

# New Jersey Court of Errors and Appeals

THE STATE OF NEW JERSEY,  
Defendant in Error,

vs.

JAMES P. REILLY, JR.,  
Plaintiff in Error.

In Error.

## BRIEF OF PLAINTIFF IN ERROR.

### Statement of Case.

The plaintiff in error was indicted in the Union County Oyer and Terminer at the October term, 1914, for the crime of bigamy. The indictment is based on the 52d Section of the Crimes Act of 1898, which reads as follows:

*“Any person who having a husband or wife living marries another person shall be guilty of bigamy, and punished by fine not exceeding one thousand dollars, or imprisonment at hard labor, not exceeding ten years or both; but nothing in this section contained shall extend to any person whose husband or wife shall be continually remaining without the United States of America for the space of five years together, or whose husband or wife shall absent himself or herself the one from the other for the space of five years together, in any parts within this State or the United States, the one of them not knowing the other to be living within that time; nor to any person who is or shall*

*be, at the time of such marriage, divorced by the judgment of decree of any authority or court having cognizance thereof, nor to any person where the former marriage hath been or shall be by the judgment or decree of any such authority or court declared to be void and of no effect."*

The indictment sets forth, "that James P. Reilly, Jr., on December 7, 1908, at the City of Paterson, in the State of New Jersey, did intermarry and have for his wife one Ada Hobson, and afterwards, while he, the said James P. Reilly, Jr., was so married to the said Ada Hobson, did on the thirtieth day of January, 1914, at Elizabeth, New Jersey, unlawfully intermarry with and take for his wife one Abbie Louise Miller, the said Ada Hobson being still alive, contrary to the form of the statute, etc."

A complaint, before the finding of the indictment, was made against the said Reilly, and he was committed in default of bail to the County Jail of Union County, on June 21, 1914, where up to a short time ago he was confined. No complaint was made against him by either wife. The whole record is before this Court under the 136th section of the Criminal Procedure Act, Laws of 1898, together with the Bill of Exceptions in the cause, and the assignments of error and specifications of causes for reversal.

On conviction the defendant was sentenced to imprisonment in the State Prison, and pending the decision in this Court is out on bail. He has been happily reunited to his first wife and they are now living together. The plaintiff in error claims that there was such manifest wrong and injury in the trial of the cause that he was prejudiced in maintaining his defence upon the merits. An exam-

ination of the testimony taken in the cause will show that Reilly, the defendant below, believed that his wife, Ada, was dead, and that he was therefore free to contract another marriage.

His testimony at page 89 and following in the printed book shows, that his wife, Ada, left him one week after marriage and that he didn't see her again until she called at the County Jail at Elizabeth, nearly six years after. After she left him he made inquiries for her, in company with his brother, John, and his brother-in-law, Nass, calling at the house of Mrs. Hobson, the mother of Ada, in the City of Paterson, on Thanksgiving Day, 1909, following his marriage; and in describing what he did to find out about his wife on this occasion, he was asked the following question:

“Just state what transpired. A. I went to the door (Mrs. Hobson's) and Mrs. Hobson answered the door, and I said, ‘Mrs. Hobson, is that true that Ada is dead?’ And she said, ‘Yes, it is true. Ada is dead and buried,’ and she slammed the door, and she made some other remark; I didn't quite get what she said, but my brother-in-law told me——”

See printed case, page 92.

See also testimony of Charles Nass, page 82, line 30 and following, and John Reilly's testimony, page 78, line 26 and following.

Mrs. Garrabrant, the aunt of the defendant and sister of his mother, called on Mrs. Hobson to find out as to the death of his wife, Ada, and the Court excluded that testimony wrongfully, as the defendant thinks.

All this was offered for the purpose of showing the good faith of the defendant and should have

been admitted by the Court and the jury instructed to receive it and consider it.

### I.

**The defendant suffered manifest wrong and injury by reason of the rejection of legal evidence and the charge of the Court.**

The defendant, for the purpose of showing that he used all means to see if his wife were alive, inquired at her mother's house and was informed that she was dead. His aunt, Mrs. Garrabrant, also inquired, and her testimony was rejected by the Court, and the particular part is made the basis of specifications for reversal.

See Specifications 25, 26, 27 and 28.

The Court holding that as they were not made in the presence of the defendant they were not admissible. But they were made by the mother of Ada Hobson, now deceased, to the various persons who were witnesses. Why wasn't this evidence admissible? The defendant is charged with the crime of bigamy and sets up the defence that he had a reasonable and bonafide belief that his first wife was dead, and tried to introduce testimony to the effect that the mother of his first wife had told his mother, brother, brother-in-law (Nass) and aunt (Mrs. Garrabrant) that her daughter was dead, which the judge of the Quarter Sessions refused to admit and the defendant insists that he has suffered manifest wrong and injury by reason of such rejection in maintaining his defence upon the merit. The Court erred in not permitting such testimony, because the testimony was proper and was admissible as hearsay testimony with regard to pedigree.

As stated in Crawford vs. Blackburn, 17 Md. 49,

the term, "pedigree" includes descent and relationship; and the facts of birth, marriage and death. The Court also held in the case of Hubatka vs. Meyerhofer, 81 New Jersey Law, 410, "that declarations as to pedigree are admissible when the person making them is related by blood or marriage to the person concerning whom the declarations are made." In this case Mrs. Hobson comes within the rule laid down in the above case, because Reilly's wife was her daughter, and the mother certainly was in a position to say whether or not her daughter was alive, as her daughter was living with her at the time.

This testimony was sought to be introduced so that the jury could consider it in arriving at their verdict as to whether Reilly, the defendant, had reasonable grounds for believing his wife to be dead. That was the fact in issue—his belief that his wife was dead.

In 9 Ency. of Evidence, page 741, the rule is stated to be as follows: It is only in cases of relationship of declarant by blood or marriage to the family to which the declarations refer, that such declarations as to pedigree are admissible. It is proved in the case that Mrs. Hobson was the mother of Ada, Reilly's first wife.

## II.

**The indictment should have been quashed because it is defective, in that it is not so shown as to comply with the terms of Section 52 of the Crimes Act of the Laws of 1898, negating the exception.**

In the act on which the indictment is based is found the following: "That nothing in this section

contained shall extend to any person \* \* \* whose husband or wife shall absent himself or herself one from the other, for the space of five years together, in any parts within this State \* \* \*, the one of them not knowing the other to be living within that time."

This is a qualification added to the enactments, and brings the case within it, and must be distinctly negated in the indictment and that the defendant doesn't come within the exception. This was not done in the case before this Court.

Where a statute forbids the doing of a particular act, without the existence of either of two conditions, the indictment must negative the existence of both these conditions before it can be supported.

*Wharton's Criminal Pleading & Practice,*  
Sec. 239.

So also Wharton in his work in Criminal Pleading and Practice at Section 241 states the law to be as follows: "If it be clear that an act is only to become a crime when executed by persons of a particular class, or under particular conditions, then this class or those conditions must be set out in the indictment, no matter in what part of the State they may be expressed."

So, under a statute, where the guilty knowledge is part of the statutory definition of the offence it must be averred.

*Wharton Crim. Pldy. & Practice,* Sec. 164.

