerable length and in great detail in relation, practically, to all of the matters referred to. He said amongst other things, after carefully dilating the cervix in the usual manner, he introduced a curette and

found a depth of six inches, that he tried to push the contents of the uterus down on his finger with his left hand while he was making a digital examination, with his right hand, of the uterus; that he put in the sponge forceps; that a loop came out; that they were the smallest intestines he ever saw and that he thought they must be the intestines of the fetus, and that the fetus was much older that he had been given to understand by the history of the case; that one end of the loop, about sixteen inches, dropped into the pail, and that shortly afterwards the other end dropped, so that that section which he says came from the uterus went into the pail; that later the patient became worse, pulse bad, he stopped the operation, packed the vagina with gauze and sent for his friend and associate—or possibly not associate but a well known surgeon, Dr. Bunn; that before Dr. Bunn arrived this defendant tried to resuscitate the patient by the injection of saline solution and a dose of camphor and strychnia and that just as Dr. Bunn came Emma C. Truesdell died; that of the death of Emma C. Truesdell this defendant notified the police and was directed by whoever answered the telephone to call Dr. Simmons; that he did call for Dr. Simmons and that pending his arrival he sent Miss Speicher out for some milk and a spool of cotton; that when Dr. Simmons came the defendant made the incision and pushed the intestines aside, which he said he saw and that he felt, and sewed up the incision with cotton thread; the nurses did not see the defendant during the operation so as to be certain as to what he did remove; Miss Speicher says she purchased the spool of cotton and saw the stitches

taken with the cotton thread while Dr. Simmons was there; the contents of the pail reddish in color were poured off into the sink and the rest of the contents of the pail were thrown into the fire in the furnace; the defendant, Miss Cox, Miss Speicher, Miss Regan and Dr. Bunn all say they noticed no fecal odor in the room; Dr. Bunn says that the only strong odor that he remembers was ether; the experts all say that fecal matter is always present to some extent in the intestines, or the larger intestines and that tearing the large intestine apart would produce an odor. Dr. Carl E. Sutphen, Dr. Frank C. Bunn, Dr. Charles W. Banks, Dr. Louis L. Davidson, Dr. Otto Lowy, Dr. Widmer E. Doremus and Dr. Willet W. Brown—I think eight in number—all testified that it is impossible to pull the intestines down through a tear in the uterus and vagina taking away the mesenteries and the attachments with the hand or with the instruments shown to them. The defendant therefore contends that it has not been shown that he could or did, beyond a reasonable doubt, remove the intestines.

The State contends in reply that the body was not tampered with between the time Dr. Young left and the embalmer arrived; that Dr. Truesdell, the husband, Fred Wolf the half brother, Mrs. Wolf, the mother, and Mrs. Truesdell, the mother-in-law of Emma and mother of Dr. Truesdell, were the only persons present after Dr. Young left and before and up to the time the embalmer arrived, except a friend from Philadelphia; that most of the time they say Mrs. Truesdell was consoling her son, the doctor, and Fred Wolf was consoling his mother. Fred Wolf and Dr. Trues-

dell say they did not take these intestines out of this body, and the State contends it is difficult to imagine that they would conceive the purpose to injury this defendant or someone else, and that as a part of that purpose designed to remove the intestines of the wife and sister for the purpose of executing that design; that the experts based their opinions on a hypothetical question not embracing all the details as to what was left and had been removed; and that at all events the intestines were gone and that this defendant was the only person other than the undertaker who is shown to have had access to the body up to the time that rigor mortis set in.

It is the duty of the jury to search through the evidence that has been presented and ascertain where the truth lies. The jury may consider amongst other matters in ascertaining, weighing and determining what weight, if any, it will give to the statements of, a witness, the demeanor manner of testifying, appearance, mental capacity, power of observation, closeness of attention, the probability of the statements, their inconsistencies and contradictions and all such other considerations that may be evolved from experience or which the jury may deem proper under the circumstances. Amongst all the other ways of ascertaining, weighing and determining the credibility of a witness, the jury may consider the interest of a witness in testifying and whether or not that interest has affected the truthfulness or credibility of his or her statements, or any part of them. This consideration may be applied to all of the witnesses in the case; those presented by the State and those presented by the

defense, and, of course, it may be applied to the defendant himself, because he has been a witness on the stand and in that connection the jury has a right to consider the very grave interest which this defendant has in any verdict which it may render and whether or not that interest has affected the truthfulness or credibility of the statements of the defendant. It may be applied also to Dr. Truesdell, who says that he understands that he will not have any trouble on some other indictment because he has been accepted as a witness in this case. It may be applied to Mrs. Wolf or Mrs. Truesdell or to the nurses, or to these expert physicians and doctors and surgeons and pathologists, and it may be applied, as I have said, to each and every and all of the witnesses in the case, in the discretion of the jury.

If the jury arrives at the conclusion, under the principles of law as stated by the Court and upon the facts of the case, beyond a reasonable doubt, that this defendant is guilty, the verdict should be guilty, otherwise, of course, it must be not guilty.

The Court cannot too greatly emphasize the necessity for the jury to base its verdict upon the evidence in the case. No sympathy should be allowed to sway this jury. No suggestion that all or any part of this audience here present is for or against this defendant or neutral or otherwise can be permitted to have place in the proper consideration of a case in the jury room, by members of a jury who have taken the oath to decide the case upon the facts before them impartially. Therefore if, under the principles of law, as stated, upon the facts, beyond a reasonable doubt,

you find this defendant is guilty, the Court has said, that it is your plain duty to render such a verdict.

Gentlemen, this case has taken several days to be tried, counsel have greatly aided you in your knowledge of the case and have very ably presented the matter in the summing up. Both sides have done that. The Court has now discharged its duty and your duty is about to begin.

Before I send you to the jury room I will call your attention to a few of the requests to charge presented by the defendant.

"2. In order to find the defendant guilty in this case the State must prove beyond a reasonable doubt, that in the performance of the operation upon Mrs. Truesdell, Dr. Young was guilty of gross negligence, either in the doing of or in the omission to do some specific act, which was rendered necessary in the performance of his duty at that time."

I so charge you, except that it must not only show that he was guilty of gross negligence but it must be so gross as to evince a reckless disregard of human life.

"3. The defendant cannot be found guilty if the jury believe that Dr. Young, without evil intent or culpable negligence, inadvertently inflicted a wound, or omitted to do something, which resulted in the death of the patient."

I so charge you.

"9. In measuring the duty and responsibility of Dr. Young in the conduct of his operation, he can only be charged with such information as he then possessed, or reasonably ought to have known with the opportunities at his command.

Knowledge derived from subsequent events, or autopsies, and unavailable, or not reasonably inferable at the time of the operation, cannot fairly be imputed to him."

I so charge you.

The jury retired.

Defendant's counsel prays a general exception to the charge of the Court.

The same is allowed and it is signed and sealed accordingly.

WM. P. MARTIN,
Judge.

(Seal)

Defendant's counsel prays an exception to the Court's refusal to charge the following request; otherwise than charged:

"1. The burden of proof is upon the State to prove the commission of the alleged crime by the defendant, not as in a civil case by the mere preponderance of the evidence, but beyond a reasonable doubt. Unless the jury believe that in this case the case has been so proved there must be a verdict for the defendant."

The same is allowed and signed and sealed accordingly.

WM. P. MARTIN,
Judge.

(Seal)

Defendant's counsel prays an exception to the Court's refusal to charge the following request, otherwise than charged:

"4. Manslaughter in cases of this kind is another word for criminal negligence, which exists where the physician or surgeon exhibits gross lack of competency, or gross inattention, or criminal indifference to the patient's safety."

The same is allowed and signed and sealed accordingly.

WM. P. MARTIN,
Judge.

(Seal)

Defendant's counsel prays an exception to the Court's refusal to charge the following request; otherwise than charged:

"5. Before a person acting, or pretending to act as a medical man can be held criminally responsible for the death of a patient, occasioned by his treatment, it must be made to appear beyond a reasonable doubt that his conduct was characterized by either gross ignorance in his art or gross inattention to the safety of the patient, and it must likewise appear that one or the other, or both of these, were the cause of the patient's death."

The same is allowed and signed and sealed accordingly.

WM. P. MARTIN,
Judge.

(Seal)

Defendant's counsel prays an exception to the Court's refusal to charge the following request; otherwise than charged:

"6. In order to convict the defendant of the charge of manslaughter the State must prove be-

yond a reasonable doubt, first, that Dr. Young in the performance of the operation upon Mrs. Truesdell manifested gross ignorance, carelessness, negligence or rashness; second, that the death of Mrs. Truesdell resulted therefrom."

The same is allowed and signed and sealed accordingly.

WM. P. MARTIN,
Judge.

(Seal)

Defendant's counsel prays an exception to the Court's refusal to charge the following request; otherwise than charged:

"7. If the jury should believe that the State has failed to prove beyond a reasonable doubt what was the cause of the patient's death, and that the same was directly attributable to gross carelessness on the part of Dr. Young, then the verdict must be not guilty."

The same is allowed and signed and sealed accordingly.

WM. P. MARTIN,
Judge.

(Seal)

Defendant's counsel prays an exception to the Court's refusal to charge the following request; otherwise than charged:

"8. In ascertaining what was the cause of the patient's death, due attention must be paid to the certificate of Dr. Simmons, the Assistant County physician; if the jury believe that that truly expressed the cause of death then the jury must find proof in the case that a death resulting from

the causes set forth in the certificate was the product and result of gross negligence on the part of the defendant."

The same is allowed and signed and sealed accordingly.

WM. P. MARTIN,
Judge.

(Seal)

Defendant's counsel prays an exception to the Court's refusal to charge the following request; otherwise than charged:

"10. The law does not require of a surgeon performing an operation of this character the most exact knowledge, nor does it charge him with responsibility for failing to exercise the greatest possible care. A mere failure in this regard, even if in the opinion of the jury it resulted in the death of Mrs. Truesdell, would be insufficient to find guilt in this case."

The same is allowed and signed and sealed accordingly.

WM. P. MARTIN,
Judge.

(Seal)

Defendant's counsel prays exception to the refusal of the Court to charge the supplemental request as follows:

"There was no duty to examine the witnesses with respect to any other instruments than those which the evidence disclosed were used. No inference can be drawn from the fact that the question was confined to the instrument which the evidence disclosed were used, there being no evi-

dence whatever to show that any other instruments were used."

The same is allowed and signed and sealed accordingly.

WM. P. MARTIN,
Judge.

(Seal)

Defendant's counsel also prays an exception to the inference of the statement of the State's contention left in the minds of the jury to the effect that it was the duty of the defendant to show who did open the body and remove the intestines, or whatever inference is inferable by the language used by the Court.

The Court: I do not think that is inferable. I did not intend any such thing and do not think it is inferable. The State has got to show in this case that this defendant is the one who did it. The defendant does not have to show he did not do it. I emphasized it three times, that it must be shown beyond a reasonable doubt that this defendant did it.

The same is allowed and signed and sealed accordingly.

WM. P. MARTIN,
Judge.

(Seal)

Defendant's counsel also prays exception to that portion of the charge of the Court, in the review of the evidence, which referred to the contention that the catgut that was found in the body by the undertaker was the same catgut that the State alleged had been put there by the defend-

ant, without referring to the fact that, assuming catgut was used, the evidence of the undertaker himself was that it was in individual stitches and not a continuous stitch.

The same is allowed and signed and sealed accordingly.

WM. P. MARTIN,
Judge.

(Seal)

Defendant's counsel prays exception to the charge of the Court, in that in reviewing the facts on which the defendant relied as indicative of the fact that the body had been tampered with the Court omitted to refer to the increased length of the incision of an inch or two above the navel.

The same is allowed and signed and sealed accordingly.

WM. P. MARTIN,
Judge.

(Seal)

I, F. L. Salmon, one of the official stenographers of the Essex County Courts, do hereby certify that the foregoing transcript contains the entire record of the proceedings and testimony taken by me at the trial of the case of the State of New Jersey vs. John H. Young on indictment No. 12 for manslaughter, which trial was held before the Honorable William P. Martin, Presiding Judge of the Essex County General Quarter Sessions Court in and for the County of Essex, and a jury, on May 8, 9, 10, 11 and 12, 1916, at Newark, New Jersey.

F. L. SALMON.

Exhibit D-2

(Seal)
C. H. Wells,
Registrar.

STATE OF NEW JERSEY—BUREAU OF VITAL STATISTICS

CERTIFICATE AND RECORD OF DEATH

Registered No. 1938

1. Place of death. County Essex; Town Montclair. (No. 71 Valley Road, 2 Ward). (If death occurred in a hospital or institution give its NAME instead of street and number).
2. Full name of deceased. Emma C. Truesdell.

PERSONAL AND STATISTICAL PARTICULARS

3. Sex. Female.
4. Color or Race. White.
5. Single, married, widowed or divorced (Write the word). Married.
6. Date of Birth. January 18, 1895.
7. Age. 21 yrs., 23 ds.
8. Occupation (*a*) Trade, profession or particular kind of work. Housewife.
9. Birthplace (State or country) Newark, N. J.

PARENTS

10. Name of Father. Henry Wolf.
11. Birthplace of Father (State or country) Newark, N. J.

Exhibit D-2

12. Maiden Name of Mother. Anna Becker.
13. Birthplace of Mother (State or country) Newark, N. J.
14. The above is true to the best of my knowledge. (Informant) Paul E. Truesdell, (Address) 71 Valley Road, Montclair, N. J.
15. Filed, Feb. 16, 1916. C. H. Wells, Registrar.

MEDICAL CERTIFICATE OF DEATH

16. Date of Death. February 15, 1916.
17. I HEREBY CERTIFY, That I saw deceased Feb. 15, 1916. THE CAUSE OF DEATH * was as follows. Hypodermic of H. M. C. 4℥ of Ether and shock. (Contributory) Rupture of uterus and injury to soft parts from curetting.

(Signed) M. HERBERT SIMMONS,
Physician, Dept. County,
(Address) Orange, N. J.

Feb. 16, 1916.

*State the Disease Causing Death, or, in deaths from Violent Causes, state (1) Means of Injury; and (2) whether Accidental, Suicidal, or Homicidal.

18. Length of Residence (For Hospitals, Institutions, Transients or Recent Residents) At place of death. 1 yr. In the State. Life. Former or usual residence. 71 Valley Road, Montclair, N. J.
19. Place of Burial or Removal. Fairmont Cem. Date of Burial. Feb. 19, 1916.
20. Undertaker. August Maier. Address. Newark, N. J.

Judge's Certificate

I, William P. Martin, Presiding Judge of the Essex County Court of General Quarter Sessions and Essex County Court of Oyer and Terminer, and the judge who presided over the aforesaid cause, certify that the above printed book contains the entire record of the proceedings had upon the trial of the said cause, and that the same is returned by the plaintiff in error therein with the writ of error bringing up the bill of exceptions signed and sealed in this cause.

Dated July 24th, 1916.

WM. P. MARTIN,
Presiding Judge of the
Essex County Court of
Oyer and Terminer and
General Quarter Sessions.

Stipulation Extending Time to File Assignments of Error

NEW JERSEY SUPREME COURT

THE STATE, Defendant in Error, vs. JOHN H. YOUNG, Plaintiff in Error.	On Indictment for manslaughter.

It is hereby stipulated and agreed, that the time of the plaintiff in error for filing assignments

of error is hereby extended to the twenty-first day of August, nineteen hundred and sixteen.

Dated July 3, 1916.

FREDERICK F. GUILD,
Prosecutor of the Pleas.

Assignments of Error

NEW JERSEY SUPREME COURT

THE STATE OF NEW JERSEY, Defendant-in-error, vs. JOHN H. YOUNG, Plaintiff-in-error.	On Error to Essex County Court of Quarter Sessions.

Afterwards, to wit, that is to say, on the 15th day of July, 1916, in the Supreme Court of judicature of the State of New Jersey, comes the said John H. Young, by Messrs. McCarter & English, his attorneys, and says that in the record and proceedings aforesaid, and also in the matters recited and contained in the bill of exceptions, and also in the giving of the verdict and judgment aforesaid, there is manifest error in this respect, to wit:

1. Because in the trial of said cause, the trial judge refused to permit the defendant's counsel to cross-examine the witness Paul E. Truesdell, as to the time when he first consulted the defendant with reference to his wife's condition.

New Jersey State Library

2. Because the learned trial judge permitted the State to ask the witness Richman, against the objection of defendant's counsel, if in the performance of an operation for the removal of a dead foetus from the womb the operator found that he had torn down out through the uterus a loop of eight or ten inches of intestines, what is the proper treatment.

3. Because the learned trial judge refused to permit the defendant's counsel to ask the witness Truesdell, on cross-examination—"Do you remember on that occasion your saying to Dr. Young, whom you shook by the hand: Dr. Young, at the outset of this conference I want you to distinctly understand that I acquit you of any blame whatever for my wife's death."

4. Because the learned trial judge overruled the following question put to the defendant: "What was that experience, and what relation did that experience bear to the conclusion you reached at that time?"

