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*Writ of Error to Supreme Court.***WRIT OF ERROR TO SUPREME COURT.**

Filed.

NEW JERSEY, ss.

State of New Jersey to the Chief
Justices of our Supreme Court of 10

(L. S.) Judicature, GREETING:

Forasmuch as in the record and
proceedings and also in the giving of
judgment in a certain case, which was in our
said Supreme Court of Judicature, before you,
between the State of New Jersey and George
Oliver, on a judgment and conviction rendered
on a certain indictment, manifest error has in-
tervened, to the great damage of the said de- 20
fendant, as it is said; we being willing that the
error, if any there be, should, in due manner,
be corrected, and full and speedy justice done
to the parties aforesaid in this behalf, do com-
mand you, that if judgment be thereupon given
and affirmed, then you distinctly and openly send,
under your seal, the entire record and proceed-
ings aforesaid, with all things touching the same,
to our Judges of our Court of Errors and Ap-
peals in the last resort in all causes, at Trenton,
on the 19th day of January next, together with 30
this writ, that the record and proceedings afore-
said being inspected, we may cause to be further
done thereupon, for correcting that error, what
of right and according to the law of the State of
New Jersey ought to be done.

WITNESS, our Chancellor and President Judge
of our said Court of Errors and Appeals, at

Return by Supreme Court.

Trenton aforesaid, the first day of December,
1925.

THOMAS F. MARTIN,
Clerk.

10 D. F. BARKMAN,
Attorney.

RETURN.

20 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 con-
cerning 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.

WILLIAM S. GUMMERE,
C. J.

30

40

Writ of Error.

WRIT OF ERROR

Filed.

New Jersey Supreme Court

THE STATE,

Defendant-in-Error.

vs.

GEORGE OLIVER,

Plaintiff-in-Error.

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*On Error to New
Jersey Supreme
Court.*

Writ of Error.

STATE OF NEW JERSEY, To wit:

20

[L. S.]

The State of New Jersey to C. Franklin Wilson, president Judge of the Court of Quarter Sessions of the County of Morris, holden at Morristown, in and for the County of Morris of the term of January, in the year of our Lord, one thousand nine hundred and twenty-three.

30

Because in the record and proceedings, and also in giving of judgment upon a certain indictment against George Oliver, of the Township of Hanover, County of Morris and State of New Jersey, for feloniously making an assault and attempting to abuse and carnally know one Teresa Fetsock and for a simple assault and battery upon the said Teresa Fetsock, as charged in said indictment.

Pro ut the said indictment and the several counts therein, whereof, before you, he hath been

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Writ of Error.

indicted, and is thereof convicted by a certain jury of the county, taken between the State of New Jersey and the said George Oliver, as it is said, manifest error hath intervened to the great damage of the said George Oliver, as from his complaint we have received information, we being willing, in this behalf, to correct the error in due manner, if
 10 any there shall be, and that speedy justice be done to him, the said George Oliver, command you that if judgment be thereon given, then that you distinctly and openly send, under your seal, the entire 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 7th day of May, 1924, and this writ, that the record and proceedings afore said being inspected, we
 20 may further cause to be done thereupon for correcting that error, what of right and according to the law ought to be done.

Witness, Hon. William S. Gummere, Chief Justice of our Supreme Court at Trenton aforesaid. the 17th day of April, in the year of our Lord one thousand nine hundred and twenty-four.

EDWARD J. KELLEHER,

Clerk.

30 D. F. BARKMAN, Attorney.

A true copy of the original.

Edward J. Kelleher, Clerk.

40

Indictment.

STATE OF NEW JERSEY, }
 COUNTY OF MORRIS, to wit: }

Be it Remembered, That at a Court of Oyer and Terminer holden at Morristown and in said County of Morris, on the third Tuesday in January in the year of our Lord One thousand nine hundred twenty-four, by the Honorable Charles W. Parker, one of the Justices of the Supreme Court of Judicature of the State of New Jersey, and C. F. Wilson, Esquire, Judge of the Court of Common Pleas, in and for the said County of Morris, by the oath of Thomas D. Leonard, George R. Coslett, Herman D. Moller, Fletcher L. Fritts, Elizabeth King, George Riker, Gilbert R. Potts, George Crampton, Frank Dufford, Frederick W. Fisher, Montagu Hankin, Frank Lozier, William Hockenjos, Jr., John B. Stephens, Henry T. Berry, Robert Campbell, Thomas O. Bassett, Charles E. Tippett, Leo Robinson, Verna VanDuyne, Andrew Lee, Joseph J. Pellett, and John Date, Jr., good and lawful men of the said County of Morris, duly summoned, and then and there duly sworn, and charged to enquire in behalf of the State of New Jersey, in and for said County of Morris, it is presented in manner and form following, to wit:

MORRIS OYER AND TERMINER,
 January Term, 1924.

Morris County, to wit:

The Grand Inquest for the State of New Jersey, and for the body of the County of Morris upon their oath Present: That George Oliver, a male person, over the age of sixteen years, late of the Township of Hanover, in the said County of Morris, on the first day of February, in the year of our Lord one thousand nine hundred and twenty-three and from thence hitherto, with force and arms, at the Township aforesaid, in the County aforesaid.

Judgment Record.

and within the jurisdiction of this Court, in and upon one Teresa Fetsock, a woman child of the age of seventeen years, feloniously did make an assault and her the said Teresa Fetsock, then and there, did abuse and attempt to carnally know, contrary to the form of the statute in such case made and provided, and against the peace of this State, and government and dignity of the same.

10

And the grand inquest aforesaid, upon their oath aforesaid, do further present that the said George Oliver on the first day of February, in the year of our Lord one thousand nine hundred and twenty-three, and from thence hitherto, with force and arms, at the Township of Hanover, in the County of Morris aforesaid, and within the jurisdiction of this Court, in and upon one Teresa Fetsock, in the peace of God and of this State then and there being an assault did make, and her the said Teresa Fetsock then and there did beat, wound and ill-treat and other wrongs to the said Teresa Fetsock there and then did to the great damage of the said Teresa Fetsock contrary to the form of the statute in such case made and provided, and against the peace of this State, and government and dignity of the same.

20

And afterwards, that is to say at a Court of Quarter Sessions, holden at Morristown aforesaid, in and for the County of Morris aforesaid, on the twenty-fifth day of January in the year of our Lord one thousand nine hundred and twenty-four, before Honorable C. F. Wilson, Judge of said Court of Quarter Sessions, the said George Oliver, being publicly called, cometh in his own proper person and forwith being demanded of and concerning the premises in said Indictment above specified and charged upon him, and being asked in what manner he will acquit himself, thereof, he says that he is not guilty thereof and of this he

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Judgment Record.

puts himself upon the Country, and James H. Bolitho, Prosecutor for the said County of Morris, who prosecutes for the State in this behalf doth the like.

And thereupon, then and there, the said George Oliver does by himself in his pledge in that behalf enter into a recognizance in the sum of One Thousand Dollars, conditioned that he, the said George Oliver will be and appear before the said Court on the twenty-fifth day of February, nineteen hundred and twenty-four and from day to day thereafter and traverse to effect the said Indictment found against him and not depart the Court without leave. 10

Therefore let a Jury thereupon here come on the First day of April, in the year of our Lord one thousand nine hundred and twenty-four, before the said Court of Quarter Sessions above mentioned of free and lawful men of the County of Morris aforesaid, by whom the truth of the matter may be better known, and who are not of kin to the said George Oliver to recognize upon their oath whether the said George Oliver be guilty in manner and form as he stands charged in the Indictment above specified, or not guilty, because as well the said James H. Bolitho, Prosecutor as aforesaid, and who prosecutes for the State of New Jersey in this behalf as the said George Oliver has put himself upon the said Jury, at which said Court of Quarter Sessions, to-wit: 20 30

At a Court of Quarter Sessions holden in Morristown, in and for the County of Morris on the First day of April, in the year of our Lord one thousand nine hundred and twenty-four, before the Hon. C. F. Wilson, Judge of the said Court of Quarter Sessions, according to the form of the statute in such case made and provided come as well the said George Oliver as James H. Bolitho 40

Judgment Record.

10 who prosecutes as aforesaid and the jurors of the said jury by the Sheriff of the County of Morris aforesaid for this purpose duly impanelled and returned, to-wit: Robert Powers, Henry W. Smith, R. Remington Hopping, Margaret Gurnee, Hannah Dobbins, Nellie Ryerson, Henry Atno, Reuben G. Marsh, Olin Vought, Joseph V. Keating, Margaret Swackhammer and James Branin, who were elected, tried and sworn to speak the truth of and concerning the premises.

20 And the trial of the said Indictment against said George Oliver, having proceeded, the said Jurors upon their oath say: that they find the said George Oliver guilty in manner and form as he stands charged in the Indictment and so say they all. And afterwards at the same term of said Court of Quarter Sessions, to-wit, on the First day of April, in the year of our Lord, one thousand nine hundred and twenty-four, the said George Oliver by himself, in his pledge in that behalf, entered into a recognizance in the sum of One Thousand Dollars conditioned that he, the said George Oliver, will be and appear before the said Court on the Seventeenth day of April, in the year of our Lord one thousand nine hundred and twenty-four, and from day to day thereafter to receive sentence as may be pronounced by the said Court on the Indictment found against him and not depart the said Court without leave. And afterwards at the same term of said Court of Quarter Sessions, to-wit, on the seventeenth day of April, in the year of our Lord one thousand nine hundred and twenty-four (to which time the said Court had been regularly adjourned) came as well the said George Oliver as the said James H. Bolitho who prosecutes as aforesaid, whereupon it is demanded of the said George Oliver, if he hath or knoweth anything to say whereof the said Court here ought not upon

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Judgment Record.

the premises and verdict aforesaid to proceed to judgment and execution against him, who nothing further saith unless as he before hath said. Whereupon all and singular, the premises being fully understood by the Court, it is considered and adjudged by the Court here that the said George Oliver be confined in the State Prison of this State at hard labor for a maximum term of seven (7) years and a minimum term of two (2) years and that he stands further committed until the costs of prosecution are paid. 10

Judgment signed the Seventeenth day of April, in the year of our Lord one thousand nine hundred and twenty-four.

C. F. WILSON,
Judge, &c.

STATE OF NEW JERSEY, {
COUNTY OF MORRIS, { ss. 20

I, E. BERTRAM MOTT, Clerk of the County of Morris, and also Clerk of the Court of Quarter Sessions, holden in and for said County, Do Hereby Certify, that the foregoing is a true, full and correct copy of the Judgment Roll in the case of The State vs. George Oliver, as fully and entirely as the same remains of record in my office.

[SEAL] IN TESTIMONY WHEREOF, I 30
have hereunto set my hand and
affixed the seal of said Court and
County at Morristown, this Fifth
day of September, A. D., Nineteen
Hundred and Twenty-four.

E. BERTRAM MOTT,
Clerk.
By EDWIN W. ORR,
Deputy Clerk.

Mary Bonda, direct.

MORRIS COUNTY QUARTER SESSIONS COURT

10	<p>THE STATE,</p> <p style="text-align: center;"><i>vs.</i></p> <p>GEORGE OLIVER, Defendant.</p>	}	<p><i>Indictment for:</i> <i>Attempt, Carnal</i> <i>Abuse ; Assault</i> <i>and Battery.</i></p>
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Morristown, N. J., April 1, 1924.

BEFORE: HONORABLE C. FRANKLIN WILSON,
Judge, and a Jury.

20 APPEARANCES:

For the State: James H. Bolitho, Esq., Prosecutor
of the Pleas.

For the Defendant: David F. Barkman, Esq.

30 MR. BOLITHO: I desire to move the case of the
State versus George Oliver, and I desire to ask the
Court to amend the indictment so as to change the
word "Borough" to the word "Township." It is
used as "Township" in two places, and in another
place, by an error in typewriting, it is stated "Bor-
ough."

THE COURT: Is there any objection, Mr. Bark-
man?

MR. BARKMAN: No.

40 THE COURT: So ordered. Defense Ready?

Mary Bonda, direct.

MR. BARKMAN: Defense ready

THE COURT: Empanel a jury.

A Jury was accepted and sworn.

The Prosecutor opened the case to the jury.

10

MARY BONDA, called as a witness on behalf of the State, being duly sworn, testifies as follows:

DIRECT EXAMINATION BY THE PROSECUTOR

Q. Where do you live, Mrs. Bonda? A. 350 West 39th Street, New York City.

Q. And you are married? A. Married five years February 28th.

Q. What is your husband's name? A. John. 20

Q. Have you any children? A. I have one, three years.

Q. Have you any sisters? A. Well, yes, I have Teresa and Margaret, and there is one besides.

Q. Let us see. You have Teresa? A. And Margaret.

Q. And Margaret? A. They are in the case here.

Q. Yes. Now, is your father and mother living? A. No, sir. 30

Q. And how long have they been dead? A. Well, my father is dead about three years, and mother died lately.

Q. By lately, how long ago, about, did your mother die? A. Well, about a—about the time that I put them on the farm.

Q. Now, how old is your sister Teresa? A. Well, she was eighteen this May, the 8th; May the 8th.

Q. You mean she will be eighteen this 8th of 40

Mary Bonda direct.

May or— A. She was, last.

Q. Last; last year, the 8th, she was, 1923? A. 1923.

Q. Her birthday is on the 8th of May? A. 8th of May.

Q. How old is Margaret?—A. Margaret was twelve years this April 4th.

10 Q. That is, last April 4th. A. Last April.

Q. She will be thirteen this April 4th; is that right? A. Yes, sir.

Q. And you said something about putting them out to board. Where did you put them out to board? A. Well, I had to put them out to board, so I answered an ad that Mrs. Oliver put in the paper, and she put her name by—she put her name by Miss Thompson in the paper; and I answered that ad. Later on I received an answer. Her name was Mrs. Oliver.

20 Q. Well, now, where did you see that ad; do you remember? A. I guess it was the Journal, but I am not sure.

Q. One of the New York papers? A. One of the New York papers.

Q. Do you remember what the ad said?

MR. BARKMAN: Wait. I do not know that that is important, or not.

A. The ad said—

30 THE PROSECUTOR: Just a minute. (

THE COURT: Just a minute.

MR. BARKMAN: Is that of any importance to this case, what the ad said?

THE COURT: I will hear what the Prosecutor says.

THE PROSECUTOR: Well, it may, if your Honor please, show the connection with reference to the boarding out of these children. That is the only purpose of it.

40 MR. BARKMAN: Is there any dispute that they

Mary Bonda direct.

were boarding?

THE COURT: The defendant does not dispute it.

MR. BARKMAN: There is no question about that, Mr. Prosecutor.

THE COURT: All right, then. It is admitted.

Q. When did you put the children out to board there? A. When did I put them out there to board? 10

Q. Yes. A. Why, I put Margaret there six weeks in September—in October, latter part of October.

Q. Last October? A. Last October. Then I put Teresa there the 7th of February.

Q. The 7th of February, 1923? A. 1923.

Q. Yes. A. No, I guess it was 1922. It is a year ago, isn't it?

Q. Yes, a year ago. That was 1923. This is 1924. A. Oh, well, it must be 1923. 20

Q. Well, it was a year ago this February? A. A year ago, yes, sir.

Q. Well, how long did Teresa board there? A. She boarded there from February till about two days before Labor Day, the time that she ran away from there.

MR. BARKMAN: What date was that, please?

THE COURT: February 7th, 1923.

Q. From February 7th, 1923, until Labor Day of the same year? A. It was not really Labor Day, but I guess it was about two days before when they ran away. I am not sure. 30

Q. Margaret was there also before they went away; is that right? A. Before they went away?

Q. Yes. A. The both of them ran away.

Q. So that Teresa was there some little time before Margaret went there; is that it? A. No, sir. Margaret was there before Teresa.

Q. Oh, Margaret, then, went there in 1922; is 40

Teresa Fetsock direct.

that right; and Teresa in 1923? You said that Margaret went there— A. Yes, sir; that is right.