The test is this, is it the scope of the statute to create a general offence, or an offence limited to a particular class of actions, or upon only such actions of that class as are committed by particular persons or in a particular way? In the latter case

the defendant must be declared to be within this class; in the former case this is not necessary.

If it be clear that an act is only to become a crime when executed by persons of a particular class, or under particular conditions, then this class or those conditions must be set out in the indictment, no matter in what part of the statute they may be expressed.

*Com. v. Hart*, 11 Cushing, 130.

*State v. O'Donnell*, 10 R. I., 472.

*Hill v. State*, 53 Ga., 472.

So also in *Steel vs. Smith*, 1 Barnewall and Alderson 94, the Court said, "When there is an exception so incorporated with the enacting clause, that the one cannot be read without the other, then the exception must be negatived."

So also, the Court stated in *Commonwealth vs. Hart*, 11 Cushing 130, above, "That there is a middle class of cases namely, where the exception is not in express terms, introduced into the enacting clause, but only by reference to some subsequent or prior clause, or to some other statute. As when the words "except as hereinafter mentioned," or other words referring to matter out of the enacting clause, are used. The rule in these cases is, that all circumstances of exemption and modification, whether applying to the offence or to the person, which are incorporated by reference with the enacting clause, must be distinctly negatived.

*Vavasour v. Armrod*, 9 Dowling & Ryland, 597.

*Rex v. Patten*, 6 Term R., 559.

*State v. Palmer*, 18 Vermont, 570

Sergeant Hawkins, says in his work on Pleas of the Crown, "A conviction on a penal statute

ought expressly to show that the defendant is not within any of its provisos; for since all the proceedings are in a summary manner, it is but reasonable that such a conviction should have the highest certainty, and satisfy the Court that the defendant had no such matter in his favor as the statute itself allows him to plead."

Chitty lays down the same rule and gives the same reason for it.

The Supreme Court in their opinion in this case said that when the proviso is subsequent to and independent of, the enacting clause, it is unnecessary to negative its exception, but this seems contrary to the whole course of the decisions.

2 *Hawkins, Pleas of the Crown*, Ch. 25  
Sec. 113.

1 *Chitty Crim. Law*, 284-5.

It has been asserted that there is a distinction between summary convictions and indictments not ~~only~~<sup>only</sup> as to pleading and the negating of exceptions, but now this distinction is not acknowledged.

See *Rex v. Stone*, 1 East 639.

It is the contention of the defendant that the act on which the indictment was found must be taken in its entirety and a liberal construction given to it. It is the nature of the exception and not its location which decides the point. If it is descriptive it must be negated. Our contention is that it is descriptive and should have been negated.

**III.**

**That the plaintiff in error suffered manifest wrong and injury by reason of the admission of illegal evidence and the rejection of legal evidence and the charge of the Court.**

The State first endeavored to show that a marriage was performed by introducing one William Duddleston of Paterson, as a witness, who says that he married Ada Hobson to the defendant, James P. Reilly, Jr., on December 16, 1908. Duddleston further says that he was elected Justice of the Peace, but doesn't produce any credentials, and except for his word there was no legal authority for his performing the marriage.

See Duddleston's testimony, page 11 and fol. ....

The introduction of this evidence was improper. The Judge stated at page 15 of the printed book, with reference to Duddleston as follows: "If this man never occupied any official position but led those people to believe that he was an officer, and he performed a ceremony and they subsequently cohabited, lived together as man and wife, and then subsequent to that time the defendant in this case married another woman during the life of the first woman whom he married, he would have been violating the law." This wasn't a full statement of the law, and the minds of the jury were influenced to the injury of the defendant.

Ada Hobson, the alleged first wife of Reilly, says: "We lived together one week." See page 30, line 9. Also at page 52, line 20, printed case, she states that she lived with Reilly one week and

never saw him again until October or November, 1914, a period of about six years, and that was the first time since her marriage and then she saw him in the Union County Jail; and never communicated with him in any way, or saw him, and James P. Reilly testifies to substantially the same.

#### IV.

**That the judge did not in his charge to the jury legally define a reasonable doubt; nor did he state that if the jury were satisfied beyond a reasonable doubt from the evidence of the cause and the want of evidence of the innocence of the defendant they should acquit.**

The Court was asked to charge a reasonable doubt and this request is made the basis of paragraph 15 of the specification of causes for reversal.

The Court charged it this way. "Now a reasonable doubt is not any doubt; it is a doubt which one entertains after he has considered all of the testimony pro and con; that is, all of the testimony for the defendant and against the defendant, and after considering it and giving it all the attention and all the weight to which it is entitled, then, if a reasonable doubt rests upon your minds, you are to give the benefit of that doubt to the defendant."

The defendant claims that this is not a true interpretation of a reasonable doubt.

See *Donnelly v. State*, 2 Dutch, 601.

*Kohl v. State*, 30 Vr., 445.

So also in the fourteenth specification the Court refused to charge as requested and in this there was reversible error.

In this connection the Court should have charged the jury that the State before it could secure a conviction must prove its case by a preponderance of evidence.

## V.

**That it is a question of fact for the jury whether the prisoner knew whether his first wife was alive.**

This is the basis of the tenth specification and the following cases sustain this contention. In *Rex v. Dane*, 1 Foster & Finlayson, p. 323, etc., the Court said, That it was a question of fact for the jury whether the prisoner knew whether his first wife was alive.

See also *Rex v. Ellis*, 1 Foster & F., 309.

As to the 11th specification for reversal, in *Rex v. Heaton*, 3 Foster & Finlayson (English Nisi Pruis Reports), p. 819, the Court states, that the burden of proof that a person charged with bigamy has not been continually absent from his wife for seven years, and that she was known to him to be living within that time is on the Prosecutor, and not on the prisoner; he cannot be required to prove a negative that he did not know. As to the twelfth specification for reversal the law has been stated thus, in *Rex v. Gurgewein*, 10 Cox's English Criminal Cases, page 152: "To an indictment for bigamy it is a good defence that at the time of the bigamous marriage the woman had a reasonable and bona fide belief that her husband was dead, although seven years had not elapsed since she had last heard from him."

The Court refused to charge as requested in the thirteenth specification for reversal and this is reversible error.

We find the law to be as stated by Wharton in his work on Criminal Pleading & Practice at Section 164, thus: "Under a statute where the guilty knowledge is part of the statutory definition of the offence, it must be averred."

The defendant never saw Ada Hobson, his first wife, from the day she left him, a week after the marriage, until he saw her in the jail of Union County nearly six years afterwards. She testifies to this fact and so does he. He did everything in his power to discover her whereabouts. He finally heard that she was dead and went with his brother John and his brother-in-law Nuss, to the house of Ada's mother in Paterson and was informed by her that Ada was dead and buried. He was led to make this inquiry from some information he received. He went to inquire about her on Thanksgiving Day, 1909. See Reilly's testimony, p. 109, line 30, and fol. ; Charles Nuss' testimony, p. 82, line 30, and fol. , and John Reilly's testimony, p. 78, line 26 and fol. .