5. Because the learned trial judge limited the defendant in his offer to show that on the previous occasion, perhaps about a year or so anterior to this operation, in a similar situation, and under similar conditions, the defendant, Dr. Young, found something protruding, which he found and ascertained to be the foetal intestine; which offer was made for the purpose of having the defendant draw on that experience for any conclusion and diagnosis he made at the time.

6. Because the Court, against the objection of defendant's counsel, permitted the State to ask

the defendant: "Do you think, Dr., that a very able and skillful physician and surgeon would be able to distinguish maternal intestine from foetal intestine, the foetus being of from five to six months development, but life having been arrested at about the third or fourth month?"

7. Because the Court refused to permit the defendant to show what he said to the Prosecutor upon the occasion of his taking down to the Prosecutor the spool of thread and left it with the Prosecutor.

8. Because the Court erred in its charge to the jury, and the same was generally harmful to the defendant.

9. Because the Court erred in refusing to charge the defendant's first request:

> "1. The burden of proof is upon the State to, prove the commission of the alleged crime by the defendant, not as in a civil case by the mere preponderance of the evidence, but beyond a reasonable doubt. Unless the jury believe that in this case the case has been so proved there must be a verdict for the defendant."

10. Because the Court erred in refusing to charge the defendant's fourth request:

> "4. Manslaughter in cases of this kind is another word for criminal negligence, which exists where the physician or surgeon exhibits gross lack of competency, or gross inattention, or criminal indifference to the patient's safety."

11. Because the Court erred in refusing to charge the defendant's fifth request:

> "5. Before a person, acting, or pretending to act, as a medical man can be held criminally responsible for the death of a patient, occasioned by his treatment, it must be made to appear beyond a reasonable doubt that his conduct was characterized by either gross ignorance in his art or gross inattention to the safety of the patient, and it must likewise appear that one or the other, or both of these, were the cause of the patient's death."

12. Because the Court erred in refusing to charge the defendant's sixth request:

> "6. In order to convict the defendant of the charge of manslaughter the State must prove beyond a reasonable doubt, first, that Dr. Young in the performance of the operation upon Mrs. Truesdell manifested gross ignorance, carelessness, negligence or rashness; second, that the death of Mrs. Truesdell resulted therefrom."

13. Because the Court erred in refusing to charge the defendant's seventh request:

> "7. If the jury should believe that the State has failed to prove beyond a reasonable doubt what was the cause of the patient's death, and that the same was directly attributable to gross carelessness on the part of Dr. Young, then the verdict must be not guilty."

14. Because the Court erred in refusing to charge the defendant's eighth request:

> "8. In ascertaining what was the cause of the patient's death, due attention must be paid to the certificate of Dr. Simmons, the Assistant County physician; if the jury believe that that truly expressed the cause of death then the jury must find proof in the case that a death resulting from the causes set forth in the certificate was the product and result of gross negligence on the part of the defendant."

15. Because the Court erred in refusing to charge the defendant's tenth request:

> "10. The law does not require of a surgeon performing an operation of this character the most exact knowledge, nor does it charge him with responsibility for failing to exercise the greatest possible care. A mere failure in this regard, even if in the opinion of the jury it resulted in the death of Mrs. Truesdell, would be insufficient to find guilt in this case."

16. Because the Court refused the following request of the defendant, namely:

> "There was no duty to examine the witnesses with respect to any other instruments than those which the evidence disclosed were used. No inference can be drawn from the fact that the question was confined to the instrument which the evidence disclosed were used, there being no evidence whatever to show that any other instruments were used."

17. That the learned trial judge in the course of his charge to the jury stated:

> "That in all events the intestines were gone, and that this defendant was the only person, other than the undertaker, who is shown to have had access to the body up to the time that rigor mortis set in."

18. Because the learned trial judge in charging the jury, erred in reciting the evidence, saying:

> "That Dr. Simmons saw the incision sewed up by defendant with catgut; that Roemmele and Adler saw this same catgut apparently, and Roemmele removed it, sewing up the incision tightly with a white thread."

without referring to the fact that assuming catgut was used, the evidence of the undertaker himself was that it was in individual stitches and not a continuing stitch.

19. Because the learned trial judge in his charge to the jury, in reviewing the facts on which the defendant relied as indicative of the fact that the body had been tampered with by some one else than the defendant, the Court omitted to refer to the uncontradicted evidence of the increased length of the incision of an inch or two above the navel.

20. Because in other respects the said verdict and judgment are erroneous.

McCARTER & ENGLISH,
Attorneys of Plaintiff-in-error.

Causes for Reversal

THE STATE OF NEW JERSEY, Defendant-in-error, vs. JOHN H. YOUNG, Plaintiff-in-error.	On Error to Essex County Court of Quarter Sessions.

Plaintiff in error assigns the following reasons or causes for reversal of the verdict and judgment of conviction in the above stated cause, upon the whole record:

1. Because the learned trial judge refused to permit the defendant's counsel to ask the witness Truesdell:

> "Do you remember anything more that Mr. Wolf said along the line we have just referred to?"

2. Because the learned trial judge permitted the witness Dr. Martland, against the objection of defendant's counsel, to answer the following questions:

> "Q. I understood you to say that you found the muscles in good condition? A. I did.
>
> "Q. No inflammation? A. That meant, as I explained, practically no previous inflammation, although I stated that the inner lining of the womb was practically missing, so that I could not say absolutely that there was no previous inflammation."

3. Because the learned trial judge erred in permitting the witness Dr. Richman, against the objection of defendant's counsel, to be asked the question—If in the performance of an operation for the removal of a dead fetus from the womb, the operator found that he had torn out down through the uterus a loop of eight or ten inches of intestine, what is the proper treatment stated? "He (Dr. Truesdell) says she did not eat anything that day," in view of the actual evidence of Dr. Truesdell upon this point, which was:

> "Q. Do you know whether or not your wife had anything to eat on the day of the operation? A. She did not have anything to eat, because Dr.—
>
> "The Court: Never mind that, how could he show that? He's got to show where he was and what he did. If he went to work this morning at his office and was away from the house, he cannot say whether she ate anything or not.
>
> "Q. Were you home to breakfast? A. She did not eat anything at breakfast. She usually had three meals a day.
>
> "The Court: Were you out of the house in the morning and out of her company?
>
> "Witness: Yes, sir.
>
> "The Court: During what time?
>
> "Witness: From just before nine until around ten, or a little after ten.
>
> "The Court: While you were there she did not eat anything?
>
> "Witness: No."

4. Because the learned trial judge, against the objection of defendant's counsel, permitted the witness Dr. Richman to answer the question—If in the performance of an operation for the removal of a dead foetus from the womb the operator found that he had torn down out through the uterus a loop of eight or ten inches of intestine, what is the proper treatment?

5. Because, under the circumstances of the case, the learned trial judge erred, and injustice was done to the defendant, in refusing to permit the defendant's counsel to ask the witness Truesdell, whether he had not on a previous occasion said to the defendant:

> "Dr. Young, at the outset of this conference, I want you to distinctly understand that I acquit you of any blame whatever for my wife's death."

6. Because the Court, although requested so to do by the defendant's counsel, refused to strike out the following conclusion and answer of the witness Dr. Washington:

> "The womb in a normal condition is always covered by the intestines, and by opening any abdomen you never see the womb except by the removal to one side of the intestines."

The Court adding, that he thought it was a perfectly proper statement for the witness to make.

7. Because the Court refused to permit the defendant's counsel to ask the defendant on direct-examination:

"What did you do in the way of self support while you were going through college?"

8. Because the trial judge, against the objection of defendant's counsel, permitted a piece of blotting paper that had been used by the witness Miss Speicher when testifying before the grand jury, to be offered in evidence in this case.

9. Because the learned trial judge, against the objection of defendant's counsel, permitted the witness Dr. Bunn, to be asked:

"Do you think, doctor, that a very able and skillful physician and surgeon would be able to distinguish maternal intestine, the foetus being from four to six—five to six months development, but life having been arrested at about the third or fourth month?

10. Because the learned trial judge directed that the answer of the witness Dr. Stow be stricken out:

"I made it upon information of the manner in which the instruments were used as testified to by Dr. Young. In that manner he could not puncture the uterus; no body could puncture the uterus, yes, sir."

11. Because the learned trial judge refused to permit the defendant to show what he said to the Prosecutor when he left the spool of thread with him.

12. Because the learned trial judge granted the

motion of the state to strike out the answer of the witness Dr. Brown, to the question:

> "Q. What skill have you found that he possessed as surgeon and operator? A. Well, I think that is best judged by the fact that I turned my own wife over to him to operate on."

13. Because the learned trial judge permitted the witness Dr. Simmons, upon the State's rebuttal, to be asked:

> "Doctor, when the partial autopsy was performed by you with Dr. Young, did you remove anything before you could see the uterus?"

14. Because the learned trial judge refused the motion of the defendant's counsel to strike out the answer to the following question:

> "Q. Describe, Mrs. Wolf, just how those articles looked that you saw there? A. Well, they were dark, they looked as if blood had been on them."

15. Because the learned trial judge, against the objection of defendant's counsel, permitted the witness Truesdell to be asked by the State:

> "You are under indictment in this Court jointly with Dr. Young for performing a criminal abortion on your wife, are you not?"

16. Because the learned trial judge in charging the jury erred in permitting the jury to draw any inference from the statement of the contention of

the State: "That he (Dr. Young) was the only person who opened the body before rigor mortis set in, and that as he was the only person that operated on the body the contention is that he removed the intestines."

17. There was also error in the Court's charge:

> "The State therefore contends that its charge is fully supported by the evidence that the intestines were not removed after death and from the time the defendant left the body that fatal afternoon until Roemmele saw it no one touched it and that the intestines could not have been removed, without some evidence of mutilation on the body, at least up to the time that rigor mortis set in."

18. That the trial judge in charging the jury improperly stated:

> "That the experts based their opinions on a hypothetical question not embracing all the details as to what was left and had been removed; and that at all events the intestines were gone and that this defendant was the only person other than the undertaker who is shown to have had access to the body up to the time that rigor mortis set in."

19. Manifest injustice was done to the defendant by the failure of the Court in his charge to the jury, in reviewing the facts on which the defendant relied as indicative that the body had been tampered with, the Court omitted to refer to the

increased length of the incision, to the extent of an inch or two above the navel.

20. Because manifest injustice was done to the defendant by the whole charge of the Court.

21. Manifest injustice has resulted to the defendant in the verdict and judgment based thereon from the entire record in the case.

McCARTER & ENGLISH,
Attorneys of Plaintiff-in-error.

Stipulation.

NEW JERSEY SUPREME COURT.

THE STATE OF NEW JERSEY,
Defendant in Error,
vs.
JOHN H. YOUNG,
Plaintiff in Error.

On Error.
Stipulation.

It is stipulated and agreed that, counsel for the State, in the course of his summing up, referred to the testimony of Dr. Bunn in reference to the size and strength of the instruments, Exhibits D. 4, 5 and 6, which Dr. Young testified were the instruments he used in performing the operation on Mrs. Truesdell. He argued that the testimony of the defendant that the instruments produced and offered in evidence were those which were used in performing the operation was, under all the facts and circumstances of the case, as disclosed by the evidence, incredible. He called attention to the form of the question put by the defendant's counsel to the New Jersey Medical witnesses for the defence as to the possibility of the defendant's having drawn down and removed the intestines in the manner claimed by the State and to the extent manifested by the second autopsy. He argued that the question put to these witnesses limited their testimony solely to the possibility of the defendant having drawn down and removed the intestines in the manner claimed by the State,

and to the extent manifested by the second autopsy, by the use of these particular instruments, and did not inquire from them, or seek to inquire from them, any opinion as to whether the intestines could have been so drawn down and removed by the use of other and more powerful instruments. He argued that the jury, under all the facts and circumstances of the case, as disclosed by the evidence, should conclude that the instruments produced were not in fact the instruments used; and that the New Jersey Medical witnesses for the defence had not in fact expressed any opinion that the intestines could not have been so drawn down and removed by the use of other and more powerful instruments.

It is further stipulated and agreed that this may be added to the record heretofore sent up, and considered as constituting a part thereof.

Dated October 7, 1916.

McCARTER & ENGLISH,
Attorneys for Plaintiff in Error.

JACOB L. NEWMAN,
Prosecutor of the Pleas.

WILBUR A. MOTT,
Asst. Prosecutor and Attorney for Defendant in Error.

Opinion

(Filed, March 6, 1917)

NEW JERSEY SUPREME COURT

NOVEMBER TERM, 1916

THE STATE, Defendant-in-Error vs. JOHN H. YOUNG, Plaintiff-in-Error.	On Error to the Essex County Court of Quarter Sessions.

Argued November 8, 1916; Decided March 6, 1917.

Before: GUMMERE, Chief Justice, and JUSTICES TRENCHARD and BLACK.

Wilbur A. Mott, Esq., for defendant-in-error.
Messrs. McCarter & English, for plaintiff-in-error.

PER CURIAM:

This case comes on for review on a bill of exceptions and also under Section 136 of the Criminal Procedure Act. The defendant is a practicing physician and surgeon. He was indicted for and convicted of manslaughter, in connection with the death of a patient, Mrs. Truesdell, in the Essex County Quarter Sessions. Mrs. Truesdell, at the time she died, was undergoing an operation by Dr. Young. The operation was on February

15, 1916. Mrs. Truesdell died on the operating table. On March 4, the body was exhumed and an autopsy was performed by Drs. Hicks, Washington and Richman. The autopsy revealed that two parts of the small intestine together with all the large intestine, except the lower part, were gone. There are twenty assignments of error and twenty-one assignments of causes for reversal. They are argued in the brief of the plaintiff-in-error under six heads. We will proceed to discuss them in the order designated in the brief of the plaintiff-in-error.

The first was a refusal of the Trial Court to charge this request:

> "There was no duty to examine the witness with respect to any other instruments than those which the evidence disclosed were used. No inference can be drawn from the fact that the question was confined to the instruments which the evidence disclosed were used, there being no evidence whatever to show that any other instruments were used."

This request embodies two ideas. First, a statement as to the duty of counsel in examining the witness for the defense, and second, it ignores all the other evidence and testimony in the case, except that of Dr. Young, as to what instruments were used and the inferences to be drawn from all the testimony. Surely this was for the jury. It was not error for the Court to refuse this request.

SECOND: Dr. Truesdell, a witness for the State, on re-direct-examination, was asked this question:

"Q. You are under indictment in this Court jointly with Dr. Young for performing a criminal operation upon your wife, are you not? A. Yes, sir.

"Mr. McCarter: I object as immaterial.

"The Court: That is proper."

This question was not objected to until after it had been answered. No motion was made to strike out the answer, the answer was in before the objection was made, no judicial action was taken and no exception was noted. The rule is established, that counsel cannot take the chance of testimony making in his favor, and if it happens to be adverse, then interpose his objection. *Clark v. State,* 47 N. J. L., p. 558. Counsel concedes this, but argues that as the whole record is before the Court under Section 136 of the Criminal Procedure Act, the Court should consider it. If the question was immaterial, it is difficult to perceive how it could be harmful to the defendant, but we think it was competent to show that Dr. Truesdell was under indictment, as affecting his credibility and if the Court had been asked to exclude the name of Dr. Young from the question, doubtless the Court would have done so, but we are not satisfied that wrong and injustice has been done to the defendant by this question and answer.

THIRD: The Court erred in its refusal to permit the defendant to give evidence, as to what was said by him to the prosecutor when he left a spool of thread with the prosecutor, some three weeks after the operation. The defendant, Dr. Young, testified that he gave a spool of thread to the prosecutor, just what date does not appear, but some-

time after the exhumation of the body, which was on March 4, the death occurred on February 15, 1916. The spool of cotton was produced by the prosecutor and offered in evidence by the defense and marked Exhibit D-7.

"Q. What did you say to the prosecutor, if anything?"

It is argued, that this testimony was admissible as part of the *res gestae,* under the cases of *State v. Kane,* 77 N. J. L., 244 and *State v. Hunter,* 40 *ib.,* 495, 538. In both .of those cases, Dr Wharton's definition of *res gestae* is quoted with approval, the pertinent part of which is:

> "Their sole distinguishing feature, *i. e., res gestae,* is that they should be the necessary incidents of the litigated act; necessary, in this sense, that they are part of the immediate preparations for, or emanations of such act, and are not produced by the calculated policy of the actors."

Squared by that rule, this proposed testimony was clearly incompetent. It was not error for the Court to exclude an answer to that question.

FOURTH: Error in a refusal to charge the defendant's eighth request to charge, which refers to the attention the jury must pay to the certificate of death of Dr. Simmons, the assistant County Physician. It is improper for the Court to segregate a single fact and make the whole case turn on that alone. There was no error in the Court's refusal of this request.

FIFTH:

"What was the experience and what relation did that experience bear to the conclusion you reached at that time?

"The Court: I do not overrule your offer. I limit your offer. When it is shown to be connected with the subject-matter."

This was not error.