Q. Then they both remained there until two days before Labor Day, 1923? A. Yes, sir.

CROSS EXAMINATION BY MR. BARKMAN:

10 Q. The children had been boarded at Jamesburg, had they not, before this time? A. Yes, they have been in Jamesburg.

Q. How long were they there? A. They was there for about eight weeks.

Q. About eight weeks? A. About weeks; eight weeks straight.

Q. Then you took them away from there and sent them up to Mrs. Oliver's place? A. I took them home, and I kept them home for a while.

20 Then I took them there.

MR. BARKMAN: That is all.

THE PROSECUTOR: That is all.

TERESA FETSOCK, called as a witness on behalf of the State, being duly sworn, testifies as follows:

DIRECT EXAMINATION BY THE PROSECUTOR.

30 Q. Where do you live now, Teresa? A. I live at 306 West 40th Street, New York City.

Q. Did you live with your sister? A. I lived with my sister twelve years old.

Q. What is her name? A. Margaret.

Q. And did you live over at Mr. Oliver's place? A. Yes, sir.

Q. When? A. I came to live there in February, 7th.

Q. 1923? A. A year ago February 7th, 1923.

40 Q. How long did you stay? A. I stayed till

Teresa Fetsock direct.

about two days before Labor Day.

Q. Yes. And do you recognize Mr. Oliver sitting there at the table? A. Yes, sir.

Q. Is that the man with whom you boarded?

A. Yes, sir.

Q. And during the time you boarded there did you have any trouble of any kind with him? A. Yes, sir. He tried to have an intercourse with me. He always used to stick his thing out, and used to come to my bedroom and try to have an intercourse with me; and my little sister always came to my rescue, and he ran away, like that. 10

Q. How many times did he do that? A. Oh, many times. He always did that.

Q. In the daytime or at night? A. In the day and at night time too.

Q. Now, were there any other things that he did while you were there toward you? A. Yes, sir. He used to chase me. He used to undress himself before the other children. He used to board more children, you know, than he was allowed to board. He had only a license for six. 20

MR. BARKMAN: I object to that.

THE COURT: Strike out what he was allowed to board. He used to undress himself.

MR. BARKMAN: Yes.

THE COURT: That is, more than he was allowed to board, strike that out. 30

Q. How many times did he come to your bed at night? A. Many times. Every time one of us used to—we never had time to sleep, because every time one of us had to be on the watch.

Q. What would he do when he came to your bed? A. He used to put his arms around me, and take off his clothes in front of me, and try to pick up my dresses.

Q. And did he do anything of that kind during the daytime? A. Yes, sir. 40

Teresa Fetsock direct.

Q. And where were you then? A. I was in the back woods. I was kept there all day. I was not allowed to even be on the porch.

Q. What did he do to you in the back woods?
A. He was running all over after me, and I had to run from one tree to another, all over the woods, like that. He was running after me.

10 Q. Was he dressed or undressed then? A. He was dressed, but then when he came to me, he let his pants down.

Q. Did he ever attempt anything with reference to your sister, that you saw?

MR. BARKMAN: I object to that.

THE PROSECUTOR: I will withdraw it.

Q. What was his treatment of your sister?

MR. BARKMAN: I object to that too.

THE PROSECUTOR: I withdraw that.

20 Q. Did he do anything toward your sister?

MR. BARKMAN: I object to that.

THE COURT: On what ground?

MR. BARKMAN: There is no charge of the sister. There is only one case we are trying here.

A. He objects to that?

Q. Yes; do not answer.

THE COURT: How about that Mr. Prosecutor?

THE PROSECUTOR: I will withdraw it.

30 Q. Your sister was there with you at the time when he made these attacks on you? A. Yes, sir, she was there, and some times she was away from me too, but then she just came, you know, in time to save me.

Q. What did you do when he made these attacks on you? A. I could only scream and run away.

Q. You say he did this a great many times. A. Yes, sir. Even the neighbors saw him doing it.

MR. BARKMAN: Wait a minute.

40 Q. You cannot tell what the neighbors saw.

Teresa Fetsock cross.

You must only tell what you saw.

CROSS EXAMINATION BY MR. BARKMAN:

Q. When you went to Mr. Oliver's place to board, how many people were there in the household? A. There were about fourteen children, besides the family. 10

Q. Besides the family. How many are there in the family? A. There are Mr. Oliver, Mrs. Oliver, and two children—four.

Q. Four. You say the time you went there there were about fourteen other children. A. Yes, sir.

Q. They did not belong to Mr. Oliver? A. Yes, sir.

Q. Children that were boarding, the same as they were boarding you and your sister? A. Yes, sir. 20

Q. These fourteen include you and your sister, do they not? A. Yes, sir.

Q. Who took you to Mr. Oliver's place? A. My sister.

Q. Mrs. Bonda? A. Mrs. Bonda.

Q. She went out there with you to the place? A. Yes, sir.

Q. Did she visit you frequently at Mr. Oliver's place? A. No, sir, because she used to keep my letters. 30

Q. I said, did she?

THE COURT: She said no.

Q. How many times did she visit you at the Oliver place? A. She very seldom came at all, because Mrs. Oliver wrote to her that I don't need her there.

Q. We will just get to that in a minute. How many times did Mrs. Bonda visit you at the Oliver place, if you recollect? A. No times. 40

Teresa Fetsock cross.

Q. Never came out to the Oliver place at all
 A. Well, she only came there when she brought Margaret; then when she brought me; that is all.

Q. You were not with her when she brought Margaret there, were you? A. No, sir.

10 Q. So you do not know anything about that, except, perhaps, what Mrs. Bonda may have told you. You say she took you there. When next did she visit you at the Oliver place? A. Only when she brought me. Otherwise, she did not come at all.

Q. She was never there? A. No, sir.

Q. All the while you were at the Oliver place?
 A. That is right.

Q. That is true, is it? A. That is true.

Q. And you did not visit her in New York during that time? A. No, sir. How could I?

20 Q. I am just asking you whether you did or not. That is all. Whereabouts is this place of Mr. Oliver's that you boarded at? A. It is in Whippany, New Jersey, about—it is right across the Catholic Church. That is a new place.

Q. That is the new place? A. And their old place was about a half a mile away from that.

Q. Toward Morristown? A. Yes, more toward Morristown.

30 Q. And that was the place where there were fourteen children? A. Yes, sir.

Q. And the little farm. How many rooms were in that house? A. How many rooms? Seven.

Q. Now, what room did you occupy? A. The top floor.

Q. The third floor or the second? A. The second floor. There were only seven rooms.

Q. How many children were in the room with you? A. I was alone in the room.

40 Q. Margaret with you, was she not? A. Well,

Teresa Fetsock cross.

I mean the other children were not with me; only ones.

Q. Just you two? A. Yes.

Q. You and Margaret occupied this one room?

A. Yes, sir.

Q. Where were the other children? A. The other children were in the other rooms, in the hall—

10

Q. How far away from your room; adjoining rooms? A. Yes, sir.

Q. All the bedrooms, then, on the second floor, were occupied by children that Mr. Oliver was boarding? Yes, sir.

Q. Where did Mrs. Oliver—what rooms did Mrs. Oliver occupy? A. Well, she slept upstairs in the old house.

Q. That is, you mean on the— A. Yes, she had a room—

20

Q. Where you were at first? A. Yes.

Q. And did the daughter sleep there too? A. Their daughter too, and Mr. Oliver downstairs.

Q. And the grand child? A. And what?

Q. Where did the grand child sleep, the little girl? A. Oh, the grand child, well, sometimes she used to sleep with her father; sometimes with her mother.

Q. That is, with Mr. and Mrs. Oliver? A. Yes.

Q. All these people were in this house, you say? A. Yes, sir.

30

Q. And they were playing around the yard?

A. They had no chance to play. They gave them too much work.

Q. I say, did they play around the yard after you were there? A. They couldn't play around the yard. They were forbidden to do that.

Q. They went outdoors, did they not? A. They went outdoors, but—and worked.

Q. They went to school too, did they not? A.

40

Teresa Fetsock cross.

Well, they were kept home from school to wash clothes.

Q. They went to school, did they not? A. They what?

Q. They went to school, did they not? A. Well, they went to school, but they were kept—

10 Q. Your sister Margaret went to school? A. Yes, but they were kept home—

Q. Yes.

THE PROSECUTOR: Let her answer the question.

MR. BARKMAN: I think she has answered, when she says they went to school.

THE COURT: Proceed.

Q. Your sister Margaret went to school with the other children? A. Yes, sir. But she was kept home too to wash clothes.

Q. To what? A. To wash clothes.

20 THE COURT: Wash clothes.

Q. Her own clothes? A. Not only hers: everybody's.

Q. Did you do your own washing too? A. Well, sometimes I did.

Q. Sometimes you did. When did this first offense against you take place? A. About in April.

Q. In April of what year? A. April, May, but not so much in April; May last year.

30 Q. Not so much in April? A. In May.

Q. Did anything take place in April? A. Sir?

Q. Did anything take place against you in April? A. Well, he used to tease me, and fool around, but not so bad as later.

Q. Then nothing happened except this teasing, as you call it; nothing happened in April? A. Only the undressing part, but—

Q. I beg your pardon. A. Just the undressing part.

40 Q. Where did he undress, now? You said

Teresa Fetsock cross

that? A. He undressed in rooms, and outside too.

Q. Outside where? A. In the woods where I was.

Q. Was that on more than one occasion? A. Many occasions.

Q. Many occasions out in the woods? A. Yes, sir. 10

Q. What were you doing out in the woods? A. Well, I had to be there.

Q. Just running out to play, or something like that? A. I was forced to stay in the woods against my will.

Q. You were forced to stay in the woods. Margaret with you in the woods? A. Yes, sir.

Q. How far is the woods from the house? A. Well, they own a farm. I do not know how many miles it is—how many acres, I mean. 20

Q. What time of day was this in the woods that you speak of? A. What kind of what?

Q. Yes, what time of day was it? A. In the evening. The morning he used to come around all the time, because he—

Q. What time in the evening? A. Before supper time; after supper too.

Q. That is in May or April? A. May.

Q. In May, that was. What time in May? A. Many times in May. 30

Q. Can you give me any specific date? A. It was nearly all the days, so that is why—

Q. Every day? A. Every day; used to come every day.

Q. Every day in the house too? A. Every day, succession. When he was out to the movies, that is the only time I was rid of him.

Q. That is the only time? A. Yes.

Q. All this time he was there? A. Yes, sir.

Q. In the house and in the woods too? A. Yes. 40

Teresa Fetsock cross

He used to do that to his wife too.

Q. You were present? A. Yes, sir. He used to pick up her clothes, and he said—

Q. Yes.

THE PROSECUTOR: Wait a moment. Answer the question.

10 MR. BARKMAN: I did not mean to interrupt. I was going to ask another question.

THE COURT: Proceed. Pick up and what?

Q. (Continuing) He picked up her clothes, and he said, "Why,"—and I said, "Why, that is a sin, to do it." He started to laugh, and said, "Oh, that is nothing. If I can do it to my wife, why can't I do it to you?"

Q. When was that, now? A. In May.

Q. When was that? A. In May.

Q. What time in May?

20 THE COURT: Do you mean the day of the month, or the day of the week?

MR. BARKMAN: Any time she has a mind to fix. A. Sunday.

Q. You do not know? A. Sunday.

Q. What Sunday? A. During the latter part of May.

Q. Latter part of May. Children were there on Sunday, were they not? A. Yes, sir, they were.

30 Q. They were around there at the same time? A. Well, we were not together, because we were not allowed to speak, even, together. We were kept apart.

Q. Well, these children occupied the same house that you did? A. Yes, I know, but we were kept apart, though.

Q. On Sundays they were around the house, were they not, the children and Mrs. Oliver, and the family? The daughter was there, was she not?

40 A. She was there, but often while the daughter

Teresa Fetsock cross

had privileges, the children did not.

Q. The daughter was there this Sunday? I say she was there on this Sunday that you speak of? A. No. She was working.

Q. Working; what? A. Oh, she was boarding away somewhere.

Q. She was not home at that time? A. Yes, sir.

10

Q. I see. The other children, though, how many were there in May on Sunday, this Sunday in May that you speak of? A. There were about twelve.

Q. Twelve. When was the next occasion on this Sunday—excuse me. On this Sunday, you say, just what you have told us is what he said to you. When was any other occasion when he said anything like that to you? A. In June he used to do that in the woods.

20

Q. What? A. In June he used to do that in the woods.

Q. June. In these woods he never touched you; he simply showed you this and ran away?

A. He stuck it out, right, you know, to me.

Q. Toward you? A. Yes.

Q. But you ran away? A. Yes. Why, yes.

Q. You did not stay there, did you? A. Oh, no.

Q. You ran away? A. Yes, I ran away, and he was running after me.

30

Q. I say, he never touched you? A. Well, yes, touched me, but I ran away.

Q. You ran away. He did not run after you? A. He did; he followed me.

Q. But you outran him? A. Yes.

Q. Where did you go? A. Well, I ran to a neighbor's farm.

Q. What farm? A. To the farm adjoining Oliver's.

40

Teresa Fetsock cross

Q. That was in June? A. Yes.

Q. When after that? A. Then he used to bother me always after that.

Q. Always? A. Every time he was home, I mean.

10 Q. Mr. Oliver was always home, was he not?
A. Home when he didn't go to the movie, or to town, to Morristown.

Q. Movies would be in the afternoon or at night? A. Well, he used to go sometimes at night; sometimes in the morning; any time when he—

Q. I believe he was constantly working around this farm there, was he not? A. He worked very seldom. The children did the work.

Q. But he was around there? A. Oh, yes.

20 Q. And Mrs. Oliver was there too, staying home? A. Yes, she was there.

Q. Can you give me any date, or any time, or any day in June this happened? A. If there were a few times, I would write them down, but it happened so often, I thought it was not necessary.

Q. You did not keep any account of the date or time, or anything, did you? A. No; he did it so often.

30 Q. You did not write to your sister at all about it, or anything of that sort? A. Yes, I did write to my sister about it.

Q. Your sister did not see you, though? A. Well, because she did not get my letters. They kept my letters.

Q. Mrs. Bonda never came out to see you? You said that. I withdraw that. That is in. When did you leave? Did anything happen in July? A. Yes, in July and August.

40 Q. The same thing? A. The same things. They happened so often that it would make you tired.

Teresa Fetsock cross

Q. Yes, I presume they would. Any specific time or date in July or August that you can give me? A. Around the 4th of July it happened.

Q. 4th of July? A. About the 5th or 6th.

Q. How many children were there at that time?

A. Well, two were home, and—

Q. About the same number were there, or fewer? A. About the same number, you see, always; and some go home, and she gets others. 10

Q. On July 4th, were you there then? A. Well, we moved on the 4th of July. We were moving to the new house.

Q. You were in the new house on July 4th? A. Yes.

Q. And this happened in the new house? A. This happened in the new one, and in the old house too.

Q. I mean this particular happening in July? A. Yes, when we were moving. 20

Q. That is the only time in July, is it? A. No. There were many times then.

Q. Many times in July? Let me see; this is the new place, you say? A. Yes. We were moving on the 4th of July.

Q. Whereabouts is that? A. The new house?

Q. Yes. A. It is right across the Catholic Church.

Q. At Whippany, New Jersey? A. Whippany, New Jersey. 30

Q. Along the main street; along the main street, the main road? A. It is—well, I don't know much about Whippany, but I know it is across the Catholic Church, Father Clifford.

Q. The other house is on the same road, further toward Morristown? A. Yes, That is what I mean.

Q. And on the opposite side of the street? A. Yes, sir. 40

Teresa Fetsock cross.

Q. You stayed there during all of August, did you not? A. Sir?

Q. You stayed there during all the month of August? A. Well, the last part of August. I ran away to the police station, and I was there for four days, until they sent for Mrs. Bonda, and she came and took me home.