The Court charged as set out in the sixteenth specification, as to Miss Miller's testimony and that Mrs. Reilly, the mother of the defendant, didn't deny it, although she was in Court and then proceeded to say: "Now you are to say whether under the circumstances, that statement was really made by the mother of the defendant, and if it was made by her to him in the presence of Miss Miller, whom he had married, what weight it has in this case." This part of the charge was very prejudicial to the defendant. It injuriously affected the defendant in the minds of the jury, because there was no evidence introduced in the case that Mrs. Reilly was in Court, and the Court was wrong in asking the jury to weigh it in their minds.

**VI.**

**Illegal evidence was introduced which affected the minds of the jury in arriving at a verdict.**

The Court permitted the question to be asked of Duddleston, "Is that Ada Hobson?" after the Prosecutor had asked her to stand. That wasn't a legal identification. This is made the basis of the 18th specification. In the 21st and 22d specifications the Prosecutor is permitted to ask Duddleston illegal questions. Duddleston should have shown that he was a justice of the peace, legally elected and qualified. It wasn't on the defendant to show that he wasn't qualified.

No complaint was made by Miss Miller, the young woman to whom Reilly is alleged to have been married, and there is no evidence in the case to show who made the complaint. It seems to the defendant that it was a proper question to be put to Miss Miller, whether she wanted to prosecute the defendant or not.

**VII.**

**Evidence offered on behalf of the defendant was rejected by the Court, which affected the defendant injuriously in the trial of his cause.**

It was the duty of Reilly to make every inquiry as to the whereabouts of his wife, or whether she was living or not, and enlist others in his efforts. He seems to have done it in this case. His aunt, Mrs. Garrabrant, seems to have found out something and was called as a witness for the defendant, but the Court refused to let her testify, and that refusal

is made the basis of specifications of causes for reversal numbered 25, 26, 27, 28 and 29 and so on up to and including the 36th specification. These were questions that could have been properly asked and their answers would have materially aided the defendant at his trial. It would have shown that he had no intention of committing the crime he is alleged to have committed.

### VIII.

**Judgment should have been arrested and the defendant discharged from custody.**

Before sentence was pronounced the counsel for defendant moved in arrest of judgment for the reasons set forth in specifications 37 to 44 both inclusive. The indictment wasn't full enough and does not comply with the statute. That as guilty knowledge is part of the statutory definition of bigamy it must be averred in the indictment. It was not averred in the case before this Court. As the first marriage took place on December 16, 1908, and the last marriage on January 30, 1914, a period of more than five years elapses and the statute of limitations runs and no valid indictment could be found against the defendant and there could be no legal conviction.

The greater weight of evidence in this case is on the side of the defendant, and the jury should have been instructed that the State should prove its case by a preponderance of evidence, and that if they were satisfied that the greater weight of evidence was on the side of the defendant he should be acquitted.

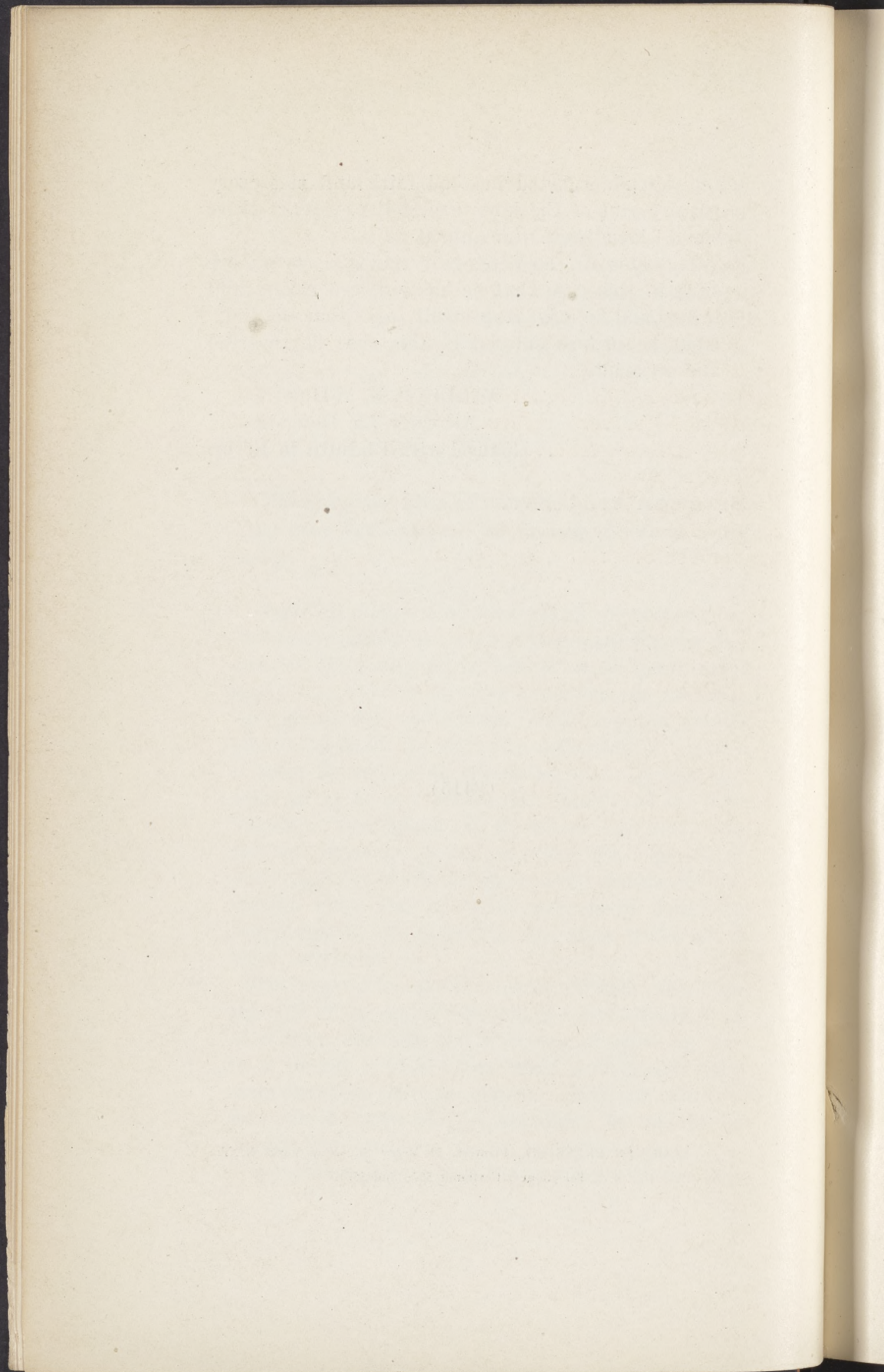
An examination of all the testimony shows that

the defendant acted in good faith and met every requirement of the law. Under the evidence there should have been an acquittal.

It seems to the defendant that the errors are such in this case that he has suffered wrong and injury and he most respectfully asks that the judgment heretofore entered in this case be reversed and set aside.

WILLIAM R. WILSON,  
Attorney for Defendant,  
Counsel with Plaintiff in Error.