SIXTH: The Court erred and did manifest wrong and injustice to the defendant in its resumé of the evidence. Our reading of the charge leads us to the conclusion, that the charge of the trial judge was an accurate statement of the law applicable to the facts of the case. The facts and what conclusion should be drawn from them were carefully left to the jury to determine.

Finding no error in the record, the judgment of the Essex County Quarter Sessions is affirmed.

Remittitur

NEW JERSEY SUPREME COURT

THE STATE OF NEW JERSEY, Defendant-in-Error vs. JOHN H. YOUNG, Plaintiff-in-Error.	On Writ of Error.

The above stated cause having been submitted on briefs at the November Term, nineteen hundred and sixteen, in the New Jersey Supreme Court, by Jacob L. Newman and Wilbur A. Mott, of counsel for the defendant-in-error, and Robert H. McCarter, of counsel for John H. Young, the plaintiff-in-error, and the Court having considered the matter and finding no error in the record and proceedings in the Essex County Court of Quarter Sessions;

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

Entered, March 7, 1917.

On motion of,

J. H. HARRISON,
Prosecutor of the Pleas,
Attorney for Defendant-in-Error.

Assignments of Error

NEW JERSEY COURT OF ERRORS AND APPEALS

THE STATE OF NEW JERSEY, Defendant-in-Error vs. JOHN H. YOUNG, Plaintiff-in-Error.	On Error to to Supreme Court.

Afterwards, in the New Jersey Court of Errors and Appeals, comes the said John H. Young by Messrs. McCarter & English, his attorneys, and says that in the record of the Supreme Court, and proceedings aforesaid, and also in the matters recited in the bill of exceptions, and in the giving of the verdict and judgment aforesaid, there is manifest error in this respect, to wit:

1. That the said Supreme Court affirmed the judgment of the Essex County Oyer & Terminer, whereas said Court should have reversed said judgment.

2. Because in the trial of said case, the trial judge refused to permit the defendant's counsel to cross-examine the witness Paul E. Truesdell, as to the time when he first consulted the defendant with reference to his wife's condition.

3. Because in the trial of the said case the learned trial judge permitted the State to ask the witness Richman, against the objection of the defendant's counsel, if in the performance of an operation for the removal of a dead foetus from the

womb the operator found that he had torn down out through the uterus a loop of eight or ten inches of intestines, what is the proper treatment.

4. Because in the trial of said case the learned trial judge refused to permit the defendant's counsel to ask the witness Truesdell, on cross-examination—"Do you remember on that occasion your saying to Dr. Young, whom you shook by the hand: Dr. Young, at the outset of this conference I want you to distinctly understand that I acquit you of any blame whatever for my wife's death."

5. Because in the trial of said case the learned trial judge overruled the following question put to the defendant: "What was that experience, and what relation did that experience bear to the conclusion you reached at that time?"

6. Because in the trial of said case the learned trial judge limited the defendant in his offer to show that on the previous occasion, perhaps about a year or so anterior to this operation, in a similar situation, and under similar conditions, the defendant, Dr. Young, found something protruding, which he found and ascertained to be the foetal intestine; which offer was made for the purpose of having the defendant draw on that experience for any conclusion and diagnosis he made at the time.

7. Because in the trial of said case the Court, against the objection of defendant's counsel, permitted the State to ask the defendant: "Do you think Doctor, that a very able and skillful physician and surgeon would be able to distinguish

maternal intestine from foetal intestine, the foetus being of from five to six months development, but life having been arrested at about the third or fourth month?"

8. Because in the trial of said case the Court refused to permit the defendant to show what he said to the Prosecutor upon the occasion of his taking down to the Prosecutor the spool of thread and left it with the Prosecutor.

9. Because in the trial of said case the Court erred in its charge to the jury, and the same was generally harmful to the defendant.

10. Because in the trial of said case the Court erred in refusing to charge the defendant's first request:

> "1. The burden of proof is upon the State, to prove the commission of the alleged crime by the defendant, not as in a civil case by the mere preponderance of the evidence, but beyond a reasonable doubt. Unless the jury believe that in this case the case has been so proved there must be a verdict for the defendant."

11. Because in the trial of said case the Court erred in refusing to charge the defendant's fourth request:

> "4. Manslaughter in cases of this kind is another word for criminal negligence, which exists where the physician or surgeon exhibits gross lack of competency, or gross inattention, or criminal indifference to the patient's safety."

12. Because in the trial of said case the Court erred in refusing to charge the defendant's fifth request.

> "5. Before a person acting, or pretending to act, as a medical man can be held criminally responsible for the death of a patient, occasioned by his treatment, it must be made to appear beyond a reasonable doubt that his conduct was characterized by either gross ignorance in his art or gross inattention to the safety of the patient, and it must likewise appear that one or the other, or both of these, were the cause of the patient's death."

13. Because in the trial of said case the Court erred in refusing to charge the defendant's sixth request:

> "6. In order to convict the defendant of the charge of manslaughter the State must prove beyond a reasonable doubt, first, that Dr. Young in the performance of the operation upon Mrs. Truesdell manifested gross ignorance, carelessness, negligence or rashness; second, that the death of Mrs. Truesdell resulted therefrom."

14. Because in the trial of said case the Court erred in refusing to charge the defendant's seventh request:

> "7. If the jury should believe that the State has failed to prove beyond a reasonable doubt what was the cause of the patient's death, and that the same was directly attributable to gross carelessness on

the part of Dr. Young, then the verdict must be not guilty."

15. Because in the trial of said case the Court erred in refusing to charge the defendant's eighth request:

"8. In ascertaining what was the cause of the patient's death, due attention must be paid to the certificate of Dr. Simmons, the Assistant County Physician; if the jury believe that that truly expressed the cause of death then the jury must find proof in the case that a death resulting from the causes set forth in the certificate was the product and result of gross negligence on the part of the defendant."

16. Because in the trial of said case the Court erred in refusing to charge the defendant's tenth request:

"10. The law does not require of a surgeon performing an operation of this character the most exact knowledge, nor does it charge him with responsibility for failing to exercise the greatest possible care. A mere failure in this regard, even if in the opinion of the jury it resulted in the death of Mrs. Truesdell, would be insufficient to find guilt in this case."

17. Because in the trial of said case the Court refused the following request of the defendant, namely:

"There was no duty to examine the witnesses with respect to any other instru-

ments than those which the evidence disclosed were used. No inference can be drawn from the fact that the question was confined to the instruments which the evidence disclosed were used, there being no evidence whatever to show that any other instruments were used."

18. That in the trial of said case the learned trial judge in the course of his charge to the jury stated:

"That in all events the intestines were gone, and that this defendant was the only person, other than the undertaker, who is shown to have had access to the body up to the time that *rigor mortis* set in."

19. Because in the trial of said case the learned trial judge in charging the jury, erred in reciting the evidence, saying:

"That Dr. Simmons saw the incision sewed up by defendant with catgut; that Roemmele and Adler saw this same catgut apparently, and Roemmele removed it, sewing up the incision tightly with a white thread."

without referring to the fact that assuming catgut was used, the evidence of the undertaker himself was that it was in individual stitches and not a continuing stitch.

20. Because in the trial of said case the learned trial judge in his charge to the jury, in reviewing the facts on which the defendant relied as indicative of the fact that the body had been tampered

with by some one else than the defendant, the Court omitted to refer to the uncontradicted evidence of the increased length of the incision of an inch or two above the navel.

21. Because in other respects the said verdict and judgment are erroneous.

McCARTER & ENGLISH,
Attorneys of Plaintiff-in-Error.

Causes for Reversal

NEW JERSEY COURT OF ERRORS AND APPEALS

THE STATE OF NEW JERSEY, Defendant-in-Error vs. JOHN H. YOUNG, Plaintiff-in-Error.	On Error to Supreme Court. On Indictment for manslaughter.

Plaintiff in Error assigns the following reasons for reversal of the judgment of the Supreme Court sustaining the verdict and judgment of conviction in the above stated cause, upon the whole record.

1. Because the learned trial judge refused to permit the defendant's counsel to ask the witness Truesdell:

"Do you remember anything else that

Mr. Wolf said along the line we have just referred to?''

2. Because the learned trial judge permitted the witness Dr. Martland, against the objection of defendant's counsel, to answer the following questions:

''Q. I understood you to say that you found the muscles in good condition. A. I did.

''Q. No inflammation? A. That meant, as I explained, practically no previous inflammation, although I stated that the inner lining of the womb was practically missing, so that I could not say absolutely that there was no previous inflammation.''

3. Because the learned trial judge erred in permitting the witness Dr. Richman, against the objection of defendant's counsel, to be asked the question—If in the performance of an operation for the removal of a dead foetus from the womb, the operator found that he had torn out down through the uterus a loop of eight or ten inches of intestine, what is the proper treatment stated? ''He (Dr. Truesdell) says she did not eat anything that day,'' in view of the actual evidence of Dr. Truesdell upon this point, which was:

''Q. Do you know whether or not your wife had anything to eat on the day of the operation? A. She did not have anything to eat, because Dr.—

The Court: Never mind that, how could he show that? He's got to show where he was and what he did. If he went to work

this morning at his office and was away from the house, he cannot say whether she ate anything or not.

"Q. Were you home to breakfast? A. She did not eat anything at breakfast. She usually had three meals a day.

"The Court: Were you out of the house in the morning and out of her company?

"Witness: Yes, sir.

"The Court: During what time?

"Witness: From just before nine until around ten, or a little after ten.

"The Court: While you were there she did not eat anything?

"Witness: No."

4. Because the learned trial judge, against the objection of defendant's counsel, permitted the witness Dr. Richman to answer the question—If in the performance of an operation for the removal of a dead foetus from the womb the operator found that he had torn down out through the uterus a loop of eight or ten inches of intestine, what is the proper treatment?

5. Because, under the circumstances of the case, the learned trial judge erred, and injustice was done to the defendant, in refusing to permit the defendant's counsel to ask the witness Truesdell, whether he had not on a previous occasion said to the defendant:

"Dr. Young, at the outset of this conference, I want you to distinctly understand that I acquit you of any blame whatever for my wife's death."

Causes for Reversal

6. Because the Court, although requested so to do by the defendant's counsel, refused to strike out the following conclusion and answer of the witness Dr. Washington:

> "The womb in a normal condition is always covered by the intestines, and by opening any abdomen you never see the womb except by the removal to one side of the intestines."

The Court adding, that he thought it was a perfectly proper statement for the witness to make.

7. Because the Court refused to permit the defendant's counsel to ask the defendant on direct-examination:

> "What did you do in the way of self-support while you were going through college?"

8. Because the trial judge, against the objection of defendant's counsel, permitted a piece of blotting paper that had been used by the witness Miss Speicher when testifying before the grand jury, to be offered in evidence in this case.

9. Because the learned trial judge, against the objection of defendant's counsel, permitted the witness Dr. Bunn, to be asked:

> "Do you think, doctor, that a very able and skillful physician and surgeon would be able to distinguish maternal intestine, the foetus being from four to six—five to six months' development, but life having been arrested at about the third or fourth month?"

10. Because the learned trial judge directed that the answer of the witness Dr. Stow be stricken out:

> "I made it upon information of the manner in which the instruments were used as testified to by Dr. Young. In that manner he could not puncture the uterus; no body could puncture the uterus, yes, sir."

11. Because the learned trial judge refused to permit the defendant to show what he said to the Prosecutor when he left the spool of thread with him.

12. Because the learned trial judge granted the motion of the state to strike out the answer of the witness Dr. Brown, to the question:

> "What skill have you found that he possessed as surgeon and operator? A. Well, I think that is best judged by the fact that I turned my own wife over to him to operate on."

13. Because the learned trial judge permitted the witness Dr. Simmons, upon the State's rebuttal, to be asked:

> "Doctor, when the partial autopsy was performed by you with Dr. Young, did you remove anything before you could see the uterus?"

14. Because the learned trial judge refused the motion of the defendant's counsel to strike out the answer to the following question:

> "Q. Describe, Mrs. Wolf, just how those

articles looked that you saw there? A. Well, they were dark, they looked as if blood had been on them."

15. Because the learned trial judge, against the objection of defendant's counsel, permitted the witness Truesdell to be asked by the State:

"You are under indictment in this Court jointly with Dr. Young for performing a criminal abortion on your wife, are you not?"

16. Because the learned trial judge in charging the jury erred in permitting the jury to draw any inference from the statement of the contention of the State: "That he (Dr. Young) was the only person who opened the body before *rigor mortis* set in, and that as he was the only person that operated on the body the contention is that he removed the intestines."

17. There was also error in the Court's charge:

"The State, therefore, contends that its charge is fully supported by the evidence that the intestines were not removed after death and from the time the defendant left the body that fatal afternoon until Roemmele saw it no one touched it and that the intestines could not have been removed without some evidence of mutilation on the body, at least up to the time that *rigor mortis* set in."

18. That the trial judge in charging the jury improperly stated:

"That the experts based their opinions on a hypothetical question not embracing all the details as to what was left and had been removed; and that at all events the intestines were gone and that this defendant was the only person other than the undertaker who is shown to have had access to the body up to the time that *rigor mortis set in.*"

19. Manifest injustice was done to the defendant by the failure of the Court in his charge to the jury, in reviewing the facts on which the defendant relied as indicative that the body had been tampered with, the Court omitted to refer to the increased length of the incision, to the extent of an inch or two above the navel.

20. Because manifest injustice was done to the defendant by the whole charge of the Court.

21. Manifest injustice has resulted to the defendant in the verdict and judgment based thereon from the entire record in the case.

McCARTER & ENGLISH,
Attorneys of Plaintiff in Error.

MacCrellish & Quigley Co., Printers, Trenton, N. J.

NEW JERSEY
Court of Errors and Appeals

STATE OF NEW JERSEY,
Plaintiff-Appellant,
vs.
PETER J. RODGERS,
Defendant-Appellee.

Supplemental Brief for Plaintiff-Appellant.

IN ANSWER TO POINT II OF RESPONDENT'S BRIEF.

On page thirteen of respondent's brief, under point II, the respondent claims that the violation of the Disorderly Persons Act merged in the common law nuisance and that, therefore, the defendant could not be lawfully convicted of the violation of the Disorderly Persons Act. He cites *Johnson* v. *State*, 29 *N. J. L., page* 453. This case was an indictment for conspiracy, and it was contended by the defendant that the averments in the indictment showed the commission of the crime of perjury and that the offense of conspiracy was merged in the crime of perjury. The Supreme Court, in its opinion in this case (*26 N. J. L., at page* 324), stated the doctrine of merger as follows:

New Jersey State Library

> "If, therefore, on the trial for a misdemeanor, it appear that the same act involves a felony, the proceedings will be arrested; otherwise the conviction and judgment on the lesser offense may be pleaded in bar of a prosecution for the higher crime, and offenders escape without due punishment."

In this case, however, the Supreme Court refused to apply this doctrine because they held that the conspiracy was separate and distinct from making the false accusation and causing the arrest, in doing which latter act perjury was committed, that one was the means of accomplishing the other, but that they were not the same act, and their decision was affirmed by this court.

No case has been found in this State in which a defendant accused of a misdemeanor was acquitted on his motion because the facts in the case showed the commission of a felony, while there are numerous cases both in England and in this country where the action of the trial court in refusing to direct an acquittal has been sustained. See *State* v. *Vadnais*, 21 *Minn.* 383, in which the Court said:

> "When the act charged as a crime is a constituent part of some greater offense, it does not lie with the defendant to object that although he committed the particular offense charged he is guilty of another and greater offense, which includes the one for which he is being tried, and hence that he cannot be convicted of the lesser crime.

Among the cases cited by the Court as supporting the decision are: *Regina* v. *Button*, 11 *Q. B.* 929; *Regina* v. *Neale*, 1 *Den. C. C.* 36; 1 *Wharton Crim. Law* 564; *Commonwealth* v. *Burke*, 14 *Gray* 100; *Commonwealth* v. *Dean*, 109 *Mass.* 349; *People* v. *Durkin*, 5 *Park. C. R.* 243; *State* v. *Vadnais*, 21 *Minn.* 382.

In *Regina* v. *Button*, 11 *Q. B.* (*Adolphus & Ellis*) 929, an indictment charged the defendants with conspiracy to defraud.

"The indictment charged that the defendants, being in the employ of the prosecutor, a dyer, conspired to use the dyeing materials on articles not instrusted to them for dyeing, and not belonging to themselves or their families, and so to defraud their employer of profit.

"The evidence showed that the prosecutor permitted his servants to dye any article belonging to themselves or their families, but not things belonging to others; and that the defendants had taken in articles not belonging to themselves or their families, and had dyed them for profit with the materials of their employer, and passed them off for articles within the prosecutor's permission."

It was objected that the misdemeanor charged formed part of a felony and was merged therein, and that, therefore, either the judgment should be arrested or a verdict of acquittal entered, and this question was reserved for consideration.

The opinion of the Court was given by Lord Denman, Chief Justice. A number of the authorities were reviewed, among them *Isaac's Case*, 2 *East's P. C.* 1031, cited by respondent. The case of *Regina* v. *Neale* is also cited with approval.