10 Q. Where did you run away from, at Newark or Whippany? A. I ran away to Newark, New Jersey.

Q. You went down with Mrs. Oliver to Newark, did you not? A. The neighbor gave me \$3.00 to run away with, and I took the \$3.00, and I got as far as the bus, and there, well, Mrs. Oliver caught me. A little boy was going to the Post Office for Mrs. Oliver, and he saw me, and so they caught me; and Mrs. Oliver went with me on the bus.

20 Q. Mrs. Oliver went with you on the bus? A. Yes. And we went right to Newark; and then she got to Child's restaurant, and she tried to bribe me. She bought me something to eat, so I come back with her, like I used to go back with her; but I wouldn't go back with her. She tried to bring me to the constable. I was willing to see him. And I said, "I will be glad to see the constable."

30 Q. Was Mr. Oliver down there? A. Yes. And then Mr. Oliver came, and Mr. Oliver was down there, both, and he started to curse in front of the people, up in front of the store, and he started to curse at me for running away. There was a great crowd by the Atlantic & Pacific Tea Store window.

Q. At Whippany? A. Whippany. And Mrs. Oliver said, "Come away from this crowd." And she promised to take me home.

MR. BARKMAN: I object to that. I did not ask her what Mrs. Oliver said.

40 THE COURT: Well, I am not so sure. You brought out that Mrs. Oliver went to Newark with

Margaret Fetsock direct.

her.

MR. BARKMAN: I did not ask her anything that she said at all. I do not think it is competent. I have not aske dher what was said.

Q. Then you left Olivers about the 1st of September; is that right? A. No, before Labor Day.

Q. Labor Day? A. It was the Thursday before Labor Day.

10

Q. That would be about the 1st of September, then, would it not, or around the 1st? I do not mean the first day, but around the first of September? A. Yes, during the latter part of August or September, the 1st of September.

MR. BARKMAN: That is all.

THE PROSECUTOR: That is all.

THE COURT: Wait a minute.

BY THE COURT:

Q. Did I understand you to say that you wrote to your sister, Mrs. Bonda? A. Yes, sir.

20

Q. Now, what else did you say about the letters not being mailed? A. She kept all my letters, and my sister was in ignorance of everything until the police came to her door, until she got me to the police station.

Q. Who got her letters? A. Mrs. Oliver. She used to hide them. She used to tear them and burn them up. She even kept the other children's letters.

30

THE COURT: That is all.

MARGARET FETSOCK, called as a witness on behalf of the State, being duly sworn, testifies as follows:

DIRECT EXAMINATION BY THE PROSECUTOR

Q. Where do you live, Margaret? A. 306 West 40th Street.

40

Margaret Fetsock direct.

Q. Speak loudly, just the same as you would if you were in school. Where do you live? A. 306 West 40th Street.

Q. West 40th Street? A. Yes, sir.

Q. 306? A. 306 West 40th Street.

10 Q. 306 West 40th Street; is that right? A. Yes, sir.

Q. Now, can you say it a little louder? A. 306 West 40th Street.

Q. That is it, now you are talking loud. Do you know Mr. Oliver? A. Yes, sir.

Q. Did you live over at his place? A. Yes, sir.

Q. And while you lived there did your sister Teresa live there? A. Yes, sir.

20 Q. Do you remember when it was that you lived there? A. November I came there.

Q. You went there in November, before your sister went there? A. Yes, sir.

Q. And when did your sister go there? A. February.

Q. The next February after you had been there? A. Yes, sir.

Q. Then you stayed there with your sister? A. Yes, sir.

Q. Until you both went away? A. Yes, sir.

30 Q. While you were there, did you see Mr. Oliver do anything to your sister? A. Yes, sir. He used to take his thing out,—you know how men are, different from ladies; they have such long things,—and he used to take it out; and he used to touch my sister; he used to try to touch my sister with it, only every time I used to come in time, and he did not have no chance to touch her.

40 Q. And did that happen in the bed any time? A. Yes, sir. When we used to sleep, one of us used to watch, because, you know, he used to come in bed, and he used to tease us and touch us.

Margaret Fetsock cross.

Q. What did he try to do to your sister when he came into the bed? A. Well, he used to put his arms around her.

Q. Anything else? A. Well, he used to take—he used to undress himself by her.

Q. Did he try to do anything with your sister?

A. Yes, sir.

Q. What? A. Well, he used to take his thing out, and he used to try to touch her with it. And he used to make, you know, talk with her, to make her touch it, but she used to run away. She used to say to me, not to look at him, because it is a sin to do it. 10

Q. Did he bother your sister's clothes? A. Yes. He used to pick her dresses up, and she used to run away to the woods.

Q. How many times; do you know? A. Very many times. 20

Q. How many times? A. Very many times.

CROSS EXAMINATION BY MR. BARKMAN:

Q. When was the first time that you saw this, Margaret? A. Sir?

Q. When was the first time that you saw anything that you have described here take place between Mr. Oliver and your sister? A. Well, when she came there he used to do it to her.

Q. First of February? A. Well, first, you know, he didn't do it, like that, but after, when he got a little bit used, he started to do it. 30

Q. When what? A. When he got a little used to her, you know, he started to.

Q. When he became better acquainted with her, you mean; is that it? A. Yes.

Q. When was that, Margaret? A. That was about in May.

Q. In May? A. Yes, sir.

Q. That is the first time you saw it? Oh, yes. No, not the first time, but I saw him many times. 40

Margaret Fetsock cross.

Q. Many times before that? A. Yes, sir.

Q. When is the first time, if you recollect? You must know. A. Well, I really do not know when, but—

Q. What? A. I really don't know when it was, but I saw him do it.

10 Q. You do not remember when it was. You say she went to Mr. Oliver's in February? A. My sister went in February.

Q. Yes, your sister went in February? A. Yes, sir.

Q. You had been there? A. In November.

Q. In November, preceding? A. Yes, sir.

Q. You went there first? A. Yes, sir.

Q. Is that right? A. Yes, sir.

20 Q. Your sister came in February? A. Yes, sir.

Q. When after she came did you first observe this action of Mr. Oliver? A. Yes, sir.

Q. When? A. Well, he was doing it to her after about a month after, around.

Q. About a month after that? A. Yes.

Q. Well, now, that would be the 1st of March? A. Yes, sir.

Q. Now, you are sure about that, are you? A. Yes, sir.

Q. Positively? A. Yes, sir.

30 Q. That is in March. I do not mean the first day of March, but around the first of March? A. Yes, sir.

Q. Where did this take place the first time? A. Sir?

Q. What? A. Sir?

Q. When; where? Where did this first occasion that you have testified to, where he did these things that you have said—where did it take place? A. He used to do it in the woods.

40 Q. Well, I am not talking about—well, excuse

Margaret Fetsock cross.

me. I will withdraw that. Was the first time in the woods, then, do you mean? A. I can't—

Q. I am talking about the first time, now, Margaret. I do not want to get you confused, not giving the time. I am talking about the first time you saw this. When was that, and where was it?

A. Well, that was about in March.

Q. In March? A. Yes, sir. 10

Q. And whereabouts was it? A. Well, he used to do it in back of the woods.

Q. No, I mean this particular time that I am talking about, that you first saw; where was it?

A. I can't understand you.

Q. You cannot understand. I will try to explain for you. You say you observed this the first time in March? A. Yes, sir.

Q. These actions of Mr. Oliver toward your sister. Now, I want to know where it was that that took place. A. Well, he used to take his long thing, you know, and he used to try to touch her with it. 20

Q. What? A. You know, he used to take—

Q. Yes; he tried to touch her with it? A. Yes, sir.

Q. Where was it; where did that take place? A. He used,—you know, he used to take it out of here, and he used to try to touch her with it.

Q. He never did touch her with it? A. No, he didn't touch her with it, but he tried to. 30

Q. Tried to, yes. Where was the first time that he did that; whereabouts? You said it was around the 1st of March, but I want to know where it was. A. I can't understand you.

THE COURT: He means in the house, or was it outdoors, or where?

THE WITNESS: Yes, it was outdoors.

THE COURT: Where?

THE WITNESS: In the woods. 40

Margaret Fetsock cross.

Q. The first time it was outdoors in the woods?

A. Yes, sir.

Q. That is around the 1st of March? A. Yes, sir.

Q. Your sister ran away, you said? A. Yes, my sister ran away from him.

10 Q. Where was the next time you saw this? A. Oh, it was outside, and every place.

Q. Every place outside? A. Yes, sir.

Q. Daytime, or any time? A. Yes, any time.

Q. And you saw it? A. Yes, sir.

Q. And you were always right there? You were always there, and he never did touch your sister? A. No, sir.

Q. Can you give any specific time that this occurred? A. Sir?

20 Q. Can you give any specific date when this occurred? A. I can't understand you.

Q. You cannot? A. No, sir.

THE PROSECUTOR: She cannot understand you, she said. Your words are too big for this little girl.

Q. Well, can you tell at any other time when this happened, besides this 1st of the month? A. I can't really tell you when, because he always used to do it,—many times he used to do it.

30 Q. Was this in the house too? A. Well, he used to dress himself in the house, too, in front of the children.

Q. Undress, you mean? A. Yes, sir.

Q. Or dress? A. Undress.

Q. Did he have a room in the house? A. Sir?

Q. He had a room in the house on the same floor where you children were sleeping? A. Well, really, I don't know exactly where.

Q. You do not know? A. No, sir.

Q. Who slept with you? A. My sister.

40 Q. And nobody else in the room except you and

Margaret Fetsock cross.

your sister? A. Yes, sir.

Q. How many times did you see this in March or April? A. Oh, many times.

Q. Many times in March? A. Yes, sir.

Q. That is about a month or six weeks after your sister came to Mr. Oliver's? A. Yes, sir.

Q. And that continued about the same, as you have described, right on up until you left the Oliver's; is that it? A. Yes, sir. 10

MR. BARKMAN: That is all.

THE PROSECUTOR: That is all.

That is the State's case.

MR. BARKMAN: I think there should be a dismissal on the first count, your Honor; no charge that he ever did touch this girl Teresa.

THE COURT: Well, the charge is an attempt.

MR. BARKMAN: Yes. There must be some touching, or something. There is no attempt. It might be open lewdness under our statute, but I do not think it is any further than that. It would be open lewdness, but there is nothing else. Both witnesses say he never did touch her. 20

THE COURT: Well, the charge in the indictment is that he did attempt to carnally know.

MR. BARKMAN: But that was not the charge, in my opinion, your Honor.

THE PROSECUTOR: I think counsel misunderstands the evidence. 30

THE COURT: If you make that motion, I am compelled to deny it, and grant you an exception.

MR. BARKMAN: Yes. I just want to get it on record, and I will take an exception.

THE COURT: Yes.

George Oliver direct.

DEFENDANT'S CASE.

Mr. Barkman opened the case to the Jury.

GEORGE OLIVER, the defendant, called as a witness in his own behalf, being duly sworn, testifies as follows:

10

DIRECT EXAMINATION BY MR. BARKMAN:

Q. Mr. Oliver, where do you live? A. Whippany.

Q. How old are you? A. 57.

Q. How long have you lived in Whippany? A. Well, it will be four years now the 1st of October, since I bought the first place there.

Q. Where was the first place that you lived in?

20 A. Well, that is about half a mile from where I live at the present time, on the Whippany Road.

Q. When did you move from the first place to the place where you now reside? A. The 16th day of July.

Q. Of this last year? A. Yes, sir.

Q. Do you know these children that have been on the stand? A. Yes, sir.

30 Q. Did you at any time, as she described it, stick out your thing and run toward her? A. No, sir, positively.

Q. Did you go up to her room and undress before, and do the same— A. No, sir.

Q. — thing? A. Never.

Q. Did you ever go out in the woods, as she described, stick out your thing and run toward her? A. No, sir.

Q. You never, at any time, made any attempt to have any carnal knowledge of this girl? A. No, sir.

40 Q. How many people are there in your house-

George Oliver direct.

hold, or were there, at any time? A. I couldn't tell that at all. I don't know. I never paid any—really do not know how many there was. My wife—

Q. Well, there is your wife, and who else? A. My wife and my daughter, and grand child. At the time—

Q. While Margaret or Teresa were there. A. 10
Why, I don't know. I think she had about seven children, the most, as far as I know. I never had anything to do with that at all.

Q. And how many people are there in your family? A. Why, four; my wife and I and daughter and grand child.

Q. And how large a house was this house, the first house you lived in? A. I think there was eight rooms.

Q. Did you have a room in the house? A. I 20
had a room in the new part of the house, away from the old part, the new part we put in.

Q. Was that anywhere near this Teresa's room? A. No, sir. You had to go up—I was on the first floor. And she had to go up to her room, up into the stairs; up in the other part of the house, in the new part—no, she slept in the old part, but upstairs, and I was in the new part downstairs, Me and the two boys slept, that we had there with us, slept in that room. I had a bed on one side, and they slept in the same room with me, in the new part, new part of the house, downstairs. Could not get up into that place without you come through, went up through the front-room, and up the stairs. You couldn't get there any other way, without coming up through. And my wife, she slept right in the next room. 30

Q. To you? A. No, on the other part. I slept all alone with the two boys.

Q. Now, down at the new place, where did you 40

George Oliver direct.

sleep there, down at the place where you are living now? A. Well, there is fifteen rooms in that house. I slept in the old part; me and the boys slept, in the front-room, on the— in the old—

Q. What? A. What is this, when the other people were there? You know we had part of the house rented at first to—

10 Q. Mr. Moore, was it? A. Yes. I slept in that room then. The boys and I had that front-room at that time.

Q. Now you say you had part of the house rented in the new place. Was that a double house? A. Yes.

Q. Who occupied the side that you had rented?

A. A party by the name of Moore.

20 Q. How long were they there? A. Well, we moved the 16th day of July, and they left, I guess, the day before September, because they didn't pay any September rent.

Q. The 1st of September? A. I think they left the day before September.

Q. They were there, then, during July and August? A. Yes.

Q. And you had the other side of the house where you lived with your wife and these children? A. Yes.

30 Q. What place did you occupy in that house? A. I occupied that front-room, that front-room and—

Q. Downstairs or upstairs? A. Downstairs.

Q. Where did these children, Teresa and Margaret, sleep? A. Why, they had a front hall—front-room upstairs.

Q. Now, at that place she said you came in her room and stuck out your thing, but did not touch her. Did you do anything like that there? A. No, sir, never.

40

George Oliver cross.

CROSS EXAMINATION BY THE PROSECUTOR.

Q. Was Teresa out in the woods during the daytime while she was there? A. Why, if she wanted to go, yes, she did. Yes, she did go out in the woods.

Q. Whom did she ask if she wanted to go? A. She never asked me. 10

Q. How did you know, then, that she asked anybody? A. I didn't say she asked anybody.

Q. You said if she wanted to go she asked and went?

MR. BARKMAN: No; he said she could go. A. I said she could go. I did not say that she asked anybody. She was old enough not to ask anybody.

Q. How old was she at that time? A. Why, I do not know how old she was; seventeen, I suppose; whatever the evidence was. I didn't know how old she was. 20

Q. Where were you born, Mr. Oliver? A. I was born in New Jersey, my father and mother and grandmother and grandfather.

Q. Where were you born? Never mind your ancestry. A. Jersey City.

Q. What is that? A. Jersey City.

Q. Where in Jersey City? A. Why, I don't know exactly the house now. Bergen Square somewhere. 30

Q. You remember your grandfather and grandmother being born, but you do not remember where you were born; is that right? A. I don't know the house where I was born, no; I can't remember.

Q. What? A. I cannot remember the house I was born in, no.

Q. When did you come to Morris County? A. Morris County? Why, I bought this first place 40

George Oliver cross.

four years ago the 1st day of October, and I have owned lots of places over in Morris County or Somerset County, Stirling.

Q. Do you not know where you have been during your life? Do you not know where you lived during your life? A. I don't understand what you are getting at.