(8415)



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**Writ of Error.**

NEW JERSEY, SS.:

The State of New Jersey to the Chief  
Justice and other Justices of our  
[SEAL] Supreme Court of Judicature, GREET-  
ING:

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Because in the record and proceed-  
ing and also in the giving of judgment in a certain  
complaint which was in our said Supreme Court of  
Judicature before you between the State of New  
Jersey, defendant in error, and James P. Reilly,  
Jr., plaintiff in error, upon a certain indictment  
against said James P. Reilly, Jr., of the City of  
Elizabeth, Union County, for bigamy. *Pro ut* the  
said indictment and counts therein, manifest error  
hath intervened to the great damage of the said  
plaintiff in error, as by his complaint we are in-  
formed, we being willing that the error, if any there  
be, should in due manner be corrected and full and  
speedy justice be done to the parties aforesaid in  
this behalf, do command you, that if judgment be  
thereupon given and affirmed then you distinctly  
and openly send under your seal, the record and  
proceedings and plaint aforesaid, with all things  
touching and concerning the same, to our Judges  
of our Court of Errors and Appeals in the last  
resort in all causes at Trenton, on the 23rd day of  
March, next, together with this writ, that the rec-  
ord and proceedings aforesaid being inspected, we  
may cause to be done thereupon, for correcting that  
error what of right and according to the law and  
custom of the State of New Jersey ought to be  
done.

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30

WITNESS our Chancellor and President Judge of  
our Court of Errors and Appeals at Trenton afore-

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*Assignments of Error*

said the fourth day of March, A. D. nineteen hundred and sixteen.

THOMAS F. MARTIN,  
Clerk.

WILLIAM R. WILSON,  
Attorney, etc.

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**Assignments of Error.**

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Afterwards, to wit, etc., before the Judges of the said Court of Errors and Appeals, in the last resort in all causes at Trenton, comes the said plaintiff in error by William R. Wilson, his attorney, and says, that in the record and proceedings aforesaid and also in the matters and things recited and contained in his assignments of error before the Supreme Court of Judicature of the State of New Jersey, as well as in the matters and things in the record and proceedings of the trial specified by him. judgment was given in said Supreme Court for the Union County Quarter Sessions against the said plaintiff in error and that there is manifest error in the following respects, to wit:

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1. That the judgment aforesaid was given against the said James P. Reilly, Jr., whereas, by the law of the land judgment should have been given for him.

2. That the charge of the Court as a whole, and in each and every part thereof is illegal, and thereby defendant below suffered manifest wrong and injury which is cause for reversal.

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3. That on the trial of the said plaintiff in error he suffered manifest wrong and injury, in the admission of evidence and the charge of the Court,

*Assignments of Error*

which prejudiced the said plaintiff in error in maintaining his defence upon the merits.

4. That the entire evidence as a whole did not show beyond a reasonable doubt that the said plaintiff in error was guilty of the crime charged, and did not justify the verdict found against him. 10

5. That the evidence in the cause is of such a nature that when fully and fairly considered it will not satisfy any thoughtful mind beyond a reasonable doubt of the guilt of the accused, and that upon said evidence the said plaintiff in error was entitled to an acquittal.

6. That the judge before whom the case was tried did not in his charge to the jury legally define a reasonable doubt so that the defendant below might have had the benefit of same. 20

7. That the judge did not charge the jury that if they were satisfied beyond a reasonable doubt from the evidence of the cause and the want of evidence of the innocence of the defendant, they should acquit him.

8. That the judge in his charge to the jury did not state that the defendant in error must before it could secure a conviction, prove its case by a preponderance of the evidence. 30

9. That the defendant by his counsel requested the Court to charge as follows: "That it is a question of fact for the jury whether the prisoner knew whether his first wife was alive." Which the Court refused to charge. 40

*Assignments of Error*

10        10. That the defendant, by his counsel, requested the Court to charge as follows: "That the burden of proof that a person charged with bigamy has not been continually absent from his wife for five years and that she was known to him to be living within that time, is on the State and not on the defendant." Which the Court refused to charge.

20        11. That the defendant, by his counsel, requested the Court to charge as follows: "That to an indictment for bigamy it is a good defense that at the time of the bigamous marriage the man had a reasonable and bona fide belief that his wife was dead, even though five years had not elapsed since he had last heard of her." Which the Court refused to charge.

12. That the defendant, by his counsel, requested the Court to charge as follows: "That under a statute where the guilty knowledge is part of the statutory definition of the offence it must be averred in the indictment." Which the Court refused to charge.

30        13. That the defendant, by his counsel, requested the Court to charge as follows: "That while it is the duty of each juror to discuss and consider the opinion of others, he must decide the case upon his own opinion of the evidence and upon his own judgment." Which the Court refused to charge.

40        14. That the defendant, by his counsel, requested the Court to charge as follows: "That if the jurors have a reasonable doubt of the defendant's guilt they must give him the benefit of that doubt

*Assignments of Error*

and acquit him." Which the Court refused to charge.

15. That the Court charged as follows: "The Prosecutor has called my attention to what he considers an important part of the testimony in the case, and I desire, at his request to call your attention to it. There was testimony on the part of Miss Miller to the effect that Mrs. Reilly, the mother of the defendant, called her son a bigamist at her home, that is, at Reilly's home in Elizabeth, and Mrs. Reilly was here in Court sitting on the front bench when that testimony was given. She might have been called to deny that statement made by Miss Miller if the defendant wished to do so, but he did not call her. She was not brought forth as a witness to deny the statement made by Miss Miller. Now you are to say whether, under the circumstances, that statement was really made by the mother of the defendant, and if it was made by her to him in the presence of Miss Miller, whom he married, what weight it has in this case."

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16. That the Court below charged the jury as follows: "And the attorney for the defendant states that Mrs. Reilly, the mother of the defendant, was in court under a subpoena issued by the State. But that would make no difference. Being in Court the defendant had a right, if he wanted to, to call her to deny the statement made by Miss Miller if the statement was untrue."

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17. That the Court erred to the prejudice and injury of the plaintiff in error by permitting William Duddleston, a witness for the State, to be asked the following: "Q. (Stand up, Ada Hobson.)

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*Assignments of Error*

Is that Ada Hobson?" Contrary to the objection of the plaintiff in error.

10 18. That the Court erred to the prejudice and injury of the plaintiff in error by permitting William Duddleston, a witness for the State, to state the following: "That is the young lady I married to James P. Reilly." Contrary to the objection of the plaintiff in error.

20 19. That the Court erred to the prejudice and injury of the plaintiff in error by permitting William Duddleston, a witness for the State, to be asked the following: "Where did you perform the ceremony between her and James P. Reilly?" Contrary to the objection of the plaintiff in error.

20 20. That the Court erred to the prejudice and injury of the plaintiff in error by permitting William Duddleston, a witness for the State, to be asked the following: "In what official capacity, if any, did you perform the ceremony between Ada Hobson and James P. Reilly, Jr.?" Contrary to the objection of the plaintiff in error.

30 21. That the Court erred to the prejudice and injury of the plaintiff in error by permitting William Duddleston, a witness for the State, to be asked the following: "When were you elected or appointed a justice of the peace " Contrary to the objection of the plaintiff in error.

40 22. That the Court erred to the prejudice and injury of the plaintiff in error in stating during the trial of the case in the presence of the jury the following: "If this man never occupied any official position, but led these people to believe that he was

*Assignments of Error*

an officer, and he performed a ceremony and they subsequently cohabited, lived together as man and wife, and then subsequent to that time, the defendant in this case married another woman during the life of the first woman whom he married he would have been violating the law. So that I have allowed the evidence to go in with the ideas of the law in this respect. 10

23. That the Court erred to the prejudice and injury of the plaintiff in error in refusing to permit the counsel for the defendant to ask one, Abbie Miller Reilly, a witness for the State, the following question: "You didn't want to prosecute James P. Reilly, did you?"