The Court points out the fact that although the courts have adjourned the trial for a minor offense when it appeared that the defendant was guilty of a more serious offense in order that the prosecution for the more serious offense might be taken, this should not be taken as authority for the "notion that the defendant has any right so to interfere, and to demand an acquittal for a manifest minor offense, upon the pretext that he has a right to direct himself to be prosecuted for a graver crime." The Court further stated, speaking of this matter:

"Also, if he (the Court) should be satisfied that a felony is proved, and should direct an ac-

quittal for the misdemeanor, it is obviously uncertain whether the same evidence would be given upon a prosecution for felony, or would be satisfactory to the jury, or would be left without answer. The felony may be pretended to extinguish the misdemeanor, and then may be shown to be but a false pretense, and entire impunity has sometimes been obtained by varying the description of the offense according to the prisoner's interest; he has been liberated on both charges, solely because he was guilty upon both."

Speaking of the case they were then considering, the Court said:

"Upon this review, we are of opinion that this conviction for a misdemeanor ought to be sustained, although the evidence proving it proved also that it was part of a felony, and that such felony had been completed."

In 1 *Bishop's Crim. Law.*, § 812, appears the following:

"But, if to what constitutes a misdemeanor some circumstance is added the aggregate may well be a felony. In such a case, according to Hawkins, should the indictment be for the misdemeanor and the aggravation which makes the act felony appear at the trial, opinions are divided on the question whether or not there can be a conviction for the misdemeanor. There is great weight in the reasons which he gives for the affirmative of this proposition, namely, 'because the king may proceed against the offender as he sees fit, either as a trespasser or as a felon.' And this is the better doctrine. In England it appears if on a trial for a misdemeanor the wrongful act is shown to have been carried to an extent which makes it a felony, the Court will in its discretion, not as of course, order the proceeding to be suspended until an indictment

> can be brought forward for the felony. It is not believed that this practice would be proper with us or that it is ever resorted to; it would lead to embarrassing complications under our constitutional guaranties against a second jeopardy. If the judge declines to give that direction the prisoner cannot complain because it is for his advantage to be prosecuted for the lighter matter rather than for the heavier."

An additional reason why the doctrine of merger cannot apply in this case is that the offense of common law nuisance and the statutory offense of disorderly conduct are separate and distinct offenses and where the offenses are different there can be no merger. *People* v. *Lohman,* 1 *N. Y.* 379.

Furthermore, it appears that the doctrine of merger applies only to a misdemeanor and a felony, or a felony and treason. Apparently there is no authority anywhere for applying this doctrine to disorderly conduct and a misdemeanor. Counsel insists that the Geiger case furnishes an example of merger. The difficulty with his contention with regard to this case, however, is that the complaint charged both disorderly conduct and a crime, that the evidence failed to show the commission of any disorderly conduct but did show the commission of a crime. There was no merger, for there was nothing to merge.

As to Point V of Respondent's Brief.

Counsel's fifth point, in which he contends that the Disorderly Persons Act violates section 8 of the Constitution because it does not provide for a trial by jury, seems to be sufficiently answered by the cases which he has cited in his brief. It is apparent that the words "criminal prosecution" as they appear in the eighth section refer to prosecutions for crimes and do not include summary proceedings for mere disorderly conduct. This

is the construction which has been placed upon this provision by the Legislature since its adoption, and also by the courts as appears from the cases cited in respondent's brief. The mere fact that reference was not made to this constitutional provision in most of these cases is not significant. Certainly the able counsel who argued and the able judges who decided these cases did not overlook this provision of the Constitution.

Proceedings of the character of the proceeding at bar are certainly not criminal prosecutions within the meaning of the constitutional provisions. See *People* v. *Burke*, 205 *N. Y.* 490, in which the Court of Appeals of New York states:

> "We think the provision in Section 5 of the Judiciary Law, which limits the Sunday jurisdiction of magistrates 'in a criminal case' to the arrest, committal or discharge 'of a person charged with an offense' has no application to such a case as this. There are many minor offenses, colloquially classified as crimes, which are merely violations of police regulations. Vagrancy, public drunkenness, various kinds of disorderly conduct, and other minor offenses fall within this category, and have from time immemorial been the subject of summary disposition in magistrates' tribunals."

Respectfully submitted,

JOSIAH STRYKER.

JOHN W. WESCOTT.

Attorney-General.

MacCrellish & Quigley Co., Printers, Trenton, N. J.

NEW JERSEY
Court of Errors and Appeals.

State of New Jersey,
Plaintiff-Appellant,
vs.
Peter J. Rodgers,
Defendant-Appellee.

Brief for Plaintiff-Appellant.

STATEMENT OF FACTS.

This case was a prosecution commenced in the Recorder's Court of the City of Paterson against the Defendant-Appellee. The complaint (Case, page 8) charges that the defendant did operate a certain automobile over and upon a public street, to wit, over and upon a public street of said city, known as Market Street, "while he, the said Peter J. Rodgers, was under the influence of intoxicating liquor, contrary to and in violation of the first section of an act of the Legislature of the State of New Jersey entitled "Supplement to an act entitled 'An act concerning disorderly persons (Revision of 1898),' approved March 12, 1913 (P. L. 1913, p. 103), and by reason thereof the said Peter J. Rodgers became a disorderly person."

The defendant-appellee was convicted in the Recorder's Court and sentenced to imprisonment in the County Jail for thirty days. He reviewed this conviction by certiorari.

The judgment of the Recorder's Court was reversed by the Supreme Court upon the ground that the statute was invalid because it provided for a conviction of the offense therein described without indictment and trial by jury. This decision was based by the Supreme Court upon the ground that the evidence in the case at bar, a statement of which was contained in the conviction in the Recorder's Court and returned with the writ (Case, pages 9 to 15), showed that the defendant was guilty of the offense of common law nuisance; that this offense was not triable in the Recorder's Court, and hence that the Recorder was without jurisdiction.

The opinion of the Supreme Court is printed on pages 16 to 18 of the Case.

The evidence showed, as stated in the opinion of Mr. Justice Swayze in the Supreme Court, that the defendant drove his automobile, which was a large machine, upon Market Street in the City of Paterson at the time named in the complaint; that the defendant at that time was very much under the influence of intoxicating liquor; that the car was driven by him through the front window of a saloon located on Market Street, breaking the glass.

The grounds of appeal appear on pages 1 and 2 of the Case, and are based solely upon the finding of the Supreme Court that the Recorder's Court was without jurisdiction to hear and determine the charge made against the defendant.

ARGUMENT.

I.

IF THE SUPPLEMENT OF 1913 DESCRIBES AN OFFENSE WHICH IS DISORDERLY CONDUCT AND NOT A COMMON LAW OFFENSE, THE LEGISLATURE HAD POWER TO PROVIDE FOR THE PUNISHMENT WITHOUT INDICTMENT AND TRIAL BY JURY.

This apparently is conceded by the opinion of the Supreme Court. See *State* v. *Anderson*, 40 *N. J. L.* 224; *State, Shivers, Prosecutor*, v. *Newton*, 45 *N. J. L.* 469; *Carter Bros.* v. *Camden District Court*, 49 *N. J. L.* 600; *Minard* v. *Dover*, 47 *Vr.* 132; *State* v. *Lakewood Market Company*, 84 *N. J. L.* 512, 523. See, also, *Bassette* v. *State*, 51 *N. J. L.* 502, in which the Supreme Court held that the defendant was not entitled to a trial by jury under the Disorderly Persons' Act.

The practice of trying cases involving disorderly conduct before a magistrate, without a jury, antedates the adoption of the Constitution. The earliest act on this subject which has been found was passed June 10, 1799, and appears in the Revision of 1847, page 564. This act was revised and amplified in 1875 (Revision of 1877, p. 303), and was again revised and further extended in 1898 (2 Comp. Stat., p. 1296). It covers numerous minor offenses, which, from the earliest times in this State, have been punished either by fine or imprisonment, upon summary conviction before a magistrate. An examination of these offenses will show that many of them are not substantially different from the offense described in the Supplement of 1913.

II.

THE DEFENDANT WAS NOT CHARGED WITH BEING A COMMON LAW NUISANCE OR WITH ANY OTHER COMMON LAW OFFENSE, BUT WITH A MERE VIOLATION OF THE SUPPLEMENT OF 1913 TO THE DISORDERLY PERSONS' ACT.

The decision of the Supreme Court, as we understand it, is based upon the finding that the defendant was guilty of a common law nuisance; that, therefore, the Recorder's Court was without jurisdiction to try him, under the doctrine of *State* v. *Anderson,* 40 *N. J. L.* 224, and *Atlantic City* v. *Rollins,* 76 *N. J. L.* 254.

In *State* v. *Anderson,* two indictments were found against the defendant, one for selling liquor without a license, the other for keeping a disorderly house by frequently selling therein liquor, contrary to law. Prior to the commission of these alleged offenses, an act had been passed providing that where ordinances of cities provided for the punishment of the unlicensed sale of spirituous liquors, the provision for the punishment of such offense by indictment should not apply. This statute also provided that where an ordinance provided for the punishment for the offense of keeping a disorderly house, it should not be lawful to prosecute for such offense by indictment if the alleged offense consisted only of the continuous or frequent sale of liquor without a license.

The Court held that the provision of the statute which prohibited prosecution by indictment for the offense of selling liquor without a license was valid, as that was a mere statutory offense, but that the statutory provision which prohibited prosecution by indictment for the offense of keeping a disorderly house and attempted to substitute in its place prosecution under a city ordinance for such offense was invalid because the offense

of keeping a disorderly house was a common law offense, and could not be prosecuted except by indictment and trial by jury. *Atlantic City* v. *Rollins, supra,* follows the doctrine of *State* v. *Anderson* without discussion.

The distinguishing feature, however, between *State* v. *Anderson* and the case at bar is that in *State* v. *Anderson* the statutory provision which was declared to be unconstitutional directly and distinctly provided for the prosecution of a common law offense without indictment and trial by jury. In the prosecution, therefore, under a city ordinance, contemplated by this statute, the defendant must necessarily be charged in the complaint with a common law offense, which would differ in no respect, so far as the charge was concerned, from the common law offense of keeping a disorderly house.

It seems to be conceded by the opinion of the Supreme Court that the complaint in the case at bar did not charge a common law offense. The Supreme Court was not able to say, *from a reading of the complaint,* that any attempt was made to convict the defendant of a common law offense. This appears plainly from the following extract from the opinion of the Court:

> "The recognized line of distinction is between offenses indictable at common law and offenses created by statute. In the present case the statute is applicable to cases of both classes. One who operates an automobile or motor vehicle while under the influence of intoxicating liquor is almost sure to be guilty of a public nuisance, although it is conceivable that the vehicle might be of so low a power and weight and operated at so slow a speed that it could not be properly found to be a nuisance. On the other hand, one who operates (to use the word of the statute) an ox-cart while under the influence of intoxicating liquors would be within

> the words of the statute, but could hardly be called guilty of a public nuisance. Since the statute applies to offenses that may not be a crime at common law, as well as offenses that may be, we must look to the facts of the case to determine whether the present proceeding is an attempt to convict Rodgers of a crime without an indictment by a grand jury, as required by the Constitution, or whether it is an attempt to convict him merely of disorderly conduct, which may properly be done by summary proceedings before a magistrate."

This is a concession upon the part of the Supreme Court, that if the defendant were convicted merely of the offense with which he was charged, he would not be convicted of a common law offense, because the charge did not contain a statement of the facts and circumstances, which, if proved, would render the defendant guilty of such an offense.

These facts and circumstances are gathered by the Court from the evidence which was produced in this case. The defendant, however, could not possibly be convicted in this case of an offense which was not charged in the complaint. When it is conceded that the charge in the complaint is not a charge of a common law offense, it must necessarily follow that the conviction was not a conviction of a common law offense. The question as to what the defendant actually did is entirely immaterial. He may have been guilty of the facts alleged in the complaint and of something else beside, which something else, either by itself or in connection with the facts alleged in the complaint, may have made him guilty of a common law offense in the same way that a person charged with a single sale of intoxicating liquor may in fact have been guilty of such numerous and habitual sales as to have made him guilty of keeping a disorderly house. If the charge in the complaint were of making a single sale of intoxi-

cating liquor, he could by no possibility in such a proceeding have been convicted of the offense of keeping a disorderly house, no matter what the evidence in the case may have shown.

That the Supreme Court believed that the charge in this complaint did not necessarily show a common law offense is also apparent from the opinion of the Supreme Court in *Curtis* v. *Joyce,* argued and decided at the same term. That was a prosecution under the same statute, and the charge was identical.

The defendant in that case, who was the plaintiff in certiorari, had originally assigned among the reasons for reversal that the defendant was deprived of the right of trial by jury, but prior to the argument had withdrawn that reason.

Speaking of this, the Court said:

> "This question is similar to that discussed in the Rodgers case, just decided, and it would be interesting to consider whether the same rule would apply to a case where the only proof was that the defendant drove an automobile on the public street while he was under the influence of intoxicating liquor. We are precluded from dealing with this question, as the prosecution has abandoned his eighth reason."

If the charge in the complaint did not show, as it appears to be conceded that it did not show, the commission of a common law offense, and if, as must be the case, the defendant, therefore, could not in this proceeding have been convicted of a common law offense, it is insisted that the evidence in the case, admitted to sustain the charge in the complaint, could by no means change the character of the offense with which the defendant was charged from a mere statutory offense into a common law nuisance. The character of the offense is determined not by the evidence which may be legally *admissible* to support the complaint, but by the charge and the evidence which is *requisite to sustain* the charge.

In the case at bar the charge would have been sustained by proof that the defendant drove an automobile, without detailed specifications as to the kind of automobile, on Market Street, while under the influence of liquor. The evidence as to the manner of his driving, as to the result of his driving, as to the extent of his intoxication, was all admissible, as cumulative evidence of the charge made. It was not, however, essential evidence for the purpose of sustaining the charge.

The question of the jurisdiction of the Recorder's Court over the subject matter of the case depends not upon the evidence produced, but upon the offense with which the defendant is charged. This is the doctrine of *State* v. *Anderson.* It is also the doctrine of *Geiger* v. *Recorder,* 96 *Atl.* 1006. In that case the defendant was convicted before the Recorder's Court of being a disorderly person. The judgment of the Court was that the defendant was "guilty of interfering with complainant while he was lawfully upon Coit Street, in the Town of Irvington," and of being a disorderly person under section 3 of an act concerning disorderly persons.

The Supreme Court said, in a *per curiam* opinion:

> "Section 3 of the act makes one a disorderly person who interferes with or obstructs another while lawfully on a street, but the evidence *and complaint* (italics ours) clearly show that if the defendant was guilty of any offense it was that of assault and battery, and not merely an interferer or obstructor. To permit this conviction to stand would allow a recorder to reduce the crime of assault and battery to that of disorderly conduct."

An investigation of the files in the office of the Clerk of the Supreme Court shows that the complaint in the Geiger case charged that one Herman Geiger, of the City of Newark, "did interfere with said complainant who was lawfully upon said Coit Street *and did beat said complainant upon the face and body.*" (Italics ours.)

The Geiger case is, therefore, entirely consistent with the principle for which appellant is contending. The action of the Court was based upon the fact that the complaint showed the common law offense of assault and battery and the evidence sustained the complaint.

See, also, *State* v. *Gratz*, 86 *N. J. L.* 484.

III.

The Statutory Offense of Driving an Automobile While Under the Influence of Intoxicating Liquor Is Not a Common Law Nuisance.

Various definitions of "common law nuisance" have been given by the courts and the writers of textbooks. In *Bishop's Criminal Law*, § 1072, it is defined as follows:

> "A public or common nuisance is any act or neglect the product of which works an annoyance or injury to the entire community; or, the product itself is termed a nuisance."

In *Russell on Crimes, page* 1838 (*Vol.* 2), is the following:

> "Nuisance is distinct from trespass and negligence, and, as a general rule, in cases of public nuisance the grievance lies in the inconvenience in fact caused and not in the intent or knowledge of the person responsible as occupier of the premises on which the nuisance is created, or of the owner, if the premises are in fact unoccupied."

> "A common nuisance may be defined to be an offense against the public, either by doing a thing which tends to the annoyance of all the king's subjects or by neglecting to do a thing which the common good requires." *Hawk. Pl. Cr., Vol.* 1, *p.* 360.

> "Whatever openly outrages decency or is injurious to public morals or public health or comfort is a common nuisance and a misdemeanor at common law." *Wharton Cr. L., p.* 1840, § 1676.

> "It is a common nuisance to prevent the public from having the free use of the highway by unreasonably blocking it or otherwise temporarily excluding them from it, or by putting on it any permanent structures, or by placing in its vicinity instruments which make its use insecure or uncomfortable." *Wharton Cr. L.*, § 1751.