10 Q. You do not understand that? A. No, sir.

Q. Where did you live before you came to Morris County? A. Why, I lived in Brooklyn.

Q. What did you do in Brooklyn when you lived there? A. I was — worked on the railroad.

Q. Rapid Transit? A. I worked on the Brooklyn Union Elevated for about twelve years, and then I had a farm, and I give up; and then I went back to work on the Interborough, and I worked for about twelve years.

20 Q. Where else did you live before you came to Morris County? A. What do you want, my whole life's history? I do not understand really what you—

MR. BARKMAN: Go ahead. Just tell us where you lived. I do not see how it is material.

A. (Continuing) I have lived in New Orleans; I have been to Cuba; lived in Virginia; I have lived in Virginia. I have been a rolling stone. Everywhere I have been.

30 Q. How long have you been married? A. I think we were married in 1894.

Q. Your wife knows, I suppose, and you do not. I see you looking toward your wife. Do you not know when you were married? A. 1894, I think; June 4th, 1894, I think, or 1896. I don't know. I couldn't tell you that. I suppose the marriage certificate will tell.

40 Q. Were you married when you lived in Brooklyn and worked on the Rapid Transit? A. Yes, sir. I was married in Brooklyn and worked on

37

George Oliver cross.

the Rapid Transit.

Q. You have not been married but once? A. Once, yes.

Q. And what business was your wife in after you were married over in Brooklyn? A. She was in no business at all. She attended her own business, I guess, attended to her house, the same as any other decent woman would do.

10

Q. When you came over to Morris County, your wife or you started in the business of boarding children, did you not? A. Board of Health knew it; she had a permit to do it.

Q. What was that? A. I say she had a permit from the Board of Health to do business.

Q. What Board of Health? A. State Board at Trenton, I suppose.

Q. Do you not know anything about the boarding of these children, and how you came to go in the boarding house business? Do you not know anything about that? A. I never wanted them at all.

20

Q. What is that? A. I say I never wanted the children at all.

Q. Well, you consented to having the children boarded at your place, did you not? A. Well, my wife claims she was the boss of the house.

Q. I see. And your wife or you got a license or permit from the State Board at Trenton? A. If you will please cut me out of it, because I had nothing whatsoever to do with the license; did not want the license; did not have nothing to do with it.

30

Q. Who got the license? A. My wife got it.

Q. How long ago? A. I don't know.

Q. What? A. I don't know, because I —

MR. BARKMAN: I do not object to any question that bears on the issue in this case, but I do not see how this does.

40

George Oliver cross.

THE COURT: Well, if you object to some question, I will rule.

MR. BARKMAN: I have not objected before. I object to the question because it has nothing to do with this case.

10 THE COURT: There is nothing before us now, Mr. Barkman. If you will interpose a timely objection—

MR. BARKMAN: I think there was a question asked before.

THE COURT: He has answered it.

MR. BARKMAN: Oh, did he answer it?

THE COURT: Yes.

MR. BARKMAN: All right.

20 Q. When you lived in Brooklyn, before you came out in New Jersey, in Morris County, and bought this place, you and your wife had an understanding that she was going to board children out there, had you not?

MR. BARKMAN: I object to that too.

A. No, sir, we did not.

MR. BARKMAN: It does not make any difference.

THE COURT: He has answered no. It will not do you any harm now.

30 Q. How long were you out there before you determined that you would maintain a boarding house for children of this kind?

MR. BARKMAN: That I object too, because I do not see how it throws any light on this charge.

THE COURT: I will have to overrule it. It seems to me it might be pertinent.

MR. BARKMAN: I pray an exception.

THE COURT: Exception allowed.

A. What was that?

(Question read.)

40 A. I never determined at all. I never had anything to do with it.

George Oliver cross.

Q. Did not you and your wife talk it over? A. No, sir.

MR. BARKMAN: I object to that too.

Q. What did you think when you saw these fourteen children walking into your place? A. Never saw fourteen children there.

Q. How many were there there? A. I say there was not fourteen. 10

Q. Well, how many were there at any one time? A. My wife could answer that, I think, better than I can, because I never paid any attention to how many was there.

Q. Who bought the food for the children? A. Why my wife bought the food, not me.

Q. Did she work and earn the money to buy the food? A. She went to the store and bought it.

Q. And who paid for it? A. I suppose she paid for it. 20

Q. You did not pay for it? A. No, not when she paid for it. She bought the stuff.

Q. Did you ever pay for it?

MR. BARKMAN: I am going to object, your Honor, to this line of examination. I do not see how it is—

THE COURT: I think the Prosecutor is entitled to find out who is running this place.

MR. BARKMAN: On this charge here what difference does it make if they had a thousand children there? It does not make any difference, what happened to any other children—these two. 30

THE COURT: It seems to me, in certain aspects of it, it might be competent. That is the reason I am admitting it.

MR. BARKMAN: Well, I take an exception, formally, to any of this line of examination, so as to be protected.

THE COURT: Yes. Exception allowed.

Q. Did you ever pay for any of the ordinary 40

George Oliver cross.

food that these children ate at your place? A. My wife bought the stuff. I can't understand why you ask me questions like that. I was around the place doing my work, taking care of my chickens, and fruit, and planting and stuff, and selling it. I can't tell you about—I don't understand the idea in asking me this question; I can't see.

10 Q. Can you not answer it yes or no, whether or not you paid anything for the food that these children ate at your place? Did you or did you not? A. My wife bought it.

Q. Did you ever pay for any? A. Many time I have went to the store and brought things, certainly.

Q. And you raised the food that they ate on your farm, did you not? A. Partially, yes. In the summer time I raised lots of corn, beans, and potatoes, and anything that anyone raises on a small farm.

20 Q. How many children did you have there in November, 1923? A. I couldn't answer that. I couldn't tell. I don't know.

Q. How many rooms did you have in your house in November, 1922? A. I suppose there was eight rooms—I think there was eight rooms in the house.

Q. Do you not know? A. Yes, there was eight rooms.

30 Q. Including the addition that you had put on? A. Yes, that was including—I think it was a—it was a five-room house that we put three rooms on.

Q. Who built the addition, you or your wife? A. Me or my wife? A. I had carpenters to do it.

Q. Who paid for it, you or your wife? A. I paid for it.

Q. You got the money for boarding these children did you not? A. I never see a cent of it.

40 She handled the money.

George Oliver cross.

Q. Did she not give you any of it? A. No, sir. I had my own.

Q. You earned the money, then, working in the garden, from the product that you fed the children, did you not, to put the addition on the house?

A. Why, I owned a farm, and bought property and sold property, for a number of years, a number of farms throughout Jersey here. I guess I owned five or six. And I bought places, and I have made money by reselling them. That is how I made money. 10

Q. You are a real estate dealer like Mr. Barkman; is that right?

MR. BARKMAN: Well, that is no crime, is it?

THE PROSECUTOR: No, I did not say that.

Q. I say you are a real estate dealer like Mr. Barkman? A. I don't know what Mr. Barkman does. I know he has been my lawyer for about—a number of years. 20

Q. Well, you say you bought and sold a lot of farms? A. Yes.

Q. And you are a real estate dealer; is that right? A. I buy property and fix it up, work, paint it up, fix it up, and sell it.

Q. Who bought the bread that the children ate who were boarding at your place? A. Why my wife bought the bread. She made bread and cake and pies herself. She made a lot of home-made bread. 30

Q. You used to buy bread in large quantities, did you not? A. Large quantities?

Q. Yes. A. Why, no, I don't know. I used to buy sometimes forty or fifty loaves at a time.

Q. Certainly. And do you remember whom you bought it of? A. Yes, sir.

Q. And do you say now, under oath, that you did not pay that man for that bread? A. I paid him for the bread, yes. 40

George Oliver cross.

Q. Certainly. How many rooms were there in the addition that you built on your house? A. Three rooms, three rooms and bath.

Q. How many rooms had you before this in the house? A. Five.

Q. Five. And when was the addition built?

A. I guess it was about two years ago,—three
10 years ago.

Q. It was before these girls came there? A. Yes, I think so. I ain't sure. I wouldn't—I can't remember that, to tell the truth, whether it was or not. Of course, I think it was.

Q. You very easily told us how old you were; you can remember when you were born; why can you not remember these things? A. Well, I can't remember exactly. I know I had carpenters come there to put the building on. I didn't think there
20 was anything like this coming up, I would have to answer such a question like this, offhand like. I can't remember.

Q. Well, you had a tenant in the addition you built on your house, did you not? A. No, sir, never.

Q. Well, I understood you to say on direct examination that another family lived— A. That is another house. We sold this place and moved to a fifteen-room house, where we are living at the
30 present time.

Q. Well, then, you moved there in July? A. July 16th.

Q. Surely; and that is what you meant when you said that you and the boys slept downstairs in the other part, is it not? A. Yes, well, not—

Q. Now, is it not? That is enough. That is what you meant, then, did you not, that you and the boys slept downstairs in the other part; you mean the new house that you live in now? A. I
40 mean both houses, the other house too, in the win-

George Oliver cross.

ter time. In the summer time I slept up in a bungalow we had in the other place. The boys and I slept up there.

Q. Who were the boys? A. Why, it was—one name was Haffner; Alfred and Teddy Haffner.

Q. How old were they? A. Oh, I should judge about twelve and ten, something like that; about a year and a half difference, or two years difference, between them. 10

Q. Where are those boys now? A. Why, they are with their parents.

Q. Do you know where? A. My wife might know. I don't. Not the exact address.

Q. Is your wife still maintaining a boarding house? A. She has got two children now.

Q. She is not maintaining the boarding house any more under the State Board, is she? A. No.

Q. When did that cease? A. I don't know. I couldn't tell you the exact date. 20

Q. Was it after you moved in the new house or before? A. In the new house, I think.

Q. Was it before or after Teresa left your place? A. It was before, I believe.

Q. You were only in the new house from July until the latter part of August, when Teresa left? A. July 16th we moved to the new house.

Q. You were in your new house a little over a month before Teresa left. Do you mean to say that after you moved in the new house, and before Teresa left, your wife ceased to run a boarding house under the State Board? A. I forget when that—when she did—when that all happened. 30

Q. So you forget about being out in the woods chasing Teresa around, do you not? A. I don't forget it. I could not forget it, because it never happened.

Q. Are you sure of that? A. Positively sure of it. 40

Josephine Oliver direct.

Q. You forget about going to her bedroom and seeing her in bed, do you not? A. Never did it. How could I forget it?

Q. You forget all those things now? A. No, sir, I do not forget nothing on that score. That is something I certainly would remember, anything like that.

10 Q. Although you forget everything else; is that right? A. No, not everything.

Q. How many girls of Teresa's age were boarding at your place at the time that Teresa was boarding there? A. None whatsoever.

THE PROSECUTOR: That is all.

MR. BARKMAN: That is all.

20 JOSEPHINE OLIVER, called as a witness on behalf of the Defendant, being duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. BARKMAN:

Q. Mrs. Oliver, you are the wife of Mr. Oliver, the defendant in this suit? A. Yes, I am.

Q. And you live with your husband in Whippany? A. I do.

Q. You know Teresa Fetsock and Margaret Fetsock? A. Yes.

30 Q. When did Margaret come to your house to board? A. She come the 9th day of November.

Q. Of what year? A. 1923.

Q. 1923 or 1922? A. 1923. This is 1924, isn't it? A year ago. This is 1924.

Q. That would be 1922. What day did you say? A. 9th of November.

THE COURT: 1922.

Q. 1922. When did Teresa come to your place? A. Her sister brought her the 7th day of February.

40 Q. That is Mrs. Bonda? A. Yes, Mrs. Bonda.

Josephine Oliver direct.

Q. After Teresa was brought there was Margaret with you all the time? A. No, she was not.

Q. When did Margaret leave you? A. Well, I had a lady from the Board of Health, requested me to send her to back to New York, and I was just about to take her when Teresa begged me — she said, “Mrs. Oliver, if you take Margaret away,” she said, “I will go crazy, and I will kill her before she goes.” She said, “I have been separated before but I never intend to be separated again.” So she said, “Please place us somewheres.” And I tried several places, and they wanted such enormous board to board them, as I was only getting eighteen from the sister. So I placed her with a lady at the rate of twenty-five dollars, and I was only getting eighteen. 10

Q. Where did you place her? A. I placed her in Bernardsville, right near the depot, the 24th day of March. Then I wrote to the principal of the school, when could I go for her, and he said school would be dismissed the 22nd day of June. So I went for her, and — 20

Q. What day of the month? A. 22nd day of June

Q. Then she was away from your house on the 24th of March? A. 24th of March.

Q. Away practically to the 22nd of June? A. 22nd day of June, yes. 30

Q. Then she came back to you? A. Then she came back to me. She did not want to come back because—

Q. Never mind what she wanted or did not want. Just answer the question. She came back. Was she and Teresa with you from that time on until they left? A. Yes.

Q. Now, how many people were there in your household? A. How many?

Q. Yes. A. Nine. 40

Josephine Oliver direct.

Q. Who made up the nine? A. Two brothers, two sisters, two— four sets of sisters, including Margaret and Teresa, and two other sisters, two brothers, a brother and sister, and one little Irish lad, just from Ireland. I was keeping him for a couple of months until his father married.

10 Q. Then you had your own daughter? A. Yes, my own daughter.

Q. And your granddaughter? A. My grand child.

Q. Is this your granddaughter? A. Yes.

Q. And this is your daughter? A. Yes, that is my daughter.

Q. And Mr. Oliver? A. Yes.

Q. Now, in the summer time, where did Mr. Oliver and the boys sleep? A. Up in the bungalow, with two big boys.

20 Q. But in the winter time, whereabouts did he — A. He slept up there until I went up and demanded him to come down before he would freeze.

Q. He did not sleep in the house; is that it? A. Up to about December, I made him come down.

Q. That was in the old place? A. Yes, in the old place. He slept in the new place, the new part of the house, the new addition.

Q. How many families were in this new house after you purchased it? A. How many families?

30 Q. Yes. A. The new?

Q. Yes, the new house. A. Just one family.

Q. What is the name of the family? A. Mrs. Moore

Q. They just occupied the other side? A. The other side, yes, sir.

Q. When did those people move? A. They moved the 30th day of August. And I see her give Teresa some money, and Teresa walked off.

40 Q. Did some of these children go to school? A. All went to school; never missed a day.

Josephine Oliver cross.

Q. Were they all old enough to go to school?

A. Well, a little Irish lad did not go to school, and one of the little sisters did not.

Q. But the others? A. All the rest never missed a day.

Q. At night would they be around the house playing? A. Always; always.

Q. Would they play out in the yard, and around the yard too, as well? A. Only in hammocks during the day, and the drive right near the house. 10

Q. Did you ever see what Teresa says, that your husband stuck out his thing and ran after her; did you ever see that anywhere in the house? A. Never saw anything. Never expect to see anything like that.

Q. You never did see anything like that? A. No.

Q. At any time? A. No. 20

Q. Teresa says that on one occasion he undressed in front of you, and said that is what he did to you, or something like that, and he would do the same to her. Did that take place? A. I never saw him undress in my life. I never saw my husband undress in my life.

Q. Before the children? A. Nor before myself.

Q. Never.

CROSS EXAMINATION BY THE PROSECUTOR: 30

Q. Your husband did not sleep up in the bungalow in December, or during last summer until December, did he? A. Yes, up until I went up and demanded him to come down. I was afraid—the boys said they was not cold, but I know that he was older than the boys, although they had thick, heavy Irish blankets that came from the old country. Still I was afraid; and my husband is subject to colds; and I demanded him to come down. 40

Josephine Oliver cross.

Q. Are you sure, Mrs. Oliver, that he slept up in the bungalow last summer? A. All last summer? Yes.

Q. He says that he moved in the new house last July. A. Oh, well, I mean—when we moved, we moved the 16th day of July.

10 Q. Now, you do not mean that at all. You meant that he slept up in the bungalow last summer, but you did not figure right, did you? A. Well, we did—yes, we moved, you know, of course. He didn't sleep there after we moved. We had two rooms, you know.