24. That the Court erred to the prejudice and injury of the plaintiff in error in refusing to permit the counsel for the defendant to ask the witness Elizabeth Garrabrant the following question: "Did you have any conversation with Mrs. Hobson, the mother of Ada Hobson, in the City of Paterson after the marriage of Ada with James Reilly?" 20

25. That the Court erred to the prejudice and injury of the plaintiff in error in refusing to permit the counsel for the defendant to ask Elizabeth Garrabrant, a witness for the defendant, the following question: "Did Mrs. Hobson, the mother of Ada Hobson, on any occasion when you saw her, state to you that her daughter Ada was dead?" 30

26. That the Court erred to the prejudice and injury of the plaintiff in error in refusing to permit the counsel for the defendant to ask Elizabeth Garrabrant, a witness for the defendant, the fol- 40

*Assignments of Error*

lowing question: "Did you make any inquiry with regard to the death of Ada Hobson, the wife of James Reilly?"

10 27. That the Court erred to the prejudice and injury of the plaintiff in error in refusing to permit the counsel for the defendant to ask Elizabeth Garrabrant, a witness for the defendant, the following question: "Did you know from anything that you heard that Ada Hobson was reported as being dead?"

20 28. That the Court erred to the prejudice and injury of the plaintiff in error in refusing to permit the counsel for the defendant to ask Elizabeth Garrabrandt, a witness for the defendant, the following question: "While Abbie Miller was at your sister's home in the City of Paterson, and you say you saw her there, did the question of the death of Ada Hobson, the wife of James P. Reilly, come up?"

30 29. That the Court erred to the prejudice and injury of the plaintiff in error, in refusing to permit the counsel for the defendant to ask John Reilly, a witness for the defendant, the following question: "Did you hear of the death of Ada Hobson?"

40 30. That the Court erred to the prejudice and injury of the plaintiff in error, in refusing to permit the counsel for the defendant to ask John Reilly, a witness for the defendant, the following question: "Did you ever go with your brother, James P. Reilly, and your brother-in-law, Charles Nuss, to Mrs. Hobson's house, the mother of Ada to find out whether she was alive or dead?"

*Assignments of Error*

31. That the Court erred to the prejudice and injury of the plaintiff in error in refusing to permit the counsel for the defendant to ask the following question: "Did you ever find out from any source that Ada Hobson, who married your brother, was reported dead?"

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32. That the Court erred to the prejudice and injury of the plaintiff in error in refusing to permit the counsel for the defendant to ask the following question: "Had you or not heard that Ada Hobson was dead?"

33. That the Court erred to the prejudice and injury of the plaintiff in error in refusing to permit the counsel for the defendant to ask the following question: "What did Mrs. Ayers tell you with respect to your wife?"

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34. That the Court erred in permitting the Prosecutor of the Pleas to ask the following question of the defendant: "Did it occur to you at all at that time that Mrs. Hobson was speaking to you while she was under the influence of a passion and that perhaps what she said was under a great passion and perhaps was not true?" Contrary to the objection of the plaintiff in error.

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35. That the Court erred to the prejudice and injury of the plaintiff in error in refusing to permit the defendant to answer the following question: "Did your mother and Mrs. Garrabrant tell you where they got the information about Ada's death?"

36. That the counsel for the defence before sentence was passed on the defendant asked the Court

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*Assignments of Error*

to arrest judgment for the following reason: "Because no indictable offence is set forth in the indictment which the Court refused whereby the defendant was prejudice and injured.

10     37. That the counsel for the defence before sentence was passed on the defendant asked the Court to arrest judgment for the following reason: "Because on the face of the indictment it appears that the offence is barred by the statute of limitations and the exception in the statute to prevent its operation is not alleged in said indictment. Which the Court refused whereby the defendant was prejudiced and injured.

20     38. That the counsel for the defence before sentence was passed on the defendant asked the Court to arrest judgment for the following reason: "That in this case where the statute exists limiting all prosecutions, within a fixed period the more exact course is to state the time correctly in the indictment. and then aver the exception, and when the exception is part of the limitation it must be pleaded. Which the Court refused, whereby the defendant was prejudiced and injured.

30     39. That the Counsel for the defence before sentence was passed on the defendant asked the Court to arrest judgment for the following reason: "That the burden of proof that a person charged with bigamy has not been continually absent from his wife for five years, and that she was known to him to be living within that time, is on the State and not on the defendant." Which was refused, whereby the defendant was prejudiced and injured.

40     40. That the counsel for the defence before sentence was passed on the defendant, asked the Court

*Assignments of Error*

to arrest judgment for the following reason: "That to an indictment for bigamy it is a good defence that at the time of the alleged bigamous marriage, the man had a reasonable and bona fide belief that his wife was dead, even though five years had not elapsed since he had last heard of her." Which was refused, whereby the defendant was prejudiced and injured. 10

41. That the counsel for the defence before sentence was passed on the defendant, asked the Court to arrest judgment for the following reason: "That under the statute where the guilty knowledge is part of the statutory definition of the offence it must be averred in the indictment." Which was refused, whereby the defendant was prejudiced and injured. 20

42. That the counsel for the defence, before sentence was passed on the defendant, asked the Court to arrest judgment for the following reason: "That there was error in the Court not charging that while it is the duty of each juror to discuss and consider the opinions of others, he must decide the case upon his own judgment and upon his own opinion of the evidence." Which was refused, whereby the defendant was prejudiced and injured. 30

43. That the counsel for the defence, before sentence was passed on the defendant, asked the Court to arrest judgment for the following reason: "That while the indictment in this cause states that the first marriage took place December 16, 1908, and the last marriage on January 30, 1914, a period of more than five years, it does not state that the defendant knew his first wife to be alive when he contracted the second marriage." Which was re- 40

*Specification of Causes for Reversal*

fused, whereby the defendant was prejudiced and injured.

10 And the said plaintiff in error prays that the judgment aforesaid, for the errors aforesaid, and for the errors therein be reversed, annulled and altogether holden for nothing, and that he may be restored in all things, in which he has lost by reason of said judgment.

WILLIAM R. WILSON,  
Attorney for and of Counsel  
with Plaintiff in Error.

**Specification of Causes for Reversal.**

20 Afterwards, to wit, etc., before the Judges of the said Court of Errors and Appeals, in the last resort in all causes at Trenton, comes the said plaintiff in error by William R. Wilson, his attorney, and says, that in the record and proceedings aforesaid and also in the matters and things recited and contained in his specification of causes for reversal before the Supreme Court of Judicature of the State of New Jersey as well as in the matters and things in the record and proceedings of the trial specified by him, judgment was given in said Supreme Court  
30 for the Union County Quarter Sessions against the said plaintiff in error and that there is manifest error in the following respects, to wit:

1. That the Court refused to quash the indictment on the motion of the counsel for the defendant before the jury was impanelled and sworn, which is cause for reversal.

40 2. That the judgment aforesaid was given against the said James P. Reilly, Jr., whereas, by

*Specification of Causes for Reversal*

the law of the land judgment should have been given for him.