From these definitions it will be seen that the essence of the crime of public nuisance is inconvenience or annoyance to the public. *If there is no annoyance or inconvenience to the public there is no nuisance.*

An indictment for public nuisance must set out the manner in which this inconvenience or annoyance arises. See *Morris & Essex R. R. Co.* v. *State,* 36 *N. J. L.* 553 (bottom of page 555); *State* v. *Middlesex & Som. Tr. Co.,* 67 *N. J. L.* 14; *State* v. *Asphalt Paving Co.,* 53 *A. Rep.* 299; *People* v. *Sands,* 1 *Johns.* (*N. Y.*) 78; *Commonwealth* v. *Linn,* 158 *Pa. St.* 22; 22 L. R. *A.* 353.

The statutory offense of driving an automobile while under the influence of intoxicating liquor differs from the offense of common law nuisance because when the thing prohibited by the statute has been done the offense is complete whether any annoyance, inconvenience or danger results to the public or not.

It is not essential to the existence of the offense that the driver of an automobile should be so intoxicated that he cannot safely drive a car.

The word "intoxicated" was defined, and that definition approved, by the Supreme Court of Pennsylvania in *Elkin* v. *Buschner* (*Pa.*), 16 *Atl.* 102, 104, as follows:

> "Whenever a man is under the influence of intoxicating liquor so as not to be entirely at himself, he is intoxicated; although he can walk straight, although he may attend to his business, and may not give any outward and visible signs to the casual observer that he is drunk, yet if he is under the influence of liquor so as not to be at himself, so as to be excited from it, and not to possess that clearness of intellect and that control of himself that he otherwise would have, he is intoxicated."

In *Babbitt on Law Applied to Motor Vehicles,* the following appears, *page* 341, *sec.* 466:

> "The weight of opinion and the inherent evidence appearing in the sweeping character of the language of the section as a whole, lead to the presumption that the expression 'under the influence of intoxicating liquor,' as used in the motor vehicle act, is to be taken not only to cover all the well known and easily recognized conditions and degrees of intoxication, but to reach back of even slight intoxication, and include any abnormal mental or physical condition which may arise in the operator of a motor vehicle as the result of indulging in any degree, or at all, in any of those things described as intoxicating liquors, as tending to deprive him of that clearness of intellect and control of himself which he would otherwise possess."

It is a well-known fact that persons somewhat under the influence of liquor, and therefore within the statutory prohibition, can and do drive automobiles without substantially endangering public safety. Such a driver of a motor vehicle may drive his car with ordinary skill and care, the car may be one of low power and may be driven at an exceedingly low rate of speed; the driver may, in operating the car, obey every provision of the traffic laws and of the Motor Vehicle Act;

he may not endanger anyone else who may be upon the public highway; his driving may be of such a character that no one upon a public street would notice his abnormal condition, and yet, if he is even slightly under the influence of intoxicating liquor he has committed the statutory offense. Such a driver would certainly not be guilty of common law nuisance. His act would not work an annoyance or inconvenience to the public, and, independently of the statute, he would be guilty of no offense.

As has above been pointed out, the Supreme Court in its opinion recognizes this fact, and concedes that in order to bring the offense within the common law definition of public nuisance, facts not charged in the complaint and not within the statutory definition of the offense must be shown. In other words, it must appear that the safety of the public was endangered to a considerable degree by the driving. This may be shown by proof of the fact that the degree of intoxication of the driver was such as to render him incapable of properly driving the machine; that he drove it in such a manner as to endanger those using the public highways; that the life and limb of the public in general were actually endangered. None of these particulars are elements of the statutory offense—the statutory offense is complete without them—but the offense of common law nuisance has not been committed unless some of these or like elements are present.

In the statutory offense the fact that the driver is under the influence of intoxicating liquor is of the essence of the offense.

In the offense of common law nuisance in the use of an automobile upon the highway, the essence of the offense is the harm, inconvenience or danger to the public from the improper use of the highway. The fact that the driver may or may not have been under the influence of intoxicating liquor is but incidental, and is not of the essence of the offense.

It clearly appears, therefore, that the offense of common law nuisance arising from the use of an automobile upon the highway, and the statutory offense of driving an automobile on the highway while under the influence of intoxicating liquor, are distinct and separate offenses, even though they arise out of the identical transaction. It will thus be clearly seen that the statutory offense of driving an automobile while under the influence of intoxicating liquor, and the common law offense of nuisance in the use of an automobile upon the highway, are essentially different offenses; that they each require different kinds of proof to sustain them, and that, although they arose from the same transaction, they still would be distinct and separate offenses.

Authorities giving principles applied in determining identity of offenses.

Cases which have arisen under various constitutional provisions prohibiting the trial of an accused person after acquittal for the same offense are in point as indicating the rule which has guided the courts in the determination of the question as to the identity of offenses.

In *King* v. *Vandercomb, 2 Leach Crown Cases, p* 829, the following language appears in the opinion:

> "And if crimes are so distinct that evidence of one will not support the other, it is as inconsistent with reason as it is repugnant to the rules of law to say that they are so far the same that an acquittal of the one shall be a bar to the prosecution of the other."

In this case the accused had been acquitted of burglariously entering a house and larceny. They were subsequently indicted for burglariously entering a house with intent to steal based upon the same act. The plea of former acquittal was set aside. See, also, *Lohman* v. *People,* 1 *N. Y.* 379; 49 *Am. Dec.* 340; *Arrington* v. *Commonwealth,* 10 *L. R. A.* 242. This latter case was a prosecution for sale of liquor without a license.

A former conviction had been had for sale of liquor on Sunday, based on the same sale. It was held that the sale of liquor on Sunday was not the same offense as the sale without a license, although but one sale had been made, because each offense required different evidence to sustain it. The Court said, in part:

> "The test is not whether the defendant has already been tried for the same act, but whether he has been put in jeopardy for the same offense. A single act may be an offense against two statutes, and if each statute requires proof of an additional act which the other does not, an acquittal or conviction under either statute does not exempt the defendant from prosecution and punishment under the other."

See, also, *Ruble* v. *State,* 51 *Ark.* 170; *Commonwealth* v. *Shea,* 80 *Mass.* 387, in which it was held that the conviction of the offense of keeping a tenement used for the sale of intoxicating liquor was not barred by a conviction for keeping a shop open on the Sabbath, even though both charges were based on the same act.

In *Wharton's Criminal Law, sec.* 393, the following appears:

> "The fact that there has been a former conviction or acquittal on a trial for an offense of a different grade, in connection with and growing out of the same act or set of facts, cannot be set up as a bar on a subsequent trial charging an offense, the essential elements of which are not the same. Thus a conviction for assault and battery will be no bar to a trial for manslaughter where the injury results in death after the former conviction."

> "Test as to whether two indictments are for the same offense is the fact whether evidence necessary to support the latter indictment would have sustained a conviction under the former indictment. Testimony to sustain the second

charge not being admissible to sustain the first charge, there is not former jeopardy." *Wh. Cr. L.* 528.

In *United States* v. *Harminson*, 26 *Fed. Cases No.* 15308, the rule is stated as follows:

> "The test is not whether the defendant has already been tried for the same act, but whether he has been put in jeopardy for the same offense. A single act may be an offense against two statutes, and if each statute requires proof of an additional fact which the other does not, an acquittal or conviction under either statute does not exempt the defendant from prosecution and punishment under the other."

See, also, *Morey* v. *Commonwealth*, 108 *Mass.* 433; *State* v. *Elder*, 65 *Ind.* 282; *Commonwealth* v. *Roby*, 12 *Pick.* 496.

In *United States* v. *McAndrews and Forbes Co.*, 149 *Fed.* 836, the defendants were indicted under the Sherman Act for combination and for monopoly. They were convicted on both counts and sentenced to separate punishment on each count. Motion was made in arrest of judgment upon the ground that the counts of the indictment charged substantially the same offense.

The Court said, in part, as follows:

> "The true test of the correctness of the defendants' position is whether upon a review of both the facts and the law identity exists between the offenses proved in this case and called in the first, combination, and in the third monopoly. If identity does exist, a conviction under either count would be a bar to a prosecution on the other, and therefore a bar to punishment on both. The rule regarding identity of offenses is to discover whether the crimes under consideration are in substance precisely the same or of the same nature or species, or the one crime is an ingredient of the other. In this case

> the crimes of monopoly and combination are legally distinct. The offense under the first count was complete when the combination was actually formed with intent to bring about restraint of interstate commerce. The additional overt acts were but cumulative evidence from which the true intent, purpose and continuance of the combination might be inferred. But they were themselves the proof of the monopoly, and the monopoly existed in their aggregate effect. That the prosecution in overwhelmingly proving the existence and intent and continuance of the combination proved the monopoly does not in my opinion render the offenses identical merely because all the evidence offered was applicable to both counts."

This case was appealed to the Supreme Court, but the appeal was dismissed by consent of counsel for plaintiff in error. 212 *U. S.* 585.

See, also, *Commonwealth* v. *Vaughn* (*Ky. Ct. of Appeals*), 45 *L. R. A.* 858, and cases cited in note; *State* v. *Cooper,* 13 *N. J. L.* 362; *State* v. *McCormick,* 9 *N. J. L. J.* 152, and cases cited.

It seems to be established by the cases above cited that the test of identity of offenses for the purpose of determining whether or not conviction of one offense will bar conviction of another offense growing out of the same conduct or transaction is whether or not the evidence requisite to establish either offense is sufficient to establish the other. If the evidence requisite for proving either offense will not prove the other, the crimes are distinct and separate, and conviction or acquittal of one will not bar conviction of the other.

Tested by this rule, the offense of driving an automobile upon a highway in such a manner as to create a common law nuisance is distinct from the offense of driving an automobile upon a highway while under the influence of intoxicating liquor. The first offense requires proof

of the unlawful use of an automobile upon the public highway in such a manner as to inconvenience the public. Whether or not the person charged with the offense was intoxicated at the time of its commission is immaterial. The gravamen of the offense is the harm and inconvenience and danger to the public. If that is proven the offense is established.

The second offense is established by proving that the person charged drove an automobile on the public highway while under the influence of intoxicating liquors. Proof of the manner of the defendant's driving or the harm, inconvenience or annoyance caused the public by such driving is entirely immaterial except in connection with evidence of intoxication and as tending to support such evidence. The statutory offense would certainly not be supported by mere proof of reckless, careless driving in a public street, thereby occasioning great harm, inconvenience and annoyance to the public; there must, in addition to this proof, if such proof is offered, be proof that the defendant was under the influence of intoxicating liquor.

On the other hand, the common law offense would not be sustained merely by proof of defendant's driving while under the influence of intoxicating liquor unless proof were offered showing driving in such a manner as to produce harm, inconvenience and annoyance to the public.

Under the doctrine of these cases, therefore, it seems plain that conviction of the statutory offense will not bar subsequent conviction of the common law offense or vice versa. The offenses are so distinct and separate that although both arise out of the same conduct or transaction separate convictions can be had for both. In this respect the offenses are identical in principle with *Commonwealth* v. *Shea*, 80 *Mass.*, 387, *supra*; *Arrington* v. *Commonwealth*, 10 *L. R. A.* 242, *supra*, and *United States* v. *McAndrews and Forbes Co.*, 149 *Fed.* 836, *supra*.

IV.

It Was Competent for the Prosecutor to Make Complaint Against the Defendant Charging any Offense Which He Had Committed, Although the Offense Charged May Have Been an Ingredient in a More Serious Offense.

The Supreme Court, in its opinion, says that the defendant was guilty of a common law nuisance; that it could not have been the intention of the Legislature to reduce a common law nuisance to a mere offense against the Disorderly Persons' Act; that the defendant cannot be convicted of a common law nuisance without indictment and trial by jury, and, therefore, his rights were infringed by the proceeding in question. It is apparent, however, that this is not a statement of the true situation. As above stated, the defendant was not charged with a common law nuisance; he was charged with an offense different and distinct from common law nuisance. If the offense with which he was charged was an ingredient in the offense of common law nuisance that does not exempt him from liability for punishment for the offense charged.

In 1 *Bish. Cr. L.*, § 791, the rule is stated as follows:

> "Subject to whatever exception may be found in the doctrine of merger discussed in the last chapter a criminal person may be holden for any crime of whatever nature which can be legally carved out of his act. He is not to elect, but the prosecuting power is. If the evidence shows him to be guilty of a higher offense than he stands indicted for, or of a lower, or of one differing in nature, whether under a statute or at the common law, he cannot be heard to complain, the question being whether it shows him to be guilty of the one charged."

See, also, *Regina* v. *White*, 9 *Car. & P.* 282; *State* v. *Jesse*, 3 *Dev. & Bat.* (*N. C.*) 98; *Regina* v. *Neale*, 1 *Car. & K.* 591; *Lohman* v. *People*, 1 *N. Y.* 379; *Thayer* v. *Boyle*, 30 *Me.* 475; *Rex.* v. *Davis*, 1 *Car. & P.* 306; *State* v. *Archer*, 54 *N. H.* 465.

There seems to be no question that this is the rule. If, therefore, it be admitted that the defendant was not charged with the offense of common law nuisance—that he was charged with a lesser offense—that the evidence showed him to be guilty of the lesser offense with which he was charged, but also showed him to be guilty of the greater offense of common law nuisance, it necessarily follows that his rights were not infringed by the conviction of the lesser offense, whether or not that conviction would operate as a bar to a subsequent prosecution for the higher offense.

CONCLUSION.

The statute under consideration is a most important one for the protection of the public. *The question really involved in this case is whether this statute can or can not be enforced against drivers of motor vehicles.*

The opinion of the Supreme Court if affirmed makes it practically impossible to ever enforce this statute in a magistrate's court against the driver of a motor vehicle. It announces the novel rule that under this statute a court cannot determine by an inspection of the complaint whether or not it has jurisdiction of a cause, that on the papers in the case jurisdiction may appear, but that when the evidence is in, the magistrate's duty is not confined to the determination of the question as to whether or not the evidence shows the defendant to be guilty of the offense charged, but he must also decide the exceedingly difficult question as to whether or not the evidence, in addition to showing the defendant guilty of the offense charged, shows him to be guilty of some other offense, viz., that of a nuisance at com-

mon law. Under this decision the magistrate, after having heard the case, of which, as appears from the complaint and warrant, he has jurisdiction, and after having found as a fact that the defendant did the things which the complaint charges him with doing, must dismiss the complaint if he finds that in addition to doing the things charged in the complaint the defendant did other things not charged or referred to in the complaint, but which make him guilty of a common law nuisance.

No precedent is cited which supports this unusual rule; no case is referred to which expresses the same view of the jurisdiction of a magistrate. The cases cited in the opinion of the Supreme Court, in which it is stated that "the driver may be liable to conviction as well for manslaughter, *State* v. *Campbell,* 82 *Conn.* 671; *People* v. *Darragh,* 126 *N. Y. Supp.* 522; or for reckless driving, *Commonwealth* v. *Horsfall,* 213 *Mass.* 232; or for assault and battery, *State* v. *Schutte,* 87 *N. J. L.* 15, are by no means in point.

Commonwealth v. *Horsfall,* referred to in the opinion, was a conviction of a *statutory offense* of recklessly driving and knowingly failing to inform a person who had been injured and has no application to the principle under discussion in this case.

State v. *Schutte* was a conviction of the common law offense of assault and battery by driving an automobile at a reckless rate of speed on a much-traveled public road, in such a manner as to inflict bodily injuries on another.

If the defendant, while under the influence of intoxicating liquor, instead of driving his machine through the window of a saloon had struck a person in the road because of his reckless driving, he might have been liable to indictment for assault and battery under the doctrine of *State* v. *Schutte.* It could scarcely be contended, however, that his liability to conviction of assault and battery would relieve him from prosecution for the statutory violation, as the two offenses are so

different in character that they could not be said to be identical under any of the rules applied for the purpose of determining identity of offenses.

The enforcement of this statute is important. If travel on our roads is to be protected, it is of the utmost importance that drivers of automobiles should know that they are liable to prosecution if they drive when intoxicated, whether or not any accident is caused or whether or not their driving is of such a character as to make them a public nuisance. The strict enforcement of this law will tend to keep the intoxicated motor vehicle driver from the road and thus make travel safe, while adherence to the doctrine of the decision of the Supreme Court will make it practically impossible to reach the intoxicated driver of an automobile unless he conducts himself in such a manner as to make him a public nuisance, and then only after indictment by a grand jury and trial by a petit jury.

It is respectfully submitted that the judgment of the Supreme Court should be reversed, and that the judgment of the Recorder's Court of the City of Paterson should be affirmed.

JOSIAH STRYKER,
JOHN W. WESCOTT,
Attorney-General,
Attorneys of Appellant.

New Jersey Court of Errors and Appeals

STATE OF NEW JERSEY,
Plaintiff-Appellant,

vs.

PETER J. RODGERS,
Defendant-Respondent.

BRIEF FOR DEFENDANT-RESPONDENT.

The facts in this case are accurately stated at pages 1 and 2 of the appellant's brief, and under the rules should not be repeated here.

THE ARGUMENT.

POINT I.