Q. The year that he slept up in the bungalow was the year before Margaret came, was it not? A. Yes. My husband slept —

20 Q. And you had to go up in the same year and get them, and get your husband down, out of the bungalow? A. Yes, that is right.

Q. But he was not sleeping up in the bungalow any more, then, was he? A. No. He slept in the other house with the two big boys.

Q. So he was down there all the time the girls were there? A. Teresa slept right alongside of me, and I slept adjoining, adjoining room. The doors were open all the time.

30 Q. That is the reason your husband did not sleep with you; is that right? A. No, he never—he always slept alone all his life.

Q. But he was down around the house, just the same, last summer, all the time the girls were there, was he not? A. Yes, he was down and around too.

Q. That is right? A. Tended to general affairs.

40 Q. And why did you, out of the generosity of your heart, donate the difference between \$18 a month and \$25., to put Margaret out to board down at Bernardsville? A. Because she told me she

Josephine Oliver cross.

took a poison to poison herself, and took so much it did not take effect, and she would poison Margaret if I did not. And I made up my mind I would do it. And I told her I would do it when the school was over, as the lady in Trenton said, "Mrs. Oliver, when vacation comes, you keep her, and then be sure and send her back, and to send the other thing back too," pointing her finger at her. 10

Q. When did she say that? A. Just previous to my shipping Margaret; one of the ladies of Trenton.

Q. You have not told us any time on that. A. Oh. Well, let me see. I guess it was around about the 1st of March, because Margaret left the 24th of March, because it took me three weeks to place her.

Q. It took you about twenty-four days to do the job? A. Well, I was trying, you know, to get different places. They wanted such big board, and I was getting such little board. 20

Q. When was it the State Board took your license away from you? A. Oh, after, let me see, in October.

Q. In October? A. In October.

Q. Last October? A. Last October.

Q. How long had you had the license? A. Oh, I guess I had it two years. 30

MR. BARKMAN: I object to this line of questioning, your Honor. It is not cross examination. It has nothing to do with the question, throwing any light on this alleged crime, whatsoever.

THE COURT: It has to do with testing her credibility.

MR. BARKMAN: To test her credibility with reference to any—

THE COURT: This evidence about what happened to Margaret. Do you not think so? 40

Josephine Oliver cross.

MR. BARKMAN: Allow me an exception.

THE COURT: What?

MR. BARKMAN: I pray an exception.

10 A. I guess about two years. I don't know just the date. I gave both to Mr. Barkman, just as soon as the lady called and told me that my license was taken, at the Board meeting. She said, "Mrs. Oliver, you can bring them after." Instead of that I sent them to Mr. Barkman, and I don't just know the date.

Q. Had you ever run a boarding house before you got a license? A. Before?

Q. Yes. A. No. I had a few children, yes, three or four. I did not —

Q. Where? A. Right near, in Whippany.

20 Q. You have only been in Whippany about four years? A. Yes; and this all happened in four years.

Q. You never had any experience before in the boarding house business, had you? A. No, I never did.

Q. How did you come to embark, two years ago, on that tempestuous sea? A. Because I was lonesome. I lost a daughter four years of age, and I missed her; and I cried night and day. Came to the country to forget our trouble; and I adopted our little baby, and came on here.

30 Q. You had one daughter, had you not? A. Ah, yes, I did, but she was younger. Four years and seventeen is quite a difference, you know. I would have to leave my husband if I didn't, I was so lonely.

Q. Mrs. Oliver, where did you get the food to feed all these children that you boarded there?

40 A. Well, just as soon as we landed there, my perfect husband gave me \$500. He sold \$500 worth of trees, and he had the trees cut down, and gave me \$500, and said, "Spend that economically."

Josephine Oliver cross.

And, of course, I spent that as I chose.

Q. That was for support of the children? A. Oh, no, not much. I think I got some board from them, but it was not very much, you know.

Q. Your husband knew you were going to spend it for that purpose? A. I don't believe he knew any more than you did, man. I told him nothing.

Q. Never told him anything? A. He was a jewel of a husband. He never asked questions. 10

Q. I see. A. Never asked questions.

Q. You mean by that you did all the talking? A. I did all the talking, and I did the bossing. I said I would be boss, or pay me off and let me go.

Q. Well, that is usually the way, you know. A. Well, that is the God's truth I am telling you on the stand. I said, "Pay me off and let me go, or I am boss."

Q. Your husband worked out in the fields all day long and raised the produce and fed the children, did he not? A. The vegetables. We all feasted on the vegetables. 20

Q. And was that all they had to eat, the vegetables? A. Well, we had two hundred chickens and an able-bodied family cow.

Q. Your husband took care of those also? A. He just took care of the chickens and the able-bodied cow.

Q. And he milked? A. If I did not milk, after he came on. 30

RECESS.

AFTER RECESS.

JOSEPHINE OLIVER, resumes the stand and testifies as follows: 40

Josephine Oliver cross.

CROSS EXAMINATION BY THE PROSECUTOR
(Continued):

Q. What was the name of the woman at Bernardsville with whom Margaret boarded at your request? A. Mrs. William Wynn.

10 Q. She is your sister, is she not? A. No, she is not.

Q. Is she related to you? A. A half-sister's daughter.

Q. How long was Margaret there? A. From the 24th day of March until the principal said I could come for her, the 22nd day of June, closing of school.

Q. And she was at your place, then, from June until August? A. Yes.

20 Q. Now, in the meantime, and about the 16th of July, you removed from the old place to the new? A. Yes.

Q. And did you rent the old place? A. No. It was already rented, the building,—half the building was rented and occupied, and they allowed the folks to remain.

MR. BARKMAN: You did not answer the question. You said the old place, did you not?

Q. I said the old place. A. Oh, I thought you meant the new place. The old place, we still —

30 Q. I see. And did the party take possession as soon as you moved out? A. Yes, they took possession.

Q. Then your husband did not do any farming that summer, did he? A. No, nothing at all.

Q. So he did not raise this healthy cow that summer? A. Oh, he never raised any cows.

Q. Do you mean to say now you paid this Mrs. Wynn \$25 a month? A. Yes.

Q. For Frances or for — A. Margaret.

40 Q. For Margaret? A. Yes.

Josephine Oliver cross.

Q. Is not the reason why you took Margaret away, because the State Board of Health would not permit you to have as many children as you had there? A. Yes. She told me to send Margaret to New York, and I was getting ready to do so, only Teresa begged me not to do it. She said she was not separated all her life, and that she was— she took care of Margaret when she was a baby, and if they were separated, she would poison Margaret. And she said, "Only do that, Mrs. Oliver, until the closing of school, if you wish." Then she wanted me to take her back again. I said, "No, I am going to give both to New York." 10

Q. Did you not know better than that even if she said that, when they were separated? A. They were not separated from each other when they were— she was talking about it when they were together. 20

Q. You did not take it seriously, that she would poison Margaret, when they were separated? A. She told me she took poison herself, and took too much.

Q. Margaret was separated from her when you took her down to Bernardsville, was she not? A. Yes.

Q. Of course. A. Surely she was.

Q. Yet you say she was going to poison Margaret? A. Yes. 30

Q. Before she left? A. Before she left. She was there three weeks after. I was ordered to do it, because that lady was a very dear woman. She said, "Mrs. Oliver," she said, "I do not care where you take her. If you do not want to take her to New York, you place her anywheres. As long as she is willing, I am willing."

Q. The Board of Health said that? A. One of the ladies at Trenton.

Q. They did not care anything about where the 40

Josephine Oliver cross.

children went, did they? A. They said they couldn't dictate. They were very interested in the children, indeed, but they couldn't dictate.

Q. At the time when you were talking about poisoning, was that the time when your model husband attempted to commit suicide by taking poison? A. I never knew he took poison. I did not know anything about it.

Q. Did you not know that he told you he was going to take poison?

MR. BARKMAN: I object.

A. No; that is a revelation.

MR. BARKMAN: I object to that.

Q. It is? A. Yes.

MR. BARKMAN: I object. It has nothing to do with this case at all.

THE COURT: She has answered.

MR. BARKMAN: I had my objection in in time. It is already answered. I object to that line of examination.

Q. How many chickens did you have. A. Oh, man alive, I guess about 500 altogether. We would buy them a day old baby chicks, you know, and my husband raised them.

Q. Yes. You sold them? A. Well, I don't know. We ate the principal—we didn't sell them. We would save the pullets, and we ate the rest.

Q. You sold the eggs, did you not? A. I don't know. We put up a sign on the tree, like all our neighbors, and we sold them once in a while.

Q. You sold the produce that was raised on the place? A. Not so much; a few things, such as corn. We couldn't eat all the corn, so we sold the corn. I do not think we sold anything else, to tell you the truth.

Q. How many children did you have boarding there? A. I had, I think, nine, as I told you before.

Josephine Oliver cross.

Q. Nine? A. Nine, yes; a little Irish fellow, a —

Q. Why have you not reported on the little Irish fellow? A. Because he was the extra lad that the Board of Health was good enough to let me keep until his father married. He was the extra one.

Q. And they went outside of their rules to let you keep him; is that right? A. Well, I don't know; just for a few months. It was just out of consideration, for the little fellow had just come over from Ireland with his father. 10

Q. Did you send for him? A. What do you say?

Q. Did you send for him to come there? A. Oh, my, no, I didn't send.

Q. How many children did you have there from the time Margaret was there until the time Margaret and Teresa left? A. Just nine; and then I had six after that. 20

Q. Were there nine there all the time? A. No.

Q. What? A. Oh, no; just the six; just the six; my number.

Q. How much board a week did you get out of each child? A. I got paid by the month.

Q. How much per month? A. Mrs. Bonda, she sent me \$38 every month.

Q. No; I mean to all of the children; what was your rate? A. What do you say? 30

Q. What was your rate? A. I couldn't tell you about that. I couldn't tell you about that. I am not very good at mathematics.

Q. Were you keeping the children for your health, or for — A. Just more for company. As I told you before, I lost a daughter, and I was lonesome.

Q. You wanted nine children for company? A. Yes. I would take ninety-nine if I could. I 40

Josephine Oliver cross.

am very fond of children.

Q. How did you get the means to support these nine children? A. Well, I had the cow, and, as I said, we had, off and on, four or five hundred chickens.

Q. But you had to feed the chickens, did you not? A. Yes, we had to feed the chickens.

10 Q. Where did you get means to do all this? A. Well, I had money in the bank, and I—in fact, I was never without money in the bank, because I always saved when I was younger. I saved money my mother left me.

Q. Now, listen. Your daughter did not stay home, did she? A. Always stayed home upto the time she left to study.

Q. When was that? A. She left the 9th day of April, and came home on the 22nd day of July.

20 Q. She was not studying very long, was she? A. Oh, no; there was no science; and she did not require much time; just telephoning, that was all. She had to go down to the school.

Q. She was studying telephoning? A. To become a telephone operator, that was all.

Q. Only your granddaughter was there? A. My granddaughter.

Q. Yes. A. That is the baby, yes. I have her since birth.

30 Q. So that you really had two children of yours there, had you not? A. No, I did not have— my daughter was away from April to July.

Q. I know, but you took those boarders before then. You were lonely before then, were you not? A. Yes. I was lonely from the time I landed in Jersey with the adopted baby, that I adopted in the Brooklyn Courts.

40 Q. How did you come to land in Jersey? A. Well, it must have some attraction, you know. I simply liked Jersey better than any place. I have

Josephine Oliver cross.

been practically away up in Sullivan County, and visited Connecticut; and I must say I like Jersey, and the people in Jersey. (

Q. How long have you lived in Jersey altogether? A. Well, I came in in 1909.

Q. In Morris County? A. Yes, in Morris County.

Q. Where did you go before that? A. Man 10
alive, I have lived everywhere.

Q. That does not mean anything. A. We had four farms over in the Branch Line —

Q. All at one time? A. No. We bought and sold.

Q. And that man here, your model husband, took care of four at one time? A. No. He comes up week-ends.

MR. BARKMAN: I do not want to interrupt. I want her to answer that. She started to say she had four farms in the Branch—and the Prosecutor asked her where these places were; that is all. 20

THE PROSECUTOR: She has not answered where she was in New Jersey.

MR. BARKMAN: She can, if you will give her time.

A. Do you want me to tell you all the places I was?

Q. I want to know at least one place. A. I can tell you them all. Just a moment. 30

Q. Begin with one. A. Gillette, Stirling, —

Q. One moment. When were you at Gillette?
A. 1913, I was at Gillette.

Q. I am talking about 1909. Where were you?
A. 1909?

Q. Yes. A. In Mt. Bethel, dear old Mt. Bethel.

Q. Where is that? A. Up in Millington.

Q. Up at Millington? A. Up at Millington.

Q. What were you doing then? A. I went up to take my perfect daughter up there for her 40

Josephine Oliver cross.

health, and lost her.

Q. So you have a perfect family, have you not?

A. I certainly have. I have not, because she is gone. It was my daughter that died. I took her up there.

10 Q. Then you were lonely and wanted to take in a lot of children to board? A. Yes; and I am lonely now; you bet I am.

Q. I see. How long did you live down in this holy Mt. Bethel? A. Just one year.

Q. Just one year? A. Just one year.

Q. Did you get lonely down there? A. Oh, man alive, I didn't get a chance to. We bought in November and sold the next.

20 Q. Then where did you go? A. From there we went to Brooklyn, on my daughter's accommodation. She begged us to go back. We stayed one year; and back again we came. Then I went to a place called Myersville.

Q. Where is that? A. That is Gillette — right over the mountain from Gillette.

Q. That is not very far from where you were before? A. Oh, my, no. The whole four farms were in walking distance.

Q. Then you were at Gillette how long? A. About two years.

30 Q. Then where did you go? A. From there we went to Gillette, on the other side of the railroad track, to a place called Union Village. I dare say you know more about New Jersey than I.

Q. Maybe you know more about it than I do. You say you love Jersey. How long were you at this place over the hill? A. About two years.

Q. About two years? A. Yes.

40 Q. Now, we have about six years intervening that — A. I don't know. I can't tell you. That gentleman over there is the gentleman that searched all our property. He knows better than I.

Josephine Oliver cross.

Q. Which gentleman? A. Mr. Barkman.

Q. Where else did you go, when you got over the hill at Gillette? A. Then we went into Plainfield proper, in the city, for a year; and then landed back in the country again, to Stirling.

Q. When did you leave Stirling? A. Oh, let me see, I have not got my diary with me.

Q. You do not need any diary. Your memory is good. A. Don't you think so? Well, I don't know. I don't want to contradict. But I think we left 1918, December 3rd. 10

Q. Where did you go? A. Right to dear old Brooklyn.

Q. I see. A. Where I was born.

Q. You love Brooklyn, too, do you not? A. I love Brooklyn, too. The memories are very dear to me.

Q. How long were you over there? A. How long? 20

Q. Yes. A. What do you mean, before I came back again?

Q. This time when you went over. A. From 19 —, well, we came back here after I lost my daughter, and my husband said, "You take the baby; you have to go back to the country again. Are you willing to adopt the baby and bring her up?" I said, "All right. I will come back and eat pancakes." And in 1920 I was landed back again here, and I am here since. 30

Q. 1920, then, you came down to Whippany? A. Down to Whippany, the first old house.

Q. In the meantime, you got in touch with the Board of Health at Trenton and found out that you could get somebody with you that would take the place of your daughter, did you not? A. Well, I know that was — no one could take the place of my daughter.

Q. I mean would help you to forget your lone- 40

Josephine Oliver cross

liness. A. Still, it didn't. It helped a little bit. I taught music and one thing another.

Q. Did you teach music after you came back to Whippany? A. Yes, I did.

Q. If you taught music, and your husband took care of the cow and the chickens, and the farm, who took care of the kids that the Board — A.
10 My daughter and myself; and when she was not home, I had a wash-woman.

Q. Your daughter was not there; she was away?
A. Well, I had help. I had a woman come in and do my washing for a long time.