3. That the charge of the Court as a whole, and in each and every part thereof, is illegal, and thereby defendant below suffered manifest wrong and injury, which is cause for reversal. 10

4. That on the trial of the said plaintiff in error he suffered manifest wrong and injury in the admission of evidence and the charge of the Court, which prejudiced the said plaintiff in error in maintaining his defence upon the merits.

5. That the entire evidence as a whole did not show beyond a reasonable doubt that the said plaintiff in error was guilty of the crime charged, and did not justify the verdict found against him. 20

6. That the evidence in the cause is of such a nature that when fully and fairly considered it will not satisfy any thoughtful mind beyond a reasonable doubt of the guilt of the accused, and that upon said evidence the plaintiff in error was entitled to an acquittal.

7. That the judge before whom the case was tried did not in his charge to the jury legally define a reasonable doubt so that the defendant below might have had the benefit of same. 30

8. That the judge did not charge the jury that if they were satisfied beyond a reasonable doubt from the evidence of the cause and the want of evidence of the innocence of the defendant, they should acquit him. 40

*Specification of Causes for Reversal*

9. That the judge in his charge to the jury did not state that the defendant in error must before it could secure a conviction, prove its case by a preponderance of evidence.

10 10. That the defendant, by his counsel, requested the Court to charge as follows: "That it is a question of fact for the jury whether the prisoner knew whether his first wife was alive." Which the Court refused to charge.

20 11. That the defendant, by his counsel, requested the Court to charge as follows: "That the burden of proof that a person charged with bigamy has not been continually absent from his wife for five years and that she was known to him to be living within that time, is on the State and not on the defendant." Which the Court refused to charge.

30 12. That the defendant, by his counsel, requested the Court to charge as follows: "That to an indictment for bigamy it is a good defence that at the time of the bigamous marriage the man had a reasonable and bona fide belief that his wife was dead, even though five years had not elapsed since he had last heard of her." Which the Court refused to charge.

13. That the defendant, by his counsel, requested the Court to charge as follows: "That under a statute where the guilty knowledge is part of the statutory definition of the offence it must be averred in the indictment." Which the Court refused to charge.

40 14. That the defendant, by his counsel, requested the Court to charge as follows: "That while it

*Specification of Causes for Reversal*

is the duty of each juror to discuss and consider the opinion of others, he must decide the case upon his own opinion of the evidence and upon his own judgment." Which the Court refused to charge.

15. That the defendant, by his counsel, requested the Court to charge as follows: "That if the jurors have a reasonable doubt of the defendant's guilt they must give him the benefit of that doubt and acquit him." Which the Court refused to charge. 10

16. That the Court charged as follows: "The Prosecutor has called my attention to what he considers an important part of the testimony in the case, and I desire, at his request, to call your attention to it. There was testimony on the part of Miss Miller to the effect that Mrs. Reilly, the mother of the defendant, called her son a bigamist at her home, that is, at Reilly's home in Elizabeth, and Mrs. Reilly was here in Court sitting on the front bench when that testimony was given. She might have been called to deny that statement made by Miss Miller if the defendant wished to do so, but he did not call her. She was not brought forth as a witness to deny the statement made by Miss Miller. Now you are to say, whether, under the circumstances, that statement was really made by the mother of the defendant, and if it was made by her to him in the presence of Miss Miller, whom he had married, what weight it has in this case." 20 30

17. That the Court below charged the jury as follows: "And the attorney for the defendant states that Mrs. Reilly, the mother of the defendant, was in Court under a subpoena issued by the State. But that would make no difference. Being in Court the 40

*Specification of Causes for Reversal*

defendant had a right, if he wanted to, to call her to deny the statement made by Miss Miller if the statement was untrue.

10 18. That the Court erred to the prejudice and injury of the plaintiff in error by permitting William Duddleston, a witness for the State, to be asked the following: "Q. (Stand up, Ada Hobson.) Is that Ada Hobson?" Contrary to the objection of the plaintiff in error.

20 19. That the Court erred to the prejudice and injury of the plaintiff in error by permitting William Duddleston, a witness for the State, to state the following: "That is the young lady I married to James P. Reilly." Contrary to the objection of the plaintiff in error.

20 20. That the Court erred to the prejudice and injury of the plaintiff in error by permitting William Duddleston, a witness for the State, to be asked the following: "Where did you perform the ceremony between her and James P. Reilly?" Contrary to the objection of the plaintiff in error.

30 21. That the Court erred to the prejudice and injury of the plaintiff in error by permitting William Duddleston, a witness for the State, to be asked the following: "In what official capacity, if any, did you perform the ceremony between Ada Hobson and James P. Reilly, Jr.?" Contrary to the objection of the plaintiff in error.

40 22. That the Court erred to the prejudice and injury of the plaintiff in error by permitting William Duddleston, a witness for the State, to be asked the following: "When were you elected or

*Specification of Causes for Reversal*

appointed a justice of the peace?" Contrary to the objection of the plaintiff in error.

23. That the Court erred to the prejudice and injury to the plaintiff in error in stating during the trial of the case in the presence of the jury the following: "If this man never occupied any official position but led these people to believe that he was an officer, and he performed a ceremony and they subsequently cohabited, lived together as man and wife, and then subsequent to that time, the defendant in this case married another woman during the life of the first woman whom he married he would have been violating the law. So that I have allowed the evidence to go in with ideas of the law in this respect.

24. That the Court erred to the prejudice and injury of the plaintiff in error, in refusing to permit the counsel for the defendant to ask one Abbie Miller Reilly, a witness for the State, the following question: "You didn't want to prosecute James P. Reilly, did you?"

25. That the Court erred to the prejudice and injury of the plaintiff in error in refusing to permit the counsel for the defendant to ask the witness Elizabeth Garrabrant the following question: "Did you have any conversation with Mrs. Hobson, the mother of Ada Hobson, in the City of Paterson after the marriage of Ada with James Reilly?"

26. That the Court erred to the prejudice and injury of the plaintiff in error in refusing to permit the counsel for the defendant to ask Elizabeth Garrabrant, a witness for the defendant, the following question: "Did Mrs. Hobson, the mother of

*Specification of Causes for Reversal*

Ada Hobson, on any occasion when you saw her state to you that her daughter Ada was dead?"

10 27. That the Court erred to the prejudice and injury of the plaintiff in error in refusing to permit the counsel for the defendant to ask Elizabeth Garrabrant, a witness for the defendant, the following question: "Did you make any inquiry with regard to the death of Ada Hobson, the wife of James Reilly?"

20 28. That the Court erred to the prejudice and injury of the plaintiff in refusing to permit the counsel of the defendant to ask Elizabeth Garrabrant, a witness for the defendant, the following question: "Did you know from anything that you heard that Ada Hobson was reported as being dead?"

30 29. That the Court erred to the prejudice and injury of the plaintiff in error in refusing to permit the counsel for the defendant to ask Elizabeth Garrabrant, a witness for the defendant, the following question: "While Abbie Miller was at your sister's house in the City of Paterson, and you say you saw her there, did the question of the death of Ada Hobson, the wife of James P. Reilly, come up?"