The Supreme Court correctly reversed the judgment of the Recorder of the City of Paterson for the reasons (slightly modified) stated in the opinion of Mr. Justice Swayze filed in the cause (pp. 16 to 18).

We might perhaps be content to rely upon the reasoning contained in Mr. Justice SWAYZE'S opin-

ion in support of respondent's position were it not for what we deem to be a misapprehension on the part of the Attorney General's office as to the true meaning of that opinion.

The opinion reads—"Peter J. Rodgers was convicted by the Recorder of being a disorderly person under Chapter 67 of the Laws of 1913 (P. L. 103). The act provides that any person who operates an automobile, motor or any other vehicle over any public street or highway while under the influence of intoxicating liquors shall, upon conviction, be punished by an imprisonment of not less than thirty days and not more than six months. The act is one of an increasing class of acts, whereby the Legislature seeks to punish offenses by summary proceedings, evidently with a design of avoiding trial by jury. That this can be accomplished in a certain class of cases is settled. *Howe* v. *Treasurer of Plainfield,* 37 *N. J. L.,* 145; *Riley* v. *Trenton,* 51 *N. J. L.,* 498. That it cannot be accomplished in another class of cases is also settled. *State* v. *Anderson,* 40 *N. J. L.,* 224; *Atlantic City* v. *Rollins,* 76 *N. J. L.,* 254. The recognized line of distinction is between offenses indictable by common law and offenses created by statute. In the present case the statute is applicable to cases of both classes. One who operates an automobile or motor vehicle while under the influence of intoxicating liquor is almost sure to be guilty of a public nuisance, although it is conceivable that the vehicle might be of so low a power and weight, and operated at so slow a speed, that it could not be properly found to be a nuisance. On the other hand, one who operates (to use the word of the statute) an ox-cart while under the influence of intoxicating liquors would be within the words of the statute, but could hardly be called guilty of a public nuisance. Since the

statute applies to offenses that may not be a crime at common law, as well as offenses that may be, we must look to the facts of the case to determine *whether the present proceeding is an attempt to convict Rodgers of a crime* (italics ours) without an indictment by a grand jury, as required by the Constitution, or whether it is an attempt to convict him merely of disorderly conduct, which may properly be done by summary proceedings before a Magistrate. This question is not to be determined by the mere language of the statute. The Legislature cannot, for instance, deprive a man of the constitutional safeguard when he is charged with larceny by authorizing his prosecution and imprisonment under the disorderly act for a statutory conversion or a statutory stealing * * *. The question of a man's constitutional rights cannot be made to depend on a mere matter of nomenclature. We must look at the real case that is presented."

The misapprehension, to which we refer, as to the meaning of this language—and perhaps the language is sufficiently inaccurate as to warrantably give rise to that misapprehension—is to conclude that the learned Court intended to say, or to have it understood, that since the statute might include among those who offended against it, parties whose offenses in offending against it amounted to common law nuisances, to wit, crimes indictable by the common law, we must look to the facts of the case to determine whether the present proceeding is an attempt to convict Rodgers of a crime—*as a crime and punishable as a crime*—without an indictment by a grand jury, as required by the Constitution, or whether it is an attempt to convict him merely of disorderly conduct.

Manifestly, the learned Justice meant no such thing as that, because, as the Attorney-General says, the defendant was not charged with committing a common law nuisance or with any other common law offense, but with a mere violation of the Supplement of 1913 to the Disorderly Persons Act—and, of course, under such a charge, the defendant could not be convicted of a common law indictable crime.

What the opinion really meant to convey, we respectfully submit, was that since the statute might include, among those who offended against it, parties whose offenses in offending against it amounted to common law nuisances, to wit, crimes indictable by the common law, we must look to the facts of the case to determine whether the present proceeding is an attempt to convict Rodgers *of a crime* (his act, in fact, amounting to a crime) under the guise of convicting him merely of disorderly conduct, or whether it was an attempt to convict Rodgers merely of disorderly conduct, *that being in fact his only offense.*

So interpreted, the opinion is entirely in accord with the authorities.

While *Howe* v. *Treasurer,* 37 *N. J. L.,* page 146, distinctly holds that the same act may constitute an offense both against the State and municipal corporation, and that both may punish without violation of any constitutional principle, nevertheless, as pointed out by Mr. Justice SWAYZE, both *Riley* v. *Trenton,* 51 *N. J. L.,* 498, and *State* v. *Anderson,* 40 *N. J. L.,* 224, state as the exception to this general rule *"offenses indictable at common law."* In the former case—*Riley* v. *Trenton*—Mr. Justice

GARRISON, in referring to the case of *Howe* v. *Plainfield,* 37 *N. J. L.,* 145 (q. v.), said:

> "The doctrine there established is that certain acts which are indictable as offenses against the state, may also be, by the legislature, constituted *offenses against the police regulations of municipalities, so as to subject the offender to the mode of trial incident to proceedings for the violation of ordinances,* and that in such cases, if the legislature has not made special provision for a trial by jury, it cannot be demanded as a matter of right. This case * * * must be considered as settling the issue against the contention of the prosecutor, *the present case not being within the exception as to offenses indictable at common law.*"

What then is the doctrine as decided in that case to which "offenses indictable at common law" are the exception? Clearly, the doctrine so established was not that certain acts indictable as offenses against the State might be tried *as crimes* by a police justice without indictment or trial by jury. The doctrine so established was that certain acts which were indictable as offenses against the State (by reason of some statute law) might also be, by the Legislature, constituted offenses against the police regulations of municipalities so as to subject the offender to the *mode of trial incident to proceedings for the violation of ordinances.*

So in the case at bar—if it should be assumed that Rodgers was not guilty of an indictable *common law* offense when he operated his automobile over the public streets, while under the influence of intoxicating liquor, *Riley* v. *Trenton, supra,* is

authority for the proposition that the Legislature had a perfect right to constitute his offense a violation of the Disorderly Persons Act, and to subject him to the mode of trial incident to a proceeding of that kind before a Magistrate. But—*per contra*—if Rodgers *was* guilty of committing a common nuisance, *an offense indictable at common law,* when he operated his automobile over the public street while under the influence of intoxicating liquor, then *Riley* v. *Trenton* is authority for the proposition that the Legislature could not deprive him of his right to be indicted before trial and to a trial by jury by constituting his offense a mere violation of the Disorderly Persons Act so as to subject him to the mode of trial incident to such proceedings.

In determining the jurisdiction of a Justice of the Peace or Recorder to try by way of summary proceedings a party as a disorderly person—whose disorderly act constituted at the common law the indictable offense of being a common nuisance, *it is no argument in favor of that jurisdiction* that the punishment to be inflicted by the Recorder or Justice may be only trivial. It is not the amount of the punishment that counts or has any relevancy to the subject of the inquiry. It is the consideration that it would be unconstitutional to subject the defendant to the shame and disgrace of *having his offense inquired into* (as Rodgers' was in the case at bar) except in the authorized method, after indictment, and by jury trial.

We quote from *State* v. *Anderson, supra,* as follows:

> Per Beasley, *C. J.*:
>
> "The keeping of a disorderly house is a crime indictable at common law, and in this

state it is punishable by fine and imprisonment in the state prison. Therefore, it is clear that if this offense can, for the purpose of crimination, trial and punishment, be put into the hands of these municipal authorities, it follows that all common law offenses of the same grade can be, in like manner, so deposited. This, I think, cannot be conceded. Such an arrangement would, in a very plain way, infringe an important provision of the constitution of this state. Article 1, Section 9, of that instrument declares that 'no person shall be held to answer for a criminal offense, unless on the presentment or indictment of a grand jury, except in cases of impeachment, or in cases cognizable by Justices of the Peace,' etc. The purpose of this clause was to prevent the bringing of any citizen under the reproach of being arraigned for crime before the public, unless, by a previous examination taken in private, the grand inquest had certified that there existed some solid ground for making the charge. It took from the law officer of the state, the Attorney-General, one of the established prerogatives of his office, that of filing his information against supposed offenders, and thus putting them on trial at his own volition. The reputation of every man was thus put under the care of a single specified body. The language of the constitutional clause is very comprehensive, and the specified exceptions show conclusively that it was intended to cover the residue of the entire field of criminal accusation. * * * *If it be said the punishment is only a fine, the answer is, the restraining clause in question has nothing to do with the result or effect of the trial, its*

> *object being to save from the shame of being brought before the bar of a criminal court, except in the authorized method after an antecedent inquisition.* I am clearly of opinion that a trial of a person for this offense before the municipal court would be an act utterly void."

We cannot agree with the Attorney-General's conclusion that the question of the jurisdiction of the Recorder's Court over the subject-matter of the case depends not upon the evidence produced, but upon the offense with which the defendant is charged. While it is true that the question as presented, in *State* v. *Anderson, supra,* was whether "a certain statutory provision which prohibited prosecution by indictment for the offense of keeping a disorderly house, and attempted to substitute in its place prosecution under a city ordinance, was unconstitutional because the offense of keeping a disorderly house was a common law offense and could not be prosecuted except by indictment and trial by jury"—and therefore that that case does not present a clear cut illustration of the principle we are invoking—we nevertheless submit that *Riley* v. *Trenton, supra,* does furnish a clear illustration of that principle, and that there is nothing contained in either *State* v. *Anderson, supra,* or in *Geiger* v. *Recorder,* 96 *Atlantic,* 1006, to *necessarily* militate against, or negative, the soundness of that doctrine.

It is true that in *Geiger* v. *Recorder,* 96 *Atlantic,* page 1006, not only the evidence showed, but the *complaint* also charged, that the defendant had been guilty of acts amounting to assault and battery, but the conviction was that the defendant was "guilty of interfering with

complainant while he was lawfully upon Coit Street, in the town of Irvington, and of being a disorderly person under Section 3 of 'An Act Concerning Disorderly Persons'" (2 Comp. St., 1910, page 1927). There was no attempt on the part of the Recorder to convict the defendant of an assault and battery. The complaint was interpreted by the Recorder as charging disorderly conduct only. The Recorder had no jurisdiction to try a case for assault and battery. The part of the complaint which alleged that the defendant "did beat said complainant upon the face and body" was merely introduced as corroborative of the charge against him of being a disorderly person. It was merely cumulative language and had no place as part of the complaint itself, the Recorder being absolutely without jurisdiction to try a case for assault and battery. The controlling point was that the *evidence* showed that the defendant was *guilty* of *assault and battery,* and there is nothing in the case to necessarily indicate that if the complaint had contained no reference to the beating of the complainant the result would not have been the same.

State v. *Gratz,* 86 *N. J. L.,* 483 (cited in the Attorney-General's Brief, p. 9), is not in point, because, as we have already attempted to argue, the test is not whether giving the Recorder jurisdiction would be twice putting the defendant into jeopardy, but whether the effect of conceding the Recorder jurisdiction would be conceding something unconstitutional in that it would be subjecting the defendant to the *shame and disgrace of having his offense publicly inquired into and at least one element of it punished, except by the authorized method.*

State v. *Gratz* is, moreover, also distinguishable for another reason, viz., because there the acquittal

by the jury in the municipal police court, which was set up as a defense under a plea of *"autrefois acquit"* to an indictment for assault and battery was an acquittal of an offense against a municipal corporation for a *violation of an ordinance,* and the rule laid down in *Howe* v. *Treasurer,* 37 *N. J. L.,* page 147, applied, viz., that the same act might constitute an offense both against the state and municipal corporation, and both might punish without violation of any constitutional principle.

We submit that the right of a municipality to punish for a wrong done to it by an offense, and the right of the state to punish for the wrong done to it by the same offense, is a very different proposition from the state punishing by two different methods a single ~~defense~~ offense.

In order to emphasize the point which we are endeavoring to argue, let us for a moment imagine or assume (contrary to the fact) that an automobile is a vehicle of remote antiquity, and that the operating of an automobile upon a public highway by a person under the influence of intoxicating liquor was, and is still, a common law offense entitling the offender to indictment and trial by jury. The point is that the Legislature could not, under those circumstances, deprive one guilty of that offense of his right to indictment and trial by jury by simply stating that hereafter the offense should constitute a disorderly act, and should render one guilty of it liable to summary trial without a jury as a disorderly person, and to imprisonment in the county jail for not less than thirty days or more than six months. We submit that the effect of such legislation would be by merely changing the name of the crime and altering the degree of

punishment to deprive the offender of his right to trial by jury for a *disgraceful offense.*

Analogously, as the committing of a common nuisance was always, and is still, an indictable offense at the common law, entitling the offender to a trial by jury, the Legislature cannot deprive one guilty of that conduct of his right to a trial by jury by simply declaring that though the manner in which he operates his automobile while intoxicated makes him guilty of committing a public nuisance, indictable as such, he can be deprived of his right to a jury trial by simply denominating his offense a disorderly act and punishing it as such.

Is it possible that if in the case at bar the evidence had shown that Rodgers had run his automobile amuck among a crowd of children, killing several of them, it would not have been the duty of the Recorder to dismiss the charge against him for disorderly conduct, and to hold him for the action of the grand jury?

The case of *Curtis* v. *Joyce,* 99 *Atl.,* 932, throws no light on the subject under discussion. In the case at bar, the Court found from the evidence that the natural probability that a person driving an automobile while intoxicated would be a public nuisance had actually proved true, as the evidence showed that the defendant had been "good and drunk," and while in that condition had driven a large automobile on a public street of a city and through the front window of a saloon, etc. (Opinion, p. 18).

In *Curtis* v. *Joyce, supra,* there was no evidence, except to show the bare fact that the accused had

been under the influence of liquor while driving the automobile. The Court said:

> "The eighth reason, if we may judge from the respondent's brief, raises the question that the prosecutor was deprived of his constitutional right to a trial by jury. This question is similar to that discussed in the *Rodgers* case, 99 Atl., 931, just decided, and it would be interesting to consider whether the same rule would apply to a case where the only proof was that the defendant drove an automobile on a public street while he was under the influence of intoxicating liquor. We are precluded from dealing with this question, as the prosecutor has abandoned his eighth reason."

Counsel for the plaintiff lays stress upon the fact that the defendant could have been convicted of the offense of which he was convicted by confining the evidence to the mere fact that he was operating the automobile while intoxicated without adducing any evidence as to the manner of his driving, or as to the result of his driving, or as to the extent of his intoxication, etc. Possibly that may be true. Had the trial been so conducted, Rodgers would not have been disgraced by its being shown that he was guilty of a crime indictable under the common law. But counsel carefully introduced all this incriminating testimony, and it is submitted that in doing so counsel ousted the Recorder of jurisdiction over the case.

POINT II.

Assuming Rodgers to have been guilty of two offenses, both, however, against the State—one of violating the supplement to the Disorderly Persons Act, of which he was in fact convicted, and the other of committing a public nuisance—the former offense merged in the latter, and he could not be lawfully convicted of the former.

In *Johnson* v. *State,* 29 *N. J. L.,* 453, this Court held that "The doctrine of merger only applies *where the same act constitutes both offenses.*"

In the *Geiger* case the very same act which constituted the disorderly act of obstructing another person on the public street also constituted an assault and battery on such person. The accused person obstructed another on the street by an act of assault. So in the case at bar. The act or series of acts consisting in the disorderly conduct of operating an automobile while under the influence of intoxicating liquor, appeared from the evidence to be of so extreme a character as to constitute the defendant guilty of committing a public nuisance. The same identical act or series of acts of driving his automobile while under the influence of intoxicating liquor, were the same acts which made him a public nuisance. Consequently, under the rule laid down in *State* v. *Johnson,* the minor offense of being a disorderly person merged in the graver indictable offense of committing a public nuisance.

Inasmuch as Rodgers could not legally be convicted of the two different offenses arising out of

the same identical acts on his part, public policy required that, if punished at all, he should be punished for the graver common law offense.

The doctrine of merger is based upon the rule that a person cannot be twice tried for the same offense, and that it is consequently contrary to public policy to permit a person to be convicted of a smaller offense that may be carved out of a transaction involving a crime of a graver nature, and thus escape the punishment to which he is properly amenable.

In *Commonwealth* v. *Roby*, 29 *Mass.*, 496, Chief Justice SHAW (pp. 502, *et seq.*) discussed what he styled the great principle and fundamental maxim of criminal jurisprudence, that no man shall be twice put in jeopardy for the same offense in regard to its application to a plea of former conviction or former acquittal. The learned Judge, after first stating that the application of the maxim "requires the consideration, whether in fact the party pleading has before been put in jeopardy, and if so whether it can be said to be for the *same offense,* and after a consideration of the question of what circumstances of fact and law would constitute an identity of the offense, drew the following conclusion: "From these considerations it appears to us that the true test to determine whether a conviction or acquittal upon one indictment is a good bar to another is well expressed in *East's Crown Law,* as drawn from the case of *Rex* v. *Vandercomb and Abbott,* 2 *Leach,* 816. These cases establish the principle that unless the first indictment were such as *the prisoner might have been convicted of it upon proof of the facts contained in the second indictment* (the italics are ours), an acquittal on the first indictment can be no bar to the second. So,

in a recent case the doctrine was recognized that such plea is no bar, unless *the facts charged in the second indictment would have warranted a conviction in the first* (italics ours). *Rex* v. *Taylor,* 3 *Barn and Cress,* 502. So Chitty, speaking of the identity of the offense requisite to support such a plea, states it thus: 'As to the identity of the offense, if the crimes charged in the former and present prosecution are so distinct that *evidence of the one will not support the other* (italics ours), it is inconsistent with reason, as it is repugnant to the rules of law to say that the offenses are so far the same; that an acquittal of the one will be a bar to the prosecution for the other (1 *Chitty Criminal Law,* 453).' "

Applying this rule to the case at bar, the defendant has been convicted by the Recorder as a disorderly person upon proof that he had been driving an automobile while he was under the influence of intoxicating liquor.