Q. Did you go to the Board of Health, or did they come to you?

MR. BARKMAN: I object, your Honor. I do not see how this is competent in any way.

A. Well, this gentleman has nothing else. He
20 must say something.

MR. BARKMAN: Wait a minute, Mrs. Oliver. He is only conducting —

THE PROSECUTOR: If your Honor please, I think I have a right to test out the witness fully on her statement. She has been very eloquent in her description of what has happened in her life.

THE COURT: You mean as to her credibility?

THE PROSECUTOR: Yes.

THE COURT: Objection overruled.

30 MR. BARKMAN: May I take an exception, your Honor?

THE COURT: Exception allowed.

(Question read).

A. A lady called on me.

Q. What was her name? A. Because —

Q. No. What was her name? Her name was not "because". A. Well, I don't know whether she would appreciate my mentioning her name. She is a very lovely woman.

40 Q. Then surely you cannot insult us by men-

Josephine Oliver cross

tioning her name. A. I would rather not mention her name.

Q. What is her name? A. She was Mrs. Maude McRoy.

Q. Where from? A. From Trenton.

Q. She came and saw you? A. What do you say?

Q. She came and saw you? A. She came to see me, many a time. 10

Q. I mean she came, representing the Board of Health, did she not? A. Yes, she did.

Q. You had not communicated with her, that you wanted to see her, did you? A. No, another gentleman did for me.

Q. Now, wait a minute. Who was the other gentleman? A. A gentleman from Frank Mackay from New York. He places children out to board, school and private homes. And he asked me would I do it or would he? And he said, "I am writing all the while, Mrs. Oliver. Will you do it or will I?" I said, "You are an educated man, and you can do better than I." And he did. He said, "All right; you can expect somebody during the week." And she called. 20

Q. That was before you moved out here, was it not? A. Oh, no, right in Whippany.

Q. After you got out here? A. Yes.

Q. When you came out, you did not have any intention of running this boarding house, did you? 30

A. Oh, my, no.

Q. This gentleman suggested it to you, did he not? A. What gentleman was that?

Q. This educated man from New York? A. Yes. He sent the two children to me. He said, "Mrs. Oliver, I am going to send two nice children. Then you immediately write to Dr. Julian Levy, of Trenton, too," he said. "But if you don't want to do it, —" I said, "I am a poor writer —". He 40

Marion Oliver direct

said, "If you don't want to do it, I will do it for you." And he was kind enough to do it for me.

Q. Then it was this educated gentleman who was lonely and not you, was it?

MR. BARKMAN: I object.

A. Well, I don't know.

THE PROSECUTOR: I think that is all.

10

REDIRECT EXAMINATION BY MR. BARKMAN:

Q. Mrs. Oliver, just one question. Teresa mentioned on the stand that you had taken some letters of hers. Did you ever take any letters belonging to Teresa? A. I didn't know she ever wrote a letter in her life, Mr. Barkman. I never knew it.

20

RECROSS EXAMINATION BY THE PROSECUTOR:

Q. By the way, Mrs. Oliver, would you mind telling us how old you are? A. Well, Shakespeare said a woman who would tell her age would tell anything. Is it necessary?

Q. You have told almost everything —

MR. BARKMAN: All right; go ahead; tell us your age.

Q. You have told us mostly everything, everything but your age. Would you mind telling us?

30 A. No, I would not. I will be 49 next July, if I live.

REDIRECT EXAMINATION BY MR. BARKMAN:

Q. You were married in 1896? A. 1896.

MR. BARKMAN: That is all.

40

MARION OLIVER. called as a witness on behalf of the Defendant, being duly sworn, testifies as follows:

Marion Oliver cross

DIRECT EXAMINATION BY MR. BARKMAN:

Q. Miss Oliver, you are the daughter of Mr. Oliver? A. Yes, sir.

Q. How old are you? A. I am 17. I will be 18 this August.

Q. Where are you employed? A. In the Telephone Company. 10

Q. Did you study or take a course in learning how to become a telephone operator in this last year 1923? A. Yes.

Q. Do you know what time you left your home to do that? A. April 9th, I think it was.

Q. When did you come back? A. Sometime in July. I don't know what the dates are.

Q. And you know Teresa who was on the stand, and Margaret? A. Yes, sir, I do.

Q. Were they at your house before you left to learn how to be an operator? A. Yes, sir, they were. 20

Q. And when you came back from your studies were Teresa and Margaret at your home? A. Yes, sir, they were.

Q. When you left your home you were living in the place on Whippany Road, near Morristown, the place where you are living at present? Yes, sir.

Q. Did you help and assist with the household work when you were home? A. Yes, I did. 30

Q. You have heard Teresa and Margaret testify about the different things your father did. Did you ever see anything like that while you were there? A. No, I never did, sir.

CROSS EXAMINATION BY THE PROSECUTOR:

Q. When did you say you were away? A. When I was away altogether, you mean? 40

Marion Oliver cross

Q. Yes; how long were you away? A. Well, I was away from April till July.

Q. What time in July? A. Well, I don't know what the dates are.

Q. You do not know whether you went away in April or March, do you? A. Yes, sure; April.

10 Q. How do you know that? A. Well, I know that.

Q. How do you know it? A. Well, I don't know how I know it.

Q. Somebody told you that? A. No.

Q. What date was it in April you went away? A. The 9th.

Q. The 9th of April? A. Yes.

Q. Who went away with you? A. No one went with me.

20 Q. Did you walk away or ride away? A. (No answer).

Q. Do you not remember? A. Sure, I do.

Q. Well, can you not answer then? A. (No answer).

MR. BARKMAN: Just tell him how you left, how you went away. Did you ride or did you walk?

THE WITNESS: I rode.

Q. Now, you could not tell me that, could you? A. Sure, I could.

30 Q. Well, why did you hesitate? A. (No answer).

Q. Do you know you are on the witness stand to answer questions when they are asked you? A. Yes.

Q. Well, why did you hesitate to answer that other question? A. (No answer).

Q. Can you not answer that? A. Yes.

Q. Why did you hesitate? A. Because I was thinking.

40 Q. Thinking whether you rode or walked away? A. Yes.

Marion Oliver cross

Q. Where do you work? A. In the Telephone Company.

Q. Where? A. On Market Street.

Q. In Morristown? A. Yes.

Q. How long have you been working there?

A. It will be a year this month, the 9th.

Q. A year the 9th of April? A. Yes.

Q. Well, then, you did not go away to study telephoning, did you? A. Yes, I did. It takes a month to learn. 10

Q. What? A. It takes one month to learn.

Q. Did you learn down there? A. Down in Newark.

Q. Down at Newark? A. Yes.

Q. Then you were not working at Market Street a year the 9th of this month. A. No, but I have been employed a year.

Q. You mean by that you have been employed in the Telephone Company? A. Yes, one year. 20

Q. Where do you live? A. In Whippany.

Q. You live home? A. Yes.

Q. Did you live home all that time? A. No.

Q. How long have you lived home? A. Oh, I have been living home all along, except from April to July.

Q. And you do not live now where you lived then, do you? A. No.

Q. Where were you in February last? A. I was home. 30

Q. What were you doing? A. I was not doing anything at all.

Q. Certainly not. You were not doing anything in March or April, were you, except when you started to become a telephone operator? A. No.

THE PROSECUTOR: That is all.

Marion Oliver recross

REDIRECT EXAMINATION BY MR. BARKMAN:

Q. When you say not anything in your home, you mean you were not employed anywhere, do you not, Miss Oliver? A. Yes, that is what I mean.

10 Q. You assisted in household work while you were home? A. Oh, yes, sure.

THE PROSECUTOR: I submit, your Honor,—

MR. BARKMAN: Well, I do not want to leave the question like that.

RECROSS EXAMINATION BY THE PROSECUTOR:

20 Q. I understand that you know when you say you know what you are doing. Do you not know what the word "doing" means? A. Well, I thought you meant whether I was working anywhere else or not.

Q. You were not working at all, were you? A. No. I was home working.

Q. What work did you do at home? A. Well, general housework.

Q. What do you mean by that; what did you do? A. Well, I helped my mother around.

30 Q. Helped your mother do what? A. Cook, and general housework.

Q. Can you not enumerate the things you did? A. Sure, washing dishes and cleaning the house.

Q. What did the other girls do that were there? A. They didn't do anything.

Q. Are you sure of that? A. I know it.

Q. Did not do a thing? A. No.

Q. What did the boys do who were there? A. Well, they didn't do—they used to help bring in the wood.

40 Q. They used to help in the garden, too, did

Walter E. Durham cross.

they not? A. Yes, they did.

Q. Certainly.

THE PROSECUTOR: That is all.

MR. BARKMAN: That is all.

WALTER E. DURHAM, called as a witness on behalf of the Defendant, being duly sworn, testifies as follows:

10

DIRECT EXAMINATION BY MR. BARKMAN:

Q. Mr. Durham, where do you live? A. In Morristown.

Q. You are acquainted with Mr. Oliver? A. Yes, sir.

Q. Do you know the place he bought at Whippany? Do you know the place he bought at Whippany? A. Yes, sir.

20

Q. You sold it to him, I believe? A. Not the first place, no; neither place, in fact.

Q. But you know the place? A. I know the place. I sold it for him, after he had bought it. He put it in our hands for sale shortly after.

Q. You mean you sold a portion of it? A. I sold all of it.

Q. Oh, the old place? A. The old place, Yes.

Q. Are you acquainted with the new place? A. Yes, sir.

30

Q. Been over it? A. Been over it.

Q. Any woods on it? A. I didn't notice any. Just an apple orchard; no woods.

MR. BARKMAN: That is all.

CROSS EXAMINATION BY THE PROSECUTOR:

Q. Any woods on the old place? A. Away in the rear, yes; very far from the house; a quarter to half a mile.

40

Testimony Closed.

Q. Yes.

THE PROSECUTOR: That is all.

MR. BARKMAN: That is our case.

STATE'S REBUTTAL TESTIMONY.

10 THE PROSECUTOR: I want to call Teresa for a question or two in rebuttal.

TERESA FETSOCK, recalled as a witness on behalf of the State, in rebuttal, testifies as follows:

DIRECT EXAMINATION BY THE PROSECUTOR

20 Q. Mrs. Oliver has testified that you stated that if Margaret was separated from you, that you would poison her. A. I couldn't poison her, because Margaret is with me now.

Q. No, no. I mean did you say that, or did you not, to Mrs. Oliver? A. I did not.

THE PROSECUTOR: That is all.

TESTIMONY CLOSED.

30 Mr. Barkman summed up the case to the Jury. The Prosecutor summed up the case to the Jury.

Charge to Jury.

The Court charged the Jury as follows:

CHARGE TO THE JURY.

THE COURT: Ladies and Gentlemen of the Jury: The defendant, George Oliver, is on trial in this court today upon an indictment found by the grand jury of Morris County, at the January Term, 1924, which contains two counts. The first count in this indictment accuses the defendant of making an assault upon Teresa Fetsock, a woman child of the age of seventeen years, and did abuse and attempt to carnally know Teresa Fetsock on the 1st day of February, 1923, and from thence hitherto. Upon this indictment the defendant has been on trial before you today. 10

The testimony introduced would seem to indicate that some time prior to October, 1922, the defendant or his wife, or both, whatever the evidence may convince you, undertook to care for and board children, and did take and board children upon a farm apparently owned by the defendant, in or near Whippany, in this County. The evidence tends to show that one Margaret Fetsock, some time in the month of October or November, 1922, was taken by the defendant, or his wife, whichever the evidence shows, to board at the home of the defendant, in or near Whippany, and that in the following month of February, as I recall the testimony, Teresa Fetsock was taken by the defendant, or by his wife, in this home to which I have alluded, to be boarded and cared for, and that the board of these two children was to be paid and was paid by their sister, or, at least, such is the testimony, as I recall it, as she gave it. 20 30

Now the evidence tends to show that there were a number of children in this home of the defendant and his wife who were being boarded there, 40

Charge to Jury.

and that the number varied from time to time, seven or eight or nine, or, perhaps, as high as twelve, I think there is some testimony.

10 The State tells you that some time, and at various times between the first day of February, 1923, and, perhaps, the last day of August, or just prior to Labor Day, 1923, the defendant attempted to have sexual intercourse with Teresa Fetsock, and so charges in this first count of the indictment. The State does not charge, ladies and gentlemen, that the defendant succeeded in the attempt, because the indictment alleges an attempt. And I charge you, ladies and gentlemen, that that is a crime under the statute of New Jersey. The attempt is the indictment, and, if proven, a conviction can be had for the attempt.

20 The State has introduced testimony tending to show that such an attempt was made, never successful. The State does not say so, that it succeeded, but that the defendant attempted, as charged in the indictment. There is evidence introduced tending to show that the attempt was repeatedly made, and that upon occasions the defendant took Teresa Fetsock in his arms, that he attempted to raise her clothing, that he unbuttoned his clothes and exposed his private parts to Teresa Fetsock.

30 The defendant denies all these charges as particularly as he is interrogated by his counsel, and he says that he is not guilty of the charge, that he never did anything of the kind, that he never laid his hands upon this girl at any time, that he never made this exposure, that he never attempted to raise her clothes, and that nothing of that kind ever happened. He has introduced other witnesses who have given testimony tending to show that nothing of the kind ever occurred.

40 Now as to the weight of this testimony, and as

Charge to Jury.

to the credibility of the witnesses, you must pass upon that, because that is peculiarly your province. That is the reason you sit in the box, to weigh it, and see in your minds its various ramifications; give the credence to it to which it may be entitled, as you view it, and from such examination, and from such weight, you will pronounce your verdict.

10

You are not interested, in my opinion, about the evidence, because my opinion of the evidence has no weight whatever with you, and you should not give it any, because that is your responsibility. My responsibility is merely to tell you what law governs in the consideration of this testimony. Perhaps I cannot go wrong in calling your attention to some of the evidence which has been introduced, because, to a reasonable mind, it will recur, and it will recur in your minds when you are weighing this evidence and arriving at your verdict.

20

Teresa says, as I understand her evidence, that the first occurrence was some time in March, 1923, and that it happened thereafter many times, in the woods and in the room where she slept, as I recall the testimony. And her sister Margaret apparently corroborated her, beginning in March many times. Then the wife of the defendant testifies that some time in March, as I recall the testimony, Margaret went to Bernardsville and stayed there until some time in July. As I recall the testimony, it was after Mr. and Mrs. Oliver had moved to the new home they now occupy, that Margaret came back from Bernardsville. Now, you will weigh these contradictions, if you find them contradictions, or the evidence as a whole.

30

There is one more part of this evidence that you will also remember. Mind you, ladies and gentlemen, you must take all of the evidence. But it ap-

40

Charge to Jury.

10 appears that sometime in August, just prior to Labor Day, Teresa left the home of the defendant. I am not sure that she used the language, but someone used the language, that she ran away. At any rate, as I understand her testimony, she landed in Newark and, as I recall it, Mrs. Oliver went on the bus with her, and, from some of the testimony I gather that Mr. Oliver appeared in Newark. Now, as I recall it, that is Teresa's story, her testimony, that she left Thursday before Labor Day, 1923, and that she never went back. I do not recall any testimony as to how or when Margaret left this home. You may. But I cannot recall any evidence as to when Margaret left. But Teresa left on Thursday.

20 Now, so far as I can recall, neither Mr. Oliver, the defendant, nor his wife, were asked, or mentioned this trip to Newark prior to Labor Day. And some of those questions which arise by reason of that, like some of the questions which will arise by reason of Margaret's testimony, will be recurring to your minds.

30 Now I charge you, ladies and gentlemen, as a matter of law, that the finding of the indictment means nothing except the ordinary legal method of putting the defendant upon his trial before you, and that he is presumed to be innocent, notwithstanding the indictment; and that presumption comes with him into this courtroom today, and remains with him until you have found your verdict.