30 30. That the Court erred to the prejudice and injury of the plaintiff in error, in refusing to permit the counsel for the defendant to ask John Reilly, a witness for the defendant, the following question: "Did you hear of the death of Ada Hobson?"

40 31. That the Court erred to the prejudice and

*Specification of Causes for Reversal*

injury to the plaintiff in error in refusing to permit the counsel for the defendant to ask John Reilly, a witness for the defendant, the following question: "Did you ever go with your brother-in-law, Charles Nuss, and your brother, James P. Reilly, to Mrs. Hobson's house, the mother of Ada to find out whether she was dead or alive?" 10

32. That the Court erred to the prejudice and injury of the plaintiff in error in refusing to permit the counsel for the defendant to ask the following question: "Did you ever find out from any source that Ada Hobson, who married your brother, was reported dead?"

33. That the Court erred to the prejudice and injury of the plaintiff in error in refusing to permit the counsel for the defendant to ask the following question: "Had you or not heard that Ada Hobson was dead?" 20

34. That the Court erred to the prejudice and injury of the plaintiff in error in refusing to permit the counsel for the defendant to ask the following question: "What did Mrs. Ayers tell you with respect to your wife?" 30

35. That the Court erred in permitting the Prosecutor of the Pleas to ask the following question of the defendant: "Did it occur to you at all at that time that Mrs. Hobson was speaking to you while she was under the influence of a passion and that perhaps what she said was under a great passion and perhaps was not true?" Contrary to the objection of the plaintiff in error.

36. That the Court erred to the prejudice and 40

*Specification of Causes for Reversal*

injury of the plaintiff in error in refusing to permit the defendant to answer the following question: "Did your mother and Mrs. Garrabrant tell you where they got the information about Ada's death?"

10      37. That the counsel for the defence, before sentence was passed on the defendant, asked the Court to arrest judgment for the following reason: "Because no indictable offence is set forth in the indictment." Which the Court refused, whereby the defendant was prejudiced and injured.

20      38. That the counsel for the defence, before sentence was passed on the defendant, asked the Court to arrest judgment for the following reason: "Because on the face of the indictment it appears that the offence is barred by the statute of limitations and the exception in the statute to prevent its operation is not alleged in said indictment." Which the Court refused, whereby the defendant was prejudiced and injured.

30      39. That the counsel for the defence, before sentence was passed on the defendant, asked the Court to arrest judgment for the following reasons: "That in this case where the statute exists limiting all prosecutions within a fixed period the more exact course is to state the time correctly in the indictment, and then aver the exception, and when the exception is part of the limitation it must be pleaded." Which the Court refused, whereby the defendant was prejudiced and injured.

40      40. That the counsel for the defence, before sentence was passed on the defendant, asked the Court to arrest judgment for the following reason: "That the burden of proof that a person charged with

*Specification of Causes for Reversal*

bigamy has not been continually absent from his wife for five years and that she was known to him to be living within that time is on the State and not on the defendant." Which was refused, whereby the defendant was prejudiced and injured.

41. That the Counsel for the defence before sentence was passed on the defendant, asked the Court to arrest judgment for the following reason: "That to an indictment for bigamy it is a good defence that at the time of the alleged bigamous marriage, the man had a reasonable and bona fide belief that his wife was dead, even though five years had not elapsed since he had last heard of her." Which was refused, whereby the defendant was prejudiced and injured.

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42. That the counsel for the defence, before sentence was passed on the defendant, asked the Court to arrest judgment for the following reason: "That under the statute where the guilty knowledge is part of the statutory definition of the offence it must be averred in the indictment." Which was refused, whereby the defendant was prejudiced and injured.

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43. That the counsel for the defence, before sentence was passed on the defendant, asked the Court to arrest judgment for the following reason: "That there was error in the Court not charging that while it is the duty of each juror to discuss and consider the opinion of others, he must decide the case upon his own judgment and upon his own opinion of the evidence." Which was refused, whereby the defendant was prejudiced and injured.

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44. That the counsel for the defence, before sen-

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*Opinion*

10 tence was passed on the defendant, asked the Court to arrest judgment for the following reason: "That while the indictment in this cause states that the first marriage took place on December 16, 1908, and that the last marriage on January 30, 1914, a period of more than five years, it does not state that the defendant knew his first wife to be alive when he contracted the second marriage." Which the Court refused, whereby the defendant was prejudiced and injured.

20 And the plaintiff in error prays that the judgment aforesaid, for the errors aforesaid, and for the errors therein, be reversed, annulled and altogether holden for nothing, and that he may be restored in all things in which he has lost by reason of said judgment.

WILLIAM R. WILSON,  
Attorney for and of Counsel  
with Plaintiff in Error.

Common joinder in error filed by the State.

**Opinion.**

## NEW JERSEY SUPREME COURT.

ON ERROR TO UNION COUNTY QUARTER SESSIONS.

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THE STATE

VS.

JAMES P. REILLY, JR.

Argued June term, 1915, before Chief Justice Gummere and Justices Swayze and Bergen.

40 1. The statute relating to the crime of bigamy, after defining the offense and fixing the penalty, de-

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clares, in the same section, that nothing in that section should extend to any person in classes particularly described, HELD, that in an indictment for bigamy it was not necessary to aver that the defendant was not within either of the excepted classes.

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2. To require that an indictment negative an exception contained in a criminal statute, the exception must be contained in the prohibitory clause as a part of the description of the crime, and the fact that the exception appears in the same section which defines the crime does not change the rule if the clause follow the prohibitory clause and is distinct and substantive.

William R. Wilson, for Plaintiff in Error.

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Alfred A. Stein, Prosecutor of the Pleas, for Defendant in Error.

The opinion of the court was delivered by BERGEN, J.

The defendant was convicted of bigamy. His first wife lived with him one week; they never saw each other for six years prior to his second marriage, and the defendant testified that he was told by her mother that she was dead before his second marriage. The defendant having brought the record here, has assigned errors thereon, and also filed specifications of causes under sections 136 and 137 of our Criminal Procedure Act.

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The first point made is, that the indictment was defective and should have been quashed, a motion therefore having been made before the jury was sworn, and the same questions raised by a request to charge which was refused by the trial court and an exception thereto sealed. The defect alleged is, that the indictment does not aver that the defend-

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*Opinion*

ant is not included in the class of persons which the statute exempts from its operation. The statute referred to is section 52 of the act entitled, "An act for the punishment of crimes" (Revision of 1898). C. S. Vol. 2, 1743. This section declares: "Any person who having a husband or wife living, and marries another person, shall be guilty of bigamy, and punished by fine not exceeding One Thousand Dollars, or imprisonment at hard labor not exceeding ten years, or both; but nothing in this section contained shall extend to any person whose husband or wife shall be continually remaining within the United States of America for the space of five years together, or whose husband or wife shall absent himself or herself, the one from the other, for the space of five years together, in any parts within this State or the United States, the one of them not knowing the other to be living within that time, nor to any person who is, or shall be, at the time of said marriage, divorced, by the judgment or decree of any authority or court having cognizance thereof; nor to any person where the former marriage has been, or shall be, by the judgment or decree of any such authority or court, declared to be void and of no effect." The claim of the defendant is, that an indictment for bigamy must aver that the defendant is not within the class of persons to whom it is declared the part of the section defining the crime and fixing the penalty shall not extend. It is well settled in this State that if there is an exception in the "enacting clause" of a statute upon which an indictment is founded, there must be an averment that the defendant is not within the excepted class, for in such case the exception is an essential part of the description of the offense. But the fact that the proviso or exception is in