But the Supreme Court held that the facts which proved his guilt under that charge showed that he had been guilty of the common law crime of being a public nuisance, for which he should have been indicted and put upon trial by a jury.

If, however, the conviction before the Recorder is affirmed by this Court, overruling the Supreme Court, then we submit there can never be a prosecution of the defendant for the common law crime, because the evidence which would be sufficient to convict him of the common law crime, was precisely the same evidence under which he was in fact convicted of being a disorderly person. The result would be what the Supreme Court declared in the *Geiger* case could not be done, that the Re-

corder would have reduced the common law crime of being a public nuisance to the merely petty statutory offense of being a disorderly person.

POINT III.

The evidence brought up by the writ of certiorari established that Rodgers had been guilty of committing a common law nuisance, and the Supreme Court correctly so decided.

We have no quarrel with the definitions cited by the learned Attorney-General of a "common law nuisance," nor with his distinction between a "common law nuisance" and an ordinary "trespass."

We simply submit that the decision of the Supreme Court has again been misunderstood. It was not the act of *"trespass"* of which Rodgers, under the evidence, was clearly guilty that necessarily made him also guilty of the crime of committing or being a public nuisance. It was the fact that he was driving his automobile "an engine of great power" on a public street without any control over it—running amuck as it were—*as demonstrated by the fact that he did drive through the front window of a saloon right back to the front end of the bar in the saloon* that constituted him a public nuisance. Counsel chooses to opine that the Supreme Court meant that the mere driving the automobile through the front window of the saloon constituted the *"common nuisance,"* but obviously that was not so. What the Supreme Court held was—that a man who was—to use Mr. Justice SWAYZE'S language "good and drunk"—and who was driving

his automobile manifestly without any control over it in such a way as to culminate in ultimately driving it through the front window of a saloon, breaking glass, etc., was evidently *before that catastrophe happened,* and while he was still on the public street—operating his car in a manner menacing to the public—and to adopt the language of the Court, "well within the definition of a public nuisance."

If, however, it should be held that the reasons given for the Supreme Court's decision were unsound, we nevertheless submit that the decision itself was sound, for the following additional reasons, which were fully argued before the Court below, but which were overlooked or disregarded by that tribunal.

POINT IV.

The supplement of 1913 (Chapter 67, P. L. 1913, p. 103) to the Disorderly Persons Act under which the prosecutor of the present writ was convicted, conflicts with, but does not repeal, the provisions of the supplement of April 16, 1909, to the Crimes Act (Chapter 127, P. L. 1909, p. 200), whereby it is made a misdemeanor to drive a motor vehicle while in an intoxicated condition, and consequently the prosecutor, if guilty of any offense, was guilty of a misdemeanor under that provision of the Crimes Act.

The provision of the supplement to the Disorderly Persons Act under which the prosecutor was convicted, is that any person who shall operate

an automobile over any public street or highway, while under the influence of intoxicating liquors, shall be adjudged to be a disorderly person.

The provision of the supplement of 1909 to the Crimes Act, is that any person who shall drive a motor vehicle while in an intoxicated condition, shall be guilty of a misdemeanor.

By this provision of the supplement to the Crimes Act, it is a misdemeanor to drive a motor vehicle *anywhere* while in an intoxicated condition, whether on a public street or highway or upon private property; whereas by the supplement to the Disorderly Persons Act under which the prosecutor was convicted, it is made simply a disorderly act to operate a motor vehicle upon a public street while under the influence of liquor.

If, therefore, it should be held that the provisions of the supplement to the Disorderly Persons Act repealed *pro tanto* those of the supplement to the Crimes Act, the result would be that it is still a misdemeanor to drive an automobile while in an intoxicated condition anywhere except upon a public street or highway; that if an intoxicated person drive his automobile on his own private property he can be convicted of having committed a misdemeanor, but if he confine his intoxicated conduct to a public street he can only be held guilty of being a disorderly person. We think that result is too absurd to be upheld by this Court as the true intention of the Legislature.

Judge Cooley, in his *Treatise on Constitutional Limitations,* p. 199, advances the doctrine that the same act may constitute an offense, both against the state and the municipal corporation, and that

both may punish without violation of any constitutional principle.

Probably this principle was what the Legislature had in view when enacting the supplement to the Disorderly Persons Act, though if so, it had a mistaken appreciation of what that principle is.

It may be that if the City of Paterson had *lawfully* passed an ordinance prohibiting, under fine and imprisonment, a person from driving an automobile within the limits of the City of Paterson while in an intoxicated condition, the punishment under that ordinance would be simply for the offense against the municipal corporation, the City of Paterson, and would still leave the accused liable to punishment for the offense against the State. But the State itself could not make the same act both a crime and a disorderly act, punishable in different ways.

It is impossible to draw any distinction between being in an intoxicated condition, the language of the supplement to the Crimes Act, and being under the influence of intoxicating liquor, the language of the supplement under which the prosecutor was convicted.

The Act under which the prosecutor was convicted is, therefore, open to this criticism: if enforced, it has either the absurd effect of rendering the driving of an automobile by an intoxicated person *on a public highway,* a mere disorderly act, while the same act done *on private property* is a misdemeanor, "a result so outrageously inconsistent with common reason as to demonstrate that such result could not have been within the legislative design" (*Gulick* v. *Gulick,* 41 *N. J. Law,* 13, 14); or

else, if it does not repeal the Act of 1909 to any extent, the result is to leave it open to the State to try the offender either for a misdemeanor or a disorderly act, according to the whim or caprice of the party complaining; in the one case entitling the offender to an indictment and trial by jury, and in the other case depriving him of those rights. The second construction would certainly, we submit, render the act unconstitutional in that it would be depriving the defendant, at the option of the State, of his constitutional right to a trial by jury, and as the first construction could not have been within the legislative design, being so outrageously inconsistent with common reason, we submit that the statute is without any legal force or efficacy, and that the Supplement to the Crimes Act of 1909 remains in full force and effect.

The precise point is, shall a construction involving an absurdity be placed upon the statute, or a construction involving the unconstitutionality of the Act? In *State* v. *Clark,* 29 *N. J. Law,* 96, it was held that if the literal construction of the words of a statute make the Act absurd, it must be so construed as to avoid the absurdity, and it is also held that if of two interpretations of a statute, one leads to a result that exceeds the power of the Legislature, the other will be deemed what the Legislature intended (*East Orange* v. *Hussey,* 70 *N. J. Law,* 244). We have therefore to choose between two interpretations, one involving an absurdity and the other involving the unconstitutionality of the Act. By adopting the latter interpretation the statute has no force at all, which surely is preferable to an interpretation which would give it an absurd effect.

There would, therefore, seem to be every reason for the Court to hold that the supplement to the Disorderly Persons Act, under which the prosecutor was convicted, does not repeal the supplement to the Crimes Act, making the driving of a motor vehicle while in an intoxicated condition, a misdemeanor. So that, assuming the prosecutor was under the influence of liquor, as charged, he was guilty of a misdemeanor under the provisions of the Supplement to the Crimes Act, and his case we submit should be governed by the rule laid down by this Court in the case of *Geiger* v. *Recorder's Court of the Town of Irvington*, 96 *Atl. Rep.*, 1006.

In that case the prosecutor of the writ had been adjudged guilty of being a disorderly person under Section 3 of the Disorderly Persons Act, for obstructing another while lawfully on a street, but the evidence showed that if he had been guilty of any offense, it was that of assault and battery, and not merely of being an interferer or obstructor.

The Supreme Court held in its *per curiam* opinion, "that to permit this construction to stand would be to allow a Recorder to reduce the crime of assault and battery to that of disorderly conduct; for every assault and battery on a public street is an interference with the free passage of the one assaulted"; and the conviction was set aside.

Paraphrasing that opinion, we submit that to permit the conviction in the present case to stand would be to allow a State Inspector of Motor Vehicles, or the Recorder acting upon his complaint, to reduce what is a misdemeanor in operating an automobile while in an intoxicated condition, to that of disorderly conduct, and conse-

quently, we submit that the present conviction should be set aside.

POINT V.

The conviction was illegal inasmuch as the provision of the supplement to the Act of 1913 is unconstitutional because it deprived the prosecutor of his constitutional right to trial by jury.

The provisions of the Constitution of New Jersey relating to the rights of persons in regard to criminal prosecution are Sections 7, 8 and 9 of Article I, which article sets forth the rights and privileges of the citizens which it was the purpose of the Constitution to particularly safeguard; the enumeration of those rights in the article constituting what is commonly called the "bill of rights."

These provisions read as follows:

> "Section 7. The right of a trial by jury shall remain inviolate; but the legislature may authorize the trial of civil suits, when the matter in dispute does not exceed $50, by a jury of six men.
>
> 8. In *all* criminal prosecutions the accused shall have the right to a speedy and public trial by an impartial jury; to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel in his defense.
>
> 9. No person shall be held to answer for a criminal offense, unless on the presentment

> or indictment of a grand jury, except in cases of impeachment, or in cases cognizable by justices of the peace, or arising in the army or navy, or in the militia, when in actual service in time of war or public danger."

Sections 7 and 8 relate to the right to trial by jury now immediately under discussion.

The language of these two sections is so simple and their meaning so plain, particularly in regard to the provisions of Section 8, that if it were not for certain decisions ~~of this Court~~, it would seem impossible that any doubt could arise as to the right to a trial by jury upon any charge of a criminal nature. It would seem that the only possible question which could arise under the simple language of Section 8 would be the question whether or not the accused was being subjected to a criminal prosecution.

It is a very remarkable circumstance that the decisions of our Courts dealing with the right to a jury trial are all based upon the provisions of Section 7, which provides that the right of a trial by jury shall remain inviolate. The provisions of this section are, of course, perfectly simple and perfectly plain, namely, that the right of a trial by jury which is to remain inviolate is simply that right as it existed at the time of the adoption of the Constitution; that whatever right to a trial by jury a citizen had at the time the Constitution was adopted he is to continue to hold inviolate. Under this section, apart from the provisions of the following Eighth Section, it would have been the duty of the Court, in a case like the present, where a jury trial has been demanded and refused, to inquire whether the prosecutor would, at the time the Constitution was adopted, have been entitled to such right.

It does not seem possible, however, by any mode of interpretation, in construing the provision of Section 8, that in *all* criminal prosecutions the accused shall have the right to a speedy and public trial by an impartial jury, to hold that that language does not mean what it so plainly says, but that it simply means that in all prosecutions the accused shall have only such right as he would have had at the time of the adoption of the Constitution, or that he shall have such right only where he is charged with a "heinous offense" within the meaning of that term as used in the case of *State* v. *Rockafellow,* 6 *N. J. Law,* 332; or that when the Constitution speaks in that section of *all* criminal prosecutions it did not intend to include a "minor offense" within the meaning of that term, as used ~~in the decision of this Court~~ in the case of *State* v. *Lakewood Market,* 84 *N. J. Law,* 512; or that it did not intend to include petty offenses within the meaning of that term used in the case of *Johnson* v. *Barclay,* 16 *N. J. Law,* 1.

There is nothing whatever to show that the people of the State, in adopting this Eighth Section, providing for a trial by jury in *all* criminal prosecutions, really intended to leave it to the Courts to decide of how serious a nature the accusation must be, or of what character of crime, in order that the accused should have the right in question.

It is true that by Section 9 the people did provide that a person *might be held to answer* for a criminal offense in cases cognizable by justices of the peace, and in certain other cases, without presentment or indictment by a grand jury.

The fact that in Section 9 the general rule thereby promulgated, that no person shall be held to an-

swer for a criminal offense unless on the presentment or indictment of a grand jury, contains expressly this exception, viz.: "except * * * in cases cognizable by justices of the peace," and the fact that Section 8, which provides, "that in *all* criminal prosecutions the accused shall have the right to a speedy and public trial by an impartial jury," contains no such exception to that rule, would clearly indicate that no such exception to the rule promulgated in Section 8 was intended to be implied. If it was thought necessary, as it was, to insert the exception in Section 9, and if it was intended that the same exception should prevail in Section 8, why was it not there inserted? *Expressio unius exclusio alterius.*

The natural and logical construction of these two Sections of the Constitution, 8 and 9, taken together, is, that while a person may be *held* for trial to answer for a criminal offense cognizable by a justice of the peace, without an indictment by a grand jury, when it comes to the *trial* for which the person is so held, he should be entitled to be *tried* by an impartial jury.

In the case of *Brown* v. *State,* 62 *N. J. Law,* 666, in which the right of the Legislature to regulate the qualifications of jurors, and the number of challenges, was the matter to be decided, and not the right to a jury trial itself, and in which consequently the question now under discussion was not involved, the opinion of the Court of Errors and Appeals, by DEPUE, *J.,* contains this language (p. 687):

> "By the Constitution of 1844 it was declared the right of trial by jury should remain inviolate, and a clause was added that

> in *all* criminal prosecutions the accused should have a right to a speedy and public trial by an impartial jury. In *State* v. *Fox,* Chief Justice Green, referring to the clause just quoted, said: 'This clause confers upon defendants in criminal cases no new right. It invests with the constitutional sanction what was previously a common law right. *Every criminal* is entitled at common law to a trial by an impartial jury. The question still remains, what constitutes impartiality, or rather, what is the test or evidence of that bias or partiality which disqualifies the juror? This must be settled by common law principles."

The case of *State* v. *Fox,* from which the quotation was made in the opinion of the Court of Errors in the case last cited, likewise involved the right of the Legislature to regulate the right to challenge a juror, and did not involve the right to a jury trial itself.

The language of Chief Justice GREEN and the context of the opinion shows that the question of how far the right to a jury trial extends—whether so as to include *"all* criminal prosecutions," according to the simple meaning of the actual language of Section 8 of the Constitution, or whether it is limited to extend only so far as it may have extended at the time of the Revolution—was not in the mind of the learned Judge when he stated that "this clause (viz., Section 8, Article I) confers upon defendants in criminal cases no new right." He simply points out that the clause in question confers no new right because *every* criminal was entitled at common law to a trial by an impartial jury. So that this expression of the learned Judge, if applied to the case at bar, was irrelevant, and

so far as it is approved in the opinion of the Court of Errors and Appeals in the *Brown* case, it is likewise irrelevant.

And it would be an astonishing result had the question now involved been in the mind of the Judge by whom it was used, for, as pointed out in the opinion of DEPUE, *C. J.*, in the *Brown* case, *supra,* the provisions of the Eighth Section were added to the Constitution in 1844.

The result then would be that by adding this Eighth Clause to the Constitution with all the solemnity involved in the adoption of such an instrument, the people in fact did nothing so far as effectuating any additional safeguards for their personal liberty.

The original Constitution of 1776 had provided in Section XXII "that the inestimable right of trial by jury shall remain confirmed, as a part of the law of this Colony, without repeal, forever."

This provision was re-enacted by the Seventh Section of Article I of the Constitution of 1844, that "the right of a trial by jury shall remain inviolate"; and then this new provision was added by Section 8, that "in *all* criminal prosecutions the accused shall have the right to a speedy and public trial by an impartial jury."

But if this *dictum* is correct, then nothing substantial was really added to the Constitution by Section 8, and it is nothing but mere unnecessary verbiage which does not even mean what it says.

Were this a case of first impression, and were there no opposing authorities, we should feel safe in resting the decision of the present case upon a

proper and reasonable construction of the simple language of this Eighth Section of Article I of the Constitution. We should simply insist that the language there used, "that in *all* criminal prosecutions the accused should have the right to a * * * trial by an impartial jury," is incapable of being construed so as to mean anything except what it expressly states; that it includes a criminal prosecution for any kind of a criminal offense, whether of an indictable nature, or otherwise; whether for a common law crime or a statutory offense; whether for an offense of a petty or an heinous character; and regardless of the character of the punishment to be inflicted upon the accused, if found guilty.

However, there are numerous authorities which seemingly arbitrarily hold that notwithstanding the simple meaning of this language of the Constitution, the right to a jury trial must be governed by the usage in England at the time of the Revolution, and the usage which has continued or grown up in this country since that time.