40 I further charge you that the State must convince you by evidence beyond a reasonable doubt of the guilt of the accused before you can find a verdict of guilty; that there is no burden upon the defendant to prove himself innocent, but that the burden is upon the State to satisfy you by evidence beyond a reasonable doubt of his guilt before you can convict. If you are so satisfied from the evi-

Charge to Jury.

dence, beyond a reasonable doubt, your verdict will be guilty; and if you are not so satisfied, it shall be not guilty.

From this indictment, on the first count, bearing in mind what I have said about the burden of proof and the rule of reasonable doubt, you can find guilty or not guilty on the first count, and that is the attempt to carnally know and have intercourse with this girl; and, on the second count, which is an assault and battery, you can either convict or acquit on that. The two counts are separate, and you can bring in your verdict on those separate counts, and that you should consider, both of them. 10

I have been requested to charge and tell you a definition of a reasonable doubt, and I will do so. It is laid down in this language: "It is not a mere possible doubt; because everything relating to human affairs, and depending upon moral evidence, is open to some possible or imaginary doubt. It is that state of the case, which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction, to a moral certainty, of the truth of the charge. The burden of proof is on the prosecution. If upon such proof there be reasonable doubt remaining, the accused 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 I take 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." 20 30 40

Charge to Jury.

(Counsel and Prosecutor confer with the Court.)

10 THE COURT: Ladies and Gentlemen, the counsel for the defendant and the Prosecutor agree, at the request of counsel for the defendant, that maybe I should put this a little more clearly and tell you that you can, if you wish, convict or acquit on the first count (I think I told you that), which is the attempt, and that you may likewise convict or acquit upon that second count, which is simple assault and battery; or you may convict on both or you may acquit on both counts.

(The Jury retired at 3:15 p. m.)

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Assignments of Error.

ASSIGNMENTS OF ERROR

NEW JERSEY SUPREME COURT.

THE STATE,

*Defendant-in-Error.**vs.*

GEORGE OLIVER,

Plaintiff-in-Error.

In Error.
Assignments 10
of
Error.

Afterwards, to wit, before our Justices of our said Supreme Court, at Trenton, comes the said George Oliver, by his attorney, David F. Barkman, and says that the record and proceedings aforesaid, and also in the giving of the judgment upon the indictment, there is manifest error in this: 20

1. Because the Court failed to sustain objections made to testimony offered on the part of the State and admitted such evidence over objection.

2. Because the Court should have granted the motion to dismiss the indictment and discharge the defendant at the close of the State's case.

3. Because there was no proof of the commission of or attempt to commit any crime as charged in the indictment. 30

4. Because the allegations of the indictment were not proven and therefore there could be no conviction.

5. Because the Court refused to dismiss the indictment on the close of the State's case.

6. There was also manifest error in the judgment and sentence of the Court of George Oliver upon the indictment when, by the laws of New Jersey, no judgment or sentence ought to have 40

Assignments of Error.

been passed on the said George Oliver upon or under said indictment or upon any count thereof, the record or proceedings.

10 For the errors aforesaid and for other reasons in the record and proceedings aforesaid and in giving of judgment and passing sentence aforesaid, the said George Oliver prays that the said judgment and sentence may be reversed and annulled and altogether held for nothing and that he may be restored in all things which he has lost by occasion thereof and that he may be discharged as to the said indictment and every part and count thereof.

DAVID F. BARKMAN,
*Attorney for Defendant and
Plaintiff-in-Error.*

20

Service of the within assignments of error acknowledged this 12th day of June, A. D. 1924.

JAMES H. BOLITHO,
Prosecutor of the Pleas.

30

40

*Specifications of Causes for Reversal.*SPECIFICATIONS OF CAUSES FOR
REVERSAL

NEW JERSEY SUPREME COURT.

THE STATE,

*Defendant-in-Error.**vs.*

GEORGE OLIVER,

*Plaintiff-in-Error.**In Error**Cause for**Reversal.*

10

The plaintiff-in-error in the above entitled cause, in addition to the assignments of error hereby specifies the causes in the record of said cause relied upon for relief and reversal. 20

1. The plaintiff-in-error having made timely objections to questions propounded and testimony offered by the defendant-in-error, the Court erred in overruling said objections and admitting the evidence, whereas as a matter of law the objections of the plaintiff-in-error should have been sustained and for that reason the ruling of the Court and verdict should be set aside.

2. Because the Court erred in declining to dismiss the indictment and discharge the defendant at the close of the State's case. 30

3. There was no evidence of a commission or attempt to commit a crime as charged in the indictment and the Court erred in refusing to dismiss the indictment.

4. The allegations of the indictment were not proven and therefore there could be no conviction, and the Court erred in refusing to quash the indictment and dismiss the defendant. 40

Specifications of Causes for Reversal.

5. Because the verdict of the jury in convicting the defendant was illegal and improper and not founded on any evidence supporting a legal conviction.

6. Because the verdict, judgment and sentence was in many respects illegal and contrary to law and should be set aside.

10

DAVID F. BARKMAN,
Attorney for Plaintiff-in-Error.

Service of the within causes of reversal acknowledged this 12th day of June A. D. 1924.

JAMES H. BOLITHO,
Prosecutor of the Pleas.

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Opinion of Supreme Court.

OPINION OF SUPREME COURT.

Filed October 7, 1925.

NEW JERSEY SUPREME COURT.

No. 2, March Term, 1925.

<p>THE STATE. <i>vs.</i> GEORGE OLIVER.</p>	}	<p><i>Error to Court of Quarter Sessions, Morris County.</i></p>	<p>10</p>
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Argued before Gummere, Chief Justice, and Justices Parker and Katzenbach.

For plaintiff-in-error, David F. Barkman. 20

For the State, James H. Bolitho, Prosecutor of the Pleas.

PER CURIAM:

1. The defendant was convicted of assault and battery and attempted rape. There is no certificate of the entire record of the trial under Section 136 of the Criminal Procedure Act (2 Comp. St. 1910, p. 1863) and, consequently, the case is before us on strict writ of error, and the plaintiff-in-error is confined to his bill of exceptions. 30

2. The first assignment of error alleges generally the admission of illegal testimony. This is futile under the well-settled rule. *State v. Lee* (N. J. Sup.), 126 A. 471; *State v. Comstock*, 95 N. J. Law 321, 111 A. 652.

3-5. The second assignment challenges the refusal of the Court to "dismiss the indictment and discharge the defendant at the close of the 40

Opinion of Supreme Court.

10 State's case;" and the fifth is that the verdict of the jury was illegal and improper, and not founded on any evidence supporting a legal conviction. The erroneous verdict of the jury does not constitute legal error, and as to the refusal of the Court to dismiss the indictment and discharge the defendant, such a motion was tantamount to a motion to direct an acquittal at the close of the State's evidence, and this, under well-settled rules, is discretionary and not a ground of appeal on a strict writ of error. *Burnett v. State*, 62 N. J. Law 510, 41 At. 719; *State v. Jagers*, 71 N. J. Law 281, 283, 58 A. 1014, 108 Am. St. Rep. 746; *State v. Lieberman*, 80 N. J. Law 506, 79 A. 331; *State v. Metzger*, 82 N. J. Law 749, 82 A. 330. We may add that
20 no exception was sealed to the refusal and, therefore, it cannot be availed of in error.

6. The third assignment of error is that there was no proof of the commission of, or attempt to commit, any crime as charged in the indictment, and the fourth, that the allegations of the indictment were not proven and, therefore, there could be no conviction. Neither of these assignments points to any judicial action.

30 The sixth assignment of error alleges general error in the judgment and sentence, but points to nothing specific, and is obnoxious to the criticism made above with respect to the first assignment.

No judicial error having been pointed out, the judgment will be affirmed.

*Order of Affirmance and Remittitur.***ORDER OF AFFIRMANCE AND
REMITTITUR.**

Filed.

This cause, having been duly argued at the March term, A. D. 1925, of this Court by James H. Bolitho, Prosecutor of the Pleas of the County of Morris, counsel for the State of New Jersey, and David F. Barkman, counsel for the said George Oliver, plaintiff-in-error, and the Court having considered the same, and having examined the records and proceedings of the Morris Quarter Sessions and finding no error therein, it is hereby ORDERED and ADJUDGED, that the judgment of the Morris Quarter Sessions in the above-entitled case be and the same is hereby affirmed, and it is

Further ORDERED that the record in the said cause be forthwith remitted to the Morris Quarter Sessions, there to be proceeded with in accordance with this judgment and the practice of said Court.

Entered on motion of

ALBERT H. HOLLAND,
Prosecutor of the Pleas,
Attorney.

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Assignment of Error.

ASSIGNMENT OF ERROR.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

10	THE STATE, <i>Defendant-in-Error,</i> <i>vs.</i> GEORGE OLIVER, <i>Plaintiff-in-Error.</i>	}	<i>On Writ of Error.</i> <i>Assignment of Error.</i>
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20 And now comes the said George Oliver, by David F. Barkman, his attorney, and says that in the record and proceedings aforesaid there is manifest error, and said George Oliver says that said judgment and conviction should be reversed because:

1. The Supreme Court erred in giving judgment for the defendant-in-error, instead of for the plaintiff-in-error.

D. F. BARKMAN,
Attorney for and of Counsel
with George Oliver.

30 Consent is hereby given to file the within reason as of time.

ALBERT H. HOLLAND,
Prosecutor of Pleas, Morris County.

Notice of Argument.

NOTICE OF ARGUMENT.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

<p>THE STATE, <i>Defendant-in-Error,</i> <i>vs.</i> GEORGE OLIVER, <i>Plaintiff-in-Error.</i></p>	}	<p><i>Notice of Argument.</i></p>	<p>10</p>
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SIR:

TAKE NOTICE of the argument of the issue joined in this cause before the New Jersey Court of Errors and Appeals, to be held at the State House, in the City of Trenton, State of New Jersey, on the third Tuesday of May next, at ten o'clock in the forenoon, or as soon thereafter as the said Court can attend to the same. 20

Yours respectfully,

D. F. BARKMAN,
Attorney and of Counsel of Plaintiff-in-Error.

Dated, May 8, 1926. 30

To Albert H. Holland, Prosecutor of the Pleas,
attorney of defendant-in-error.

Due and legal service of the within notice is hereby acknowledged.

ALBERT H. HOLLAND,
Pros.

May 8, 1926.

Stipulation.

STIPULATION.

NEW JERSEY COURT OF ERRORS
AND APPEALS.

10	<p>THE STATE, <i>Defendant-in-Error,</i> <i>vs.</i> GEORGE OLIVER, <i>Plaintiff-in-Error.</i></p>	}	<p><i>On Error to New Jersey Court of Errors and Appeals. Stipulation.</i></p>
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It is hereby stipulated in the above-entitled case that the same shall be argued at the May term of the Court of Errors and Appeals, and that the same shall be submitted on brief.

20

D. F. BARKMAN,
Attorney for Plaintiff-in-Error and of Counsel.

ALBERT H. HOLLAND,
Prosecutor of the Pleas for Morris County,
Attorney for Defendant-in-Error.

Dated, April 7, 1926.

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Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

New Jersey Court of Errors and Appeals

THE STATE, <i>Defendant-in-Error,</i> <i>vs.</i> GEORGE OLIVER, <i>Plaintiff-in-Error.</i>	}	<i>In Error.</i>
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BRIEF FOR GEORGE OLIVER, PLAINTIFF- IN-ERROR.

The following reasons and argument were presented to the Supreme Court.

Facts.

George Oliver was indicted by the Grand Jury of the County of Morris for attempted rape or carnal abuse, which indictment reads as follows: "That George Oliver, a male person, etc. * * * on the first day of February, 1923, * * * with force and arms at the township aforesaid, in the county aforesaid, and within the jurisdiction of this court, in and upon one Teresa Fetsock, a woman child of the age of seventeen years, feloniously did make an assault on her, the said Teresa Fetsock, then and there did abuse and attempt to carnally know, contrary to the form of the statute in such case made and provided, and against the peace of the State and government and dignity of the same." There is a second count which alleges a simple assault.

POINT I.

The Court erroneously admitted evidence which was illegal and prejudicial to the defendant and tended to prevent a fair trial of the issue.

The Court, over the objection of the defendant, admitted evidence which was not pertinent to the issue, and therefore illegal, and was harmful to the defendant. (P. C., page 38.) Q How long were you out there before you determined that you would maintain a boarding house for children of this kind? This was objected to and answered over the objection and exception taken. (P. C., page 39, line 20.) Q Did you ever pay for it? The question arises as to the paying for food used by the Olivers in their home. Beginning with line twenty, the whole line of examination on this subject was objected to and overruled, and the prosecutor was permitted to go into matters having no relation to the charge. The question of building a room and paying the carpenters; who got the money for the boarding of the children, etc. These questions were objected to and overruled and exceptions taken. (P. C., p. 40.)

Also in the examination of Josephine Oliver answers were allowed over the objection of the defendant which, in the opinion of the defendant, prejudiced him before the jury illegally. Questions were asked in reference to running a boarding house by Mrs. Oliver (P. C., p. 49, l. 30). Q How long had you had the license? (P. C., p. 54, l. 11.) Q Did you now know that he told you he was going to take poison? These questions were objected to and objection was made to the whole line of examination, in order to save objection to each question and exception allowed. (P. C., p. 60.) A further objec-

tion was made to the kind of examination being conducted, the subject matter being that of the occupation of Mrs. Oliver as to washing, particularly line 15. Q Did you go to the Board of Health or did they come to you? Objection was overruled and exception allowed.

I have cited sufficient to show that the examination tended to bring in foreign matter, and had nothing to do with Mr. Oliver whatsoever and, of course, was harmful to him before the jury. The case being tried was whether Mr. Oliver had committed the crime as charged in the indictment or not, and irrelevant questions such as to family history; whether Mrs. Oliver was properly keeping a children's boarding house; were entirely improper and could have no other effect except to prejudice the jury.

An examination of the evidence so admitted fairly comes under the rule as stated in 16 *Cyc.*, page 1114, paragraph 3.

“It may be fairly doubted how far a party can be truly said to be prejudiced by the receipt of evidence which is objectionable only because irrelevant; and a growing tendency has been manifested by courts of last resort not to regard as prejudicial error the receipt of such evidence and even to sustain the action of the lower court in admitting it, provided the jury were not misled or confused. When, however, the incidental effect of receiving immaterial evidence has been to injure a party by exciting sympathy for his adversary or hostility to himself, or in any other way, the admission constitutes a reversible error.”

POINT II.

The Court should have granted the motion to dismiss the indictment at the close of the State's case.

Rape, as defined in our statute (C. S., p. 1783, section 115), is as follows:

“Any person who shall have carnal knowledge of a woman forcibly against her will, or shall aid, abet, counsel, hire, cause or procure any person or persons to commit the said offense, or who, being of the age of sixteen or over, shall unlawfully and carnally abuse a woman-child under the age of twelve years, with or without her consent, shall be guilty of a high misdemeanor, and punished by a fine not exceeding five thousand dollars, or imprisonment at hard labor not exceeding thirty years, or both, or who, being of the age of sixteen or over, shall unlawfully and carnally abuse a woman over the age of twelve and under the age of sixteen years, with or without her consent, shall be guilty of a high misdemeanor, and punished by a fine not exceeding two thousand dollars, or imprisonment at hard labor not exceeding fifteen years, or both.”

In the case under consideration there is no charge that rape or carnal abuse was accomplished, but it is claimed, in the language of the indictment, that the defendant “feloniously did make an assault on her the said Teresa Fetsock, then and there did abuse and attempt to carnally know.”

The State relies upon the evidence of Teresa Fetsock, the person alleged to have been assaulted, and her sister, Margaret Fetsock, to sustain its allegations.