Proffat on Jury Trial, ~~cited by this Court~~ in the case of *State* v. *Lakewood Market Co.,* 84 *N. J. Law,* 512, at Section 98, says:

> "A very dangerous and reprehensible principle has been established in a few states, that the right to a trial by jury only exists in those cases where a person is charged with an offense that was a crime at common law, and that it does not extend to such crimes as have been created by statute since the adoption of the Constitution. * * * This would establish a principle of the most pernicious consequences if generally held and acted on. If carried out as enunciated

> by the court, a person may be subjected to infamous punishment, even imprisonment, for any length of time without a trial by jury, merely because it seemed fit to the legislature to make an act criminal which was before unknown as a crime. If this doctrine be accepted it would be competent for the legislature to practically abolish trial by jury and render the right to it an illusion and a mockery. * * *
>
> In Vermont it is held that the guarantee extends to all cases fit to be tried by a jury according to the course of the common law, although the cause of action arise on a statutory offense since the adoption of the Constitution (*Plimpton* v. *Somerset,* 33 *Vt.,* 282); and this is substantially the doctrine held in the New York cases and also to be accepted as a general constitutional provision."

We concede that the question of what was the practice at the time of the adoption of the Constitution would be pertinent and would govern did the provisions of the Constitution simply require that the right to a jury should continue unimpaired as it existed at the time of the adoption of the Constitution, as would be the case if Section 7 of our Constitution were the only provision concerning the subject. But otherwise, we contend, that the case should not be governed by what has been the practice, for it is possible that a wrong practice may have grown up, and we do not concede that the right to personal liberty, involved in the right to a jury trial, can be lost by the growing up of a practice impairing such right; but in that case we contend that the practice should be abolished and the right restored.

It is remarkable, upon an examination of the reports, to find that there is no case reported in this State in which the provisions of Section 8 of Article 1 contained in the Constitution of 1844, are construed in relation to the question involved in the present case; and there is no decision by any Court of this State which we have been able to find, in regard to the right to a jury trial conferred by that section of the Constitution; although there are numerous decision which we propose to discuss, involving the provisions of Section 7 of the same article.

In these decisions the provisions of Section 8 are entirely ignored so far as such provisions may have affected any possible change in the previous law.

The cases since 1844 are decided precisely as if Section 8 had never been added to the Constitution.

For instance, the third headnote in the case of *McGear* v. *Woodruff*, decided ~~by this Court~~ in 1868 (33 *N. J. Law*, 213), states that the principle decided in *Johnson* v. *Barclay*, 1 *Harr.*, 1, must still control, although the earlier case was decided in 1837, when the Constitution of 1776 was still in effect.

The opinion in the later case, *McGear* v. *Woodruff*, construes the Seventh Section, but contains no mention whatever of Section 8. We quote from the opinion as follows (33 *N. J. Law*, 216):

> "The language of the seventh section of article first of the constitution of 1844, that 'the right of a trial by jury shall remain inviolate,' is not substantially different from that of the twenty-second article of the constitution of 1776, 'that the inestimable right

of trial by jury, shall remain confirmed as part of the law of this colony, without repeal, forever.' By that section it was not intended to introduce trial by jury in cases where it did not exist before, but merely to preserve it inviolate in cases where it existed at the time of the adoption of the constitution. Prior to the adoption of the constitution of 1776, convictions before magistrates for *petty criminal offenses,* and violations of police regulations were of frequent occurrence, and were recognized as part of the laws of England. Since the adoption of that constitution, and prior to the adoption of the constitution of 1844, that practice was pursued in this state without objection. It was not intended, by the seventh section of the first act of the constitution of 1844 to introduce trial by jury in these cases where by law and by long practice the right did not previously exist. In the *State* v. *Zeigler, S. C., June Term,* 1867, Mr. Justice Elmer expressed a doubt whether a pecuniary penalty exceeding sixteen dollars, that being the largest sum which could be tried by a justice without a jury, before the constitution of 1776, can now be enforced, otherwise than by the verdict of a jury, if demanded by the defendant. In *Johnson* v. *Barclay,* 1 *Harr.,* 1, this court held in a case where a conviction, under the act for the suppression of vice and immorality, was had for penalties above the sum of sixteen dollars, that the defendant was not entitled to a trial by jury. And that the twenty-second article of the constitution then in force, did not extend to proceedings before magistrates under that act. Indeed, extensive and

> summary police powers are constantly exercised in all the states of the Union for the repression of breaches of the peace and petty offenses, and these statutes are not *supposed* to conflict with the constitutional provisions securing to the citizen a trial by jury. *Sedg. Stat. Constr.,* 548; see also 1 *Bish. Cr. Prac.,* note 7 to §758, and cases there cited. This constitutional provision does not prevent the enforcement of the by-laws of a municipal corporation without a jury trial."

All that this case decided is contained in the last sentence in the above quotation, so that it is not a controlling authority in deciding the present case; it brought up for review proceedings had before the Mayor of the City in an action of debt brought before him in the name of the Treasurer of the City, to recover a penalty of $2 for the violation of a city ordinance in relation to streets and highways.

In *Johnson* v. *Barclay,* 16 *N. J. Law,* 1, the opinion contains this language (p. 6):

> "7th Objection. The justice refused a trial by jury.
>
> In doing so, the justice was right. Convictions before a justice, were in practice in this state, long before the Constitution was formed—by the twenty-second article of that instrument, the trial by jury was to 'remain confirmed' as a part of the law of this (then) colony; but it was not introduced as a *new* mode of trial, in all cases—it was adopted, or rather continued, as it was then used in England and in this colony, and was not at that time, either there or here, resorted to in cases of summary proceedings and convictions for petty offences."

That case was a suit for a penalty brought by the plaintiff as informant, suing in behalf of the Township against the defendant, under the provisions of the Act for suppression of vice and immorality (Rev. 378), for profane swearing. It was tried before a justice of the peace without a jury and resulted in a judgment against the defendant for $16.50 penalty to be forfeited for the use of the poor of the Township; and the judgment was upheld in this court.

As previously stated, that case was decided before the adoption of the Constitution of 1844 containing the Eighth Section of Article I.

The case of *Howe* v. *Treasurer of Plainfield,* 37 *N. J. Law,* 145, was likewise a suit for a penalty. It was brought under the provisions of a city ordinance for selling liquor without a license. It resulted in a fine of $20 upon the defendant. He had demanded a jury trial which had been refused. The city charter, while preserving the right to a jury trial in all cases where the punishment prescribed might be imprisonment, or the fine exceeded $20, permitted the trial without a jury where the fine was less than that sum; and this Court upheld the constitutionality of that provision of the charter, and the legality of the fine imposed upon the defendant. The opinion follows the same reasoning as that in the case of *McGear* v. *Woodruff,* which is cited as an authority in the decision.

In the case of *Mayor, &c., of the City of Vineland* v. *Denoflio,* 65 *Atl. Rep.,* 837, the opinion ~~of this Court~~ refers to a provision of Section 12 of the Borough Act of 1897, relating to the Recorder's Court of a borough, that "in all cases where the fine or penalty shall exceed $20, or the punishment

shall be imprisonment for a term exceeding seven days, there may be a trial by jury, to be conducted as in cases now triable in courts for the trial of small causes," as conserving a public right guaranteed by the Constitution.

The opinion does not state what section of the Constitution the Court had in mind, as being conserved by the statute, or whether the Court had reference to the Seventh Section of Article 1, or to Section 8, or to both sections.

In that case a jury had been refused by the Recorder except upon the prepayment of the jury fees, and the conviction was set aside in the Supreme Court. The charge was for disorderly conduct in violation of one of the borough ordinances.

The case of *State* v. *Lakewood Market Co.,* 84 *N. J. Law,* 512, decided ~~in this court~~ in 1913, involved a review of a conviction in a proceeding before a Justice of the Peace on a complaint of a Fish and Game Warden, who sued for the use of the State. The complaint alleged that the Market Company unlawfully had in its possession, contrary to the provisions of the Fish and Game Act of 1903, a number of wild duck, for which it was liable to a penalty of $20 a piece. One of the grounds upon which it was sought to set aside the conviction was that a jury trial had been refused. Upon that point the opinion was as follows (p. 523):

> "Lastly, it is contended that the judgment should be set aside because the justice of the peace refused the defendant below a trial by jury.
>
> We think not. It has been repeatedly held in this state that in a summary procedure

> for the collection of a penalty for violation of a police regulation, neither party is entitled to a trial by jury. One of the leading cases on this subject is *Johnson* v. *Barclay,* 1 *Harr.,* 1. Another is *McGear* v. *Woodruff,* 4 *Vroom,* 213. These were followed by *Shivers* v. *Newton,* 16 *id.,* 469, and *Carter Brothers* v. *Camden District Court,* 20 *id.,* 600."

In the case of *Minard* v. *Dover Gas Co.,* 76 *N. J. L.,* 132, cited in the opinion in the *Lakewood Market Company* case, *supra,* it was held ~~by this Court~~ that the proceeding to collect the penalty under the Fish and Game Act was a civil action, so that neither that case nor the *Lakewood Market Company* case is decisive of the right to a jury trial in a criminal proceeding.

The opinion in the case of *Carter Brothers* v. *Camden District Court,* ~~decided in this Court,~~ 49 *N. J. Law,* 600, while discussing the right to a jury trial under Section 7 of Article I, contains no reference whatever to Section 8 of the same Article. That was a suit in the District Court by the State Dairy Commissioner to recover a penalty for violation of the Oleomargerine Law; it was consequently a civil proceeding (*Minard* v. *Dover Gas Co., supra*), and it is not, therefore, decisive of the present question.

We quote from the opinion as follows (p. 601):

> "It is admitted that the statute in question is in the nature of a police regulation. It was enacted to prevent cheating in the sale of articles made to imitate butter and cheese. The proceedings to enforce it are intended to be summary in their character.

Before the adoption of the constitution of 1776, penalties for the violation of statutes, which provided for summary proceedings before a magistrate for their enforcement, were disposed of by the magistrate without a jury. The defendants in such cases were not entitled to trial by jury. Neither the act now in question, nor any other act, has given to either party in such case the right of trial by jury. It is claimed by these defendants as a constitutional right. The language of the constitution of 1776 is peculiar. It does not give the right of trial by jury where it did not previously exist. It does not enlarge, but merely secures the right, as it then existed, by the following clause, viz.: 'Section 11. The inestimable right of trial by jury shall remain confirmed, as a part of the law of this colony, without repeal, forever.'

Neither does the constitution of 1844 enlarge the right. The language of that instrument is: 'The right of trial by jury shall *remain* inviolate.' The meaning of the language is that where the right to a jury existed before the constitution, it could not be taken away by the legislature; but where there was no such right previously, it was not extended to such cases.

The leading case on the subject, in this state, is found in *Johnson* v. *Barclay,* 1 *Harr.,* 1, 6. In the opinion in that case Chief Justice HORNBLOWER said: 'Convictions before a justice were in practice in this state long before the constitution was formed.' By that instrument (constitution of 1776) the trial by jury was 'to *remain* confirmed' as a part of the law of the colony; but it was

> not introduced as a new mode of trial in all cases. It was adopted, or rather continued, as it was then used in England and in this colony, and was not, at that time, either there or here, resorted to in cases of summary convictions for petty offences.
>
> Since the adoption of the constitution of 1844 the leading case is *McGear* v. *Woodruff*, 4 *Vroom*, 213, in which Judge DEPUE, referring to the clause in that instrument, 'the right of trial by jury shall remain inviolate,' said, 'it was not intended to introduce trial by jury in cases where it did not exist before, but merely to preserve it inviolate in cases where it existed at the time of the adoption of the constitution.' "

In the case of *Unger* v. *Fanwood*, 69 *N. J. Law*, 548, it was attempted to set aside upon certiorari, an ordinance of a township committee regulating the speed of automobiles, and providing punishment for its violation. The prosecutor of the writ had been arrested for an alleged violation of the ordinance but the proceedings upon the arrest were not brought up with the writ. It was, therefore, dismissed by this Court upon the ground that the prosecutor had no standing to sue out the writ which attacked the ordinance, but did not attack the alleged illegal proceedings against himself.

The Court, however, considered the validity of the ordinance and held it to be legal, notwithstanding it permitted a conviction before a Justice of the Peace without a jury, upon the ground that it provided for a summary proceeding which might be tried without a jury, as it could have been before the Constitution of 1844 was adopted.

The opinion in that case laid down the rule that where in a case of that kind the Justice had power to impose a penalty by imprisonment, it was a criminal proceeding, and not a civil suit, citing *Johnson* v. *Barclay,* 1 *Harr.,* 1, *supra,* and *McGear* v. *Woodruff,* 4 *Vr.,* 213, *supra.*

That case is, therefore, authority *by way of obiter dictum* ~~in this Court~~ for the proposition that *for the violation of a municipal ordinance* a conviction involving punishing by imprisonment may be had without a jury trial; but further than that it should not be considered binding upon this Court.

In *Bassette* v. *State,* 51 *N. J. Law,* 502, ~~this~~ the Supreme Court upheld a conviction before a Justice of the Peace under Section 6 of the Disorderly Act (Rev., p. 305) for uttering loud and offensive language in a public street, notwithstanding a trial by jury had been denied to the accused. In the opinion it is simply stated that trial by jury was not given by the act, and the question of the constitutionality of the act, not having been raised, was not considered. We submit, therefore, that the case is not a decisive authority governing the case at bar.

The foregoing review of the cases in this State is, we believe, comprehensive; and we submit that while these cases indicate that the attitude of this Court has been opposed to our present contention, there is no case which is a decisive authority to that effect. We submit, therefore, that the question is still open for this Court to construe the Eighth Section of Article I, as meaning what it so clearly says, that in *every criminal prosecution,* no matter of what character, or what the degree of heinousness of the offense charged, no matter how petty the same may be, in which the accused is *charged*

with a violation of a general law of the State prohibiting an act, and inflicting a punishment by imprisonment for committing the same, the accused "shall have the right to * * * a trial by an impartial jury."

The case of *Unger* v. *Fanwood,* 69 *N. J. Law,* 548, *supra,* is authority for the proposition that the proceedings now under review constitute a criminal prosecution, and being a criminal prosecution, we submit that it should be governed by the provisions of Section 8 of the Constitution.

The correct rule of construction in regard to the Eighth Section of our bill of rights is, we submit, that laid down by the Vermont Court in the case of *State* v. *Peterson,* 41 *Vt.,* 405.

As stated in that opinion, the Constitution of Vermont contains the provision in the 10th Article of its bill of rights, "that in all prosecutions for criminal offences, a person hath a right * * * to call * * * for a speedy public trial by an impartial jury of the country." This language, it will be seen, is almost identical with that of the Eighth Section of the New Jersey bill of rights.

In addition, the Vermont Constitution also contains the further provisions in Article 12, "that when any issue in fact proper for the cognizance of a jury, is joined in a court of law, the parties have a right to trial by jury," and in Section 31, that "trials of issue proper for the cognizance of a jury in the supreme and county courts, shall be by jury, except where the parties otherwise agree." But it will be seen by a reference to the opinion that the decision of the case did not hinge upon these two additional provisions of the Vermont Constitution,

the opinion stating that "it would seem that the words in the 10th Article of the bill of rights (viz., the Article corresponding to the Eighth Section of the New Jersey bill of rights), in respect to trial by jury, are broad enough to include the case at bar."

This case is so entirely in point with the contention that we now make on behalf of the prosecutor, that a careful perusal of it is respectfully be-spoken.

Undoubtedly there were petty or minor crimes which at common law could be tried without a jury, and it has been held in many cases that the Federal Constitutional provision that all crimes, except impeachment, shall be tried by jury, is to be interpreted in the light of that fact. But the trial even of such cases without a jury was contrary to the genius of the common law, and was allowed by the English Courts only in *obedience to acts of parliament* which was not bound by a written constitution, and whose authority in matters of legislation was omnipotent, and, therefore, not to be disputed by any English Court.

Counsel for the appellant conclude their brief by a reference to the importance of informing drivers of automobiles that they are liable to prosecution if they operate their cars while in a condition of intoxication. We fully concur in this sentiment, but we are unable to see why "an adherence to the doctrine of the decision of the Supreme Court will make it practically impossible to reach the intoxicated driver of an automobile unless he conducts himself in such a manner as to make himself a public nuisance." We agree that if he does make himself a public nuisance, then before he can be lawfully tried he must be

first indicted, and that when tried he must be tried by a petit jury.

What was said by Blackstone when referring to summary proceedings *authorized by acts of parliament* in particular cases may well be repeated at this day whenever it is proposed upon grounds of convenience to dispense with juries in criminal prosecutions, and thereby introduce a new mode for the trial of crimes. He said, "And however *convenient* these may appear at first (as doubtless all arbitrary powers well executed are the most *convenient*), yet let it be again remembered that delays and little inconveniences in the forms of justice are the price that all free nations must pay for their liberty in more substantial matters; that these inroads upon this sacred bulwark of the nation are fundamentally opposite to the spirit of our Constitution; and that though begun in trifles, the precedent may gradually increase and spread to the utter disuse of juries in questions of the most momentous concern.

(Book 4, Chap. 27, p. 350.)

Respectfully submitted,

HUMPHREYS & SUMNER,
Of Counsel with the Defendant-Responent.