An examination of the evidence of both these witnesses discloses that they are extremely vague

as to the time when this assault took place, and refuse to be pinned to any specific day or date. The closest as to specific time and place is testified to by Teresa Fetsock (P. C., p. 21, l. 20)

Q What? A In June he used to do that in the woods. She described occurrences which took place in the woods, but on being asked whether the defendant assaulted her or touched her she replied that he did not, but that she ran away, and in only one answer does she say that she was ever touched by the defendant, but the circumstances do not show that assault such as would indicate an attempt to rape took place. On cross examination her sister, Margaret Fetsock, testified that there was no assault. (P. C., p. 29, l. 30.) Q He never did touch her with it? A No, he didn't touch her with it, but he tried to. (P. C., p. 30, l. 14.) Q And you were always right there? You were always there, and he never did touch your sister? A No, sir.

Accepting all these statements as made by these two witnesses as true, they fall short of showing an assault upon the said Teresa Fetsock for the purpose of ravishing her, rather they show open lewdness and utter disregard for common decency, but they do not show that the crime with which the said George Oliver was charged was committed. A mere touching may constitute an assault, but it did not constitute the crime charged in the indictment. 33 *Cyc.*, page 1431, it seems to me, describes the law affecting this present case. It is as follows:

“To constitute an attempt to rape there must be something more than mere preparation, there must be some overt act with intent to commit the crime, coupled with an actual or apparent present ability to complete the crime. Mere indecent advances, solicitations or importunities do not amount to an attempt.”

The motion to dismiss as to the charge of attempted rape should have been granted in accordance with the motion made by the attorney for the defendant and denied by the trial court. (P. C., p. 31.)

Three and four under Assignments of Error have been treated under the above heading.

POINT III.

Upon the whole case there is not sufficient evidence to support the charge.

A review of all the evidence in the case, coupled with the denial of the defendant and the condition in the household at the time of these alleged occurrences took place demonstrates without question that they could not have happened as testified to by the State's witnesses. According to their own testimony there were fourteen children upon the premises where these alleged assaults took place, besides the defendant's household, of which there were four members. The defendant did not claim that there were so many persons, but the evidence, as produced by him, indicates that there were at least from six to ten people always on these premises, and it would be impossible that some of these occurrences would not be witnessed by others than these two children, and this fact, coupled with the fact that neither the complaining witness, nor her sister, can fix any definite time, it is impossible for the Court to say when any such assault actually did occur. The evidence shows also that the testimony of Margaret Fetsock is not of any value, as she testifies to occurrences which she says she saw, when, as a matter of fact, he was in Bernardsville, N. J., attending school, many miles away from Whippany, N. J. Mrs. Oliver testified

that Margaret Fetsock left on the 24th of March and did not return again until the 22nd day of June. (P. C., p. 45, l. 19.)

This evidence is not contradicted by Margaret and is a fact.

There should be a reversal on the ground that the weight of evidence, considering the whole case, is overwhelmingly with the defendant.

I believe No. 5 of causes for reversal is broad enough to bring the case within Chapter 389 of the Laws of 1921.

A review of all the evidence in the case will show that there was no crime committed such as charged in the first count of the indictment, consequently there should be no conviction on that count.

The only crime proven by the testimony is open lewdness, a crime for which he was not indicted.

I therefore submit that the Supreme Court erred in giving judgment for the State.

Respectfully submitted,

D. F. BARKMAN,
Attorney for Plaintiff-in-Error.

4

New Jersey Court of Errors and Appeals.

THE STATE OF NEW JERSEY,
Defendant-in-Error,

VS.

GEORGE OLIVER,
Plaintiff-in-Error.

In Error.

Brief for the State,
Defendant-in-Error.

The following Brief was submitted to the New Jersey Supreme Court at the March Term of Court, 1925, and is herewith submitted to the Court of Errors and Appeals.

NEW JERSEY SUPREME COURT

<p style="text-align: center;">THE STATE, <i>Defendant-in-Error,</i></p> <p style="text-align: center;">VS.</p> <p style="text-align: center;">GEORGE OLIVER, <i>Plaintiff-in-Error.</i></p>	}	<p style="text-align: center;">In Error.</p>	10
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BRIEF FOR THE STATE, DEFENDANT-IN-
ERROR.

GEORGE OLIVER was indicted by the Grand Jury of the County of Morris for attempted rape or carnal abuse, which indictment reads as follows: 20

“That George Oliver, a male person, etc. * * *
on the first day of February, 1923, * * * with
force and arms at the township aforesaid, in the
County aforesaid, and within the jurisdiction of
this Court, in and upon one Teresa Fetsock, a
woman-child of the age of seventeen years, feloniously did make an assault on her the said Teresa Fetsock, then and there did abuse and attempt to carnally know, contrary to the form of the statute in such case made and provided, and against the 30
peace of the State and the government and dignity of the same.”

There is a second count which alleges a simple assault.

The verdict of the Jury was, that they find the said George Oliver guilty in manner and form as he stands charged in said indictment.

STATUTE

“Any person who shall have carnal knowledge of a woman forcibly against her will, or shall aid, abet, council, hire, cause or procure any person or persons to commit the said offense, or who, being of the age of sixteen or over, shall unlawfully and carnally abuse a woman-child under the age of twelve years, with or without her consent, shall be guilty of a high misdemeanor, or who, being of the age of sixteen or over, shall unlawfully and carnally abuse a woman-child over the age of twelve years and under the age of sixteen years, with or without her consent, shall be guilty of a high misdemeanor, and punished by a fine not exceeding two thousand dollars, or imprisonment at hard labor not exceeding fifteen years, or both.”

See also Crimes Act 1898, P. L. 1898, page 854, section 216:

“Any person who shall attempt to commit any of the offenses mentioned in this act, * * * shall be guilty of a misdemeanor.”

STATEMENT

The testimony shows that Teresa Fetsock and her sister Margaret were boarded out at the home of defendant in Hanover Township, in the County of Morris and the State of New Jersey.

Teresa was at the time 17 years of age.

Her testimony shows that defendant assaulted her, in an attempt to commit rape, and the testimony is found on pages 12, 13, 14 and 15 of the State of the Case.

He not only, according to this testimony, attempted intercourse with this girl, but he went to her bedroom for that purpose, and in order to avoid his advances in this behalf, she and her sister Mar-

garet were compelled to get out of bed and run away from him.

On page 13 of her testimony, next to the last question and answer, she testified as follows:

“Q. What would he do when he came to your bed? A. He used to put his arms around me, and take off his clothes in front of me, and try to pick up my dresses. Q. And did he do anything of that kind during the daytime? A. Yes, sir. Q. And where were you then? A. I was in the back woods. I was kept there all day. I was not allowed to even be on the porch. Q. What did he do to you in the back woods? A. He was running all over after me, and I had to run from one tree to another, all over the woods, like that. He was running after me. Q. Was he dressed or undressed then? A. He was dressed, but then when he came to me, he let his pants down.”

The testimony of Margaret Fetsock, found on pages 25, 26 and 27 of the State of the Case, corroborates this testimony of her sister. On page 26 the questions and answers beginning with line 30 are as follows:

“Q. While you were there, did you see Mr. Oliver do anything to your sister? A. Yes, sir. He used to take his thing out—you know how men are, different from ladies; they have such long things—and he used to take it out; and he used to touch my sister; he used to try to touch my sister with it, only every time I used to come in time, and he did not have no chance to touch her. Q. And did that happen in the bed any time? A. Yes, sir. When we used to sleep, one of us used to watch, because, you know, he used to come in bed, and he used to tease us and touch us. Q. What did he try to do to your sister when he came into the bed? A. Well, he used to put his arms around her. Q. Anything else? A. Well, he used to take—he used to undress himself by her. Q. Did he

try to do anything with your sister? A. Yes, sir. Q. What? A. Well, he used to take his thing out, and he used to try to touch her with it. And he used to make, you know, talk with her, to make her touch it, she used to run away. She used to say to me, not to look at him, because it is a sin to do it. Q. Did he bother your sister's clothes? A. Yes. He used to pick her dresses up, and she used to run away to the woods. Q. How many times; do you know? A. Very many times. Q. How many times? A. Very many times."

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Under this testimony we think that there can be no question that there was an assault upon Teresa Fetsock by the defendant, with an intent to commit rape.

It was for the Jury to say, from this testimony and the other testimony in the case, whether the case of the State was made out to the satisfaction of the Jury.

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The slightest touch of the person with intent to have intercourse is sufficient. *Mc Avoy v. State*, 51 S. W. 928.

We realize, as is laid down in 33 Cyc., pages 1435 etc., that to constitute an assault with intent to commit rape there must be some overt act amounting to an assault, but this testimony which we have quoted indicates the overt act, which satisfied the Jury in this case that there was an assault with intent to commit rape.

30

See also case of *Carter v. State*, 35 Georgia 263 and *Ware case v. State*, 67 Ga. 349, and *Sharpe v. State*, 48 Ga. 16, cited in *Dorsey v. State*, 34 S. E., first column, page 137.

A conviction of an offense such as the one in this case alleged, may be had upon the uncorroborated evidence of the prosecutrix, the weight to be accorded to the evidence being a question for the Jury.

40

See *People v. Mayes*, 66 Calif. 597, 6 Pac. Rep. 691; also *People v. Stewart*, 27 Pac. 200.

The facts in the case of the *State v. Rudd*, 66 N. W. Rep., pages 748, etc., show that a defendant can properly be convicted of the charge as alleged in the indictment in this case by evidence such as was submitted to the Jury in this case.

See also *Jackson v. State*, 18 S. E. Rep. 132, etc.; see also *Shepard v. State*, 28 S. W. Rep. 816, etc.; see also *State v. Carter*, 11 S. W. Rep., page 624, 10 etc.; see also *State v. Shryor*, 16 S. W. Rep., pages 286, etc.

Force, actual or constructive is an essential element of the crime of rape, but even the least force is sufficient. While to constitute an "attempt" to commit rape, there must be in addition to the intent, some overt act in pursuance of such intent the overt act need not amount to a technical trespass. A judgment of conviction in such a case will not be reversed upon the ground that the evidence is not sufficient to support the verdict, the only question on appeal being whether there was any evidence before the Jury tending to show defendant's guilt. See *Payne v. Commonwealth*, 110 S. W. Rep., pages 311, etc. 20

Such intent may be inferred from the conduct of the parties and the other circumstances. 33 Cyc. 1494 and cases cited in note 76.

We have cited the law under Statement of Facts, so that the Court would know the facts to which the law applied. 30

AS TO POINTS RAISED IN DEFENDANT'S
BRIEF

POINT ONE

The testimony referred to by counsel for defendant in his brief under Point One was testimony on cross-examination of defendant and his wife, which cross-examination was carried on in the manner indicated for the purpose of testing the credibility
10 of the witnesses as to the matters testified to on direct examination by them.

There was no error in the Court's ruling in this matter.

The reason why prosecutrix came to the place of the alleged offense, and the circumstances surrounding the times when she alleged the offense had been committed may be shown for the purpose of rebutting any presumption of consent, and
20 also for the purpose of showing the credibility of the witness. 33 Cyc. 1461 (e), and cases cited in notes to same.

POINT TWO

The question raised by counsel for defendant under Point Two in his brief is taken care of by what we have heretofore said in our brief.

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POINT THREE

The question raised by counsel for defendant under Point Three in his brief is taken care of by what we have heretofore said in our brief.

An objection that evidence is incompetent, irrelevant and immaterial does not raise the question that the evidence is only admissible for a specific purpose. *State v. Kysilka* (N. J. Sup.),
40 87 A. 79.

If a question be incompetent, the adverse party can not "speculate" by waiting to see if the answer be favorable to him, and, if not, moving to strike it out. He must object to the incompetent question. *State v. D'Adame* (N. J. Err. & App.), 86 Atl. 414.

Accused is not entitled to a review on appeal of a question not raised on the trial. *Town of Montclair v. Amend*, 72, A. 360, 76 N. J. Law, 625, affirming judgment (N. J. Sup.), 68 A. 1067.

Objections not made below are not grounds of reversal upon a strict writ of error. *State v. Metzger*, 82 N. J. L. 749. 10

The criminal procedure act (P. L. 1894, p. 246), as amended by Laws 1898, provides that, if it appear from the record in a criminal cause that plaintiff-in-error, on the trial below suffered manifest wrong or injury either in the admission or rejection of testimony, whether objection was made thereto or not, the appellate court shall order a new trial. Held, that the phrase "admission or rejection of testimony" imports judicial action, and a judgment will not be reversed for refusal of the trial court to strike out testimony elicited by a question to which no objection was made. Rehearing, 65 A. 249, 73 N. J. L. 714, denied. *State v. Hummer*, 67 A. 294, 81 N. J. L. 430. 20

Where no objection was interposed, on the trial, or motion made to strike evidence out, its admission is not ground for reversal, under Act June 14, 1898 (P. L. p. 915), Par. 136. *State v. Warady*, 72 A. 37, 77 N. J. Law 348, judgment affirmed, 75 A. 977, 78 N. J. Law 687. 30

Reading the entire charge of the Court to the Jury, it is submitted that there can not be found anything therein which was not absolutely fair to the defendant in the case, and it is submitted that there was no error in the charge of the Court to the Jury. 40

CONVICTION SHOULD BE SUSTAINED

The conviction of the defendant was legal and not contrary to law and fact and should not be set aside.

The Jury saw the the defendant in court, the Jury heard the witnesses, no illegal evidence was admitted, no wrong done defendant and the Jury convicted.

The conviction of the defendant was legal and should be sustained.

JAMES H. BOLITHO,
Prosecutor of the Pleas for
the County of Morris.

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The following is a copy of the Supreme Court opinion, reported in Advance Reports, Vol. 3, No. 45, Misc. p. 1021.

The State of New Jersey, Defendant in Error,
v. George Oliver, Plaintiff in Error.

Submitted March 13, 1925—Decided October
7, 1925.

Crimes-Assault and Battery-Assignments of
Error Alleging Illegal Testimony, &c., Found
Not to Constitute Error.

On writ of error to the Morris Quarter Ses-
sions.

Before Gummere, Chief Justice, and Justices
Parker and Katzenbach.

For the plaintiff in error, David F. Barkman.
For the defendant in error, James H. Bolitho,
prosecutor of the pleas.

Per Curiam.

The defendant was convicted of assault and battery and attempted rape. There is no certificate of the entire record of the trial under section 136 of the Criminal Procedure act, and, consequently, the case is before us on strict writ of error, and the plaintiff in error is confined to his bill of exceptions.

The first assignment of error alleges, generally, the admission of illegal testimony. This is futile under the well-settled rule. *State v. Lee*, 126 Atl. Rep 471; *State v. Comstock*, 95 N. J. L. 321.

The second assignment challenges the refusal of the court to "dismiss the indictment and discharge the defendant at the close of the state's case," and the fifth is that the verdict of the jury was illegal and improper and not founded on any evidence supporting a legal conviction. The erroneous verdict of a jury does not constitute legal error, and, as to the refusal of the

court to dismiss the indictment and discharge the defendant, such a motion was tantamount to a motion to direct an acquittal at the close of the state's evidence, and this, under well-settled rules is discretionary, and not a ground of appeal on a strict writ of error. *Burnett v. State*, 62 N. J. L. 510; *State v. Jagers*, 71 *Id.* 281, 283; *State v. Lieberman*, 80 *Id.* 506; *State v. Metzger*, 82 *Id.* 749. We may add that no exception was sealed to the refusal and, therefore, it cannot be availed of in error.

The third assignment of error is that there was no proof of the commission of or attempt to commit any crime as charged in the indictment; and the fourth, that the allegations of the indictment were not proven, and therefore, there could be no conviction. Neither of these assignments points to any judicial action.

The sixth assignment of error alleges general error in the judgment and sentence, but points to nothing specific, and is obnoxious to the criticism made above with respect to the first assignment.

No judicial error having been pointed out, the judgment will be affirmed.

It is therefore respectfully contended in view of the foregoing that the conviction should be affirmed, and the writ dismissed.

Respectfully submitted,

ALBERT H. HOLLAND,
Prosecutor of the Pleas for
the County of Morris.

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ALANAR H. HOTIANN,
Prosecutor of the Pleas for
the County of Morris.