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the same section of the act does not make it necessary to notice it in pleading, unless it is also incorporated in the enacting clause, "for statutes are not divided into sections upon the rolls of parliament." *McGear et al. v. Woodruff*, 33 N. J. L. 213, in which Mr. Justice Depue quoted with approval from Gould on Pl. as follows: "In an action founded on a penal statute the subject of any exception in the enacting or prohibitory clause of the act must, in the declaration, be included by averment; but of any proviso or qualification in a separate substantive clause, the declaration need not take notice. In the first case, the exception is an essential part of the description of the offense or thing prohibited; in the latter the proviso, etc., is only a distinct matter of defense." Any confusion which may exist in the cases dealing with this subject is, we think, due to the use of the expression "enacting clause," when referring to the declaratory or prohibitory clause. Strictly speaking, the enacting part of a statute is that which declares its enactment and identifies it an act of legislation, which is no part of the prohibitory or declaratory clause of the act. If the exception appear in the latter, it is an essential part of the description of the thing prohibited, and must be negatived. The exception relied on in this case is not contained in the prohibitory clause of the act, but in a separate substantive clause which the pleader need not notice. In *State v. Miller*, 24 Conn. 522, the statute provided, in section one, that no person should manufacture or sell intoxicating liquor "except as hereinafter provided," and then followed in succeeding sections certain exceptions. The written complaint there under review, which was in the nature of an indictment, did not negative the

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10 exceptions. In disposing of this matter Judge Ellsworth, speaking for the Supreme Court of Errors of Connecticut, says: "Now the claim is, that, by the reference in the first section, the subsequent exceptions are incorporated into the first section, and becomes a part of it as affectually as if they were  
20 recited verbatim, and that they must therefore be negatived, according to the well settled rule of declaring, that an exception, contained in the enacting clause of the statute, must be negatived by the prosecutor or the pleader. As to this general rule of law, we believe there is no doubt; but in the application of it, and especially in the language that has been used, quite loose and unguarded as we think, there is great confusion and apparent  
30 inaccuracy even by those who understand the rule as we do. The rule, as everywhere laid down, is, that after words of general prohibition, whatever comes in by way of proviso or exception, need not be negatived by the pleader, but must be set up by the accused. In this view it is immaterial whether the proviso, or exception, be contained in the enacting or subsequent sections, if it only follow a general prohibition, \* \* \*. It is of no importance in what section the proviso is placed. By "clause" in these cases, I understand, the words  
40 of prohibition; that sentence of the section, which at first describes and prohibits the general offense, though it is followed by exceptions, as in the statute in question." In *State v. Price*, 71 N. J. L. (249), 256, Mr. Justice Pitney said, speaking for this court: "It is well settled that an indictment, for a statutory offense need not contain an averment that the defendant is not within an excepted clause, unless the exception is found in the enacting or prohibition clause of the act. If it be found

*Opinion*

in a separate substantive clause, and is not an essential part of the description of the offense it is a matter of defense." In construing this clause the word "enacting" must be read as synonymous with prohibitory, and not as identifying an act of legislation. In *Hale v. State*, Supreme Court of Ohio, 51 N. E. 154, the court said: "The test appears to be that, when an exception or proviso in a criminal statute is a part of the description of the offense, it must be negatived by an averment in the indictment, in order to fully state the offense, but where its effect is merely to take certain persons or acts out of the operation of the general prohibitory words of the statute, the negative averment is unnecessary." In the statute under consideration that part of it which declares that the act shall not extend to a certain class of persons is no part of the prohibitory clause, nor does it in any way describe the offense. It merely excludes a certain class of persons from subjection to a general prohibitory clause. If the State was required to aver that the parties to the first marriage had never been divorced, it would be bound to prove that no court having jurisdiction of either of the parties had ever made a decree divorcing them. The scope of such an inquiry would prevent a conviction in almost every case, when we consider that divorces are granted in nearly every state and country. We are quite satisfied that under the cases the exception must be contained in the prohibitory clause as a part of the description of the thing forbidden, and that if it does not appear there, the pleader is not bound to aver it. We are also of opinion that the fact that the exception appears in the same section of the act with the prohibitory clause, does not change the rule if the clause containing the exception is distinct and substantive,

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and that such a condition exists in the statute being considered.

*Conner v. Fogg*, 75 N. J. L. 245.

10 The next point argued is, that it was error to permit the Justice of the Peace who performed the marriage ceremony between the defendant and his first wife to testify that he was a Justice of the Peace at the time, the contention being, that he was bound to produce his "credentials." The question to which the exception on which this argument is based was: "Q. In what official capacity, if any, did you perform the ceremony between Ada Hobson and James P. Reilly, Jr.?" Proof that a party acted and exercised the office of Justice of the Peace is sufficient evidence that he is one, without producing his appointment, was settled in *Conover v. Solomon*, Spencer (20 N. J. L.), 295, and therefore there is no merit in this objection.

20 The next point is, that in deciding this question, the trial court said: "If this man never occupied any official position he led those people to believe that he was an officer and he performed the ceremony and they subsequently cohabited, lived together as man and wife, and then subsequent to that time the defendant in this case married another woman during the life of the first woman whom he married, he would have been violating the law." The reason which the trial judge gives as a basis for his ruling is not error if the determination is a correct one. The reason above given was not an instruction to the jury, but only that of the court for the admission of the evidence which was properly admitted and therefore it is not necessary to now determine whether the statement was correct in law or not.

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The third point argued is, that the judge did not properly define a reasonable doubt. What the court said was: "Now a reasonable doubt is not any doubt; it is a doubt which one entertains after he has considered all of the testimony pro and con; that is, all of the testimony for the defendant and against the defendant, and after considering it, and giving it all the attention and the weight to which it is entitled, then, if a reasonable doubt rests upon your minds, you are to give the benefit of that doubt to the defendant." This instruction must be read in connection with what the trial court said immediately preceeding the matter challenged, which was, "that the jury ought to feel that the defendant is guilty beyond a reasonable doubt, and if a reasonable doubt exists in their minds, they should of course give the benefit of that doubt." Taking the entire charge on this point, we think there was no error.

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The next point is, that it was error to refuse to charge as requested "that it was a question of fact for the jury whether the prisoner knew whether his first wife was alive." The court did charge that the state must prove affirmatively and beyond a reasonable doubt that the first wife was alive at the date of the void marriage, "but under the statute, this defendant would be innocent of the crime of bigamy if he did not know that she was alive, and if it appears that he had not heard from her during the period of five years prior to his marriage to Abbie Miller," and subsequently charged, after reciting some of the evidence, "you are to decide whether this man has told a truthful story on the witness stand when he said to you he believed his wife was dead for the period of five years at the time when he married Miss Miller. You are to determine that." We think the request

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*Opinion*

was fully charged, and that the question of fact whether the prisoner knew his first wife was alive, was fully submitted.

10 The next point is, that it was error to refuse to charge as requested "that the burden of proof that a person charged with bigamy has not been continually absent from his wife for five years, and that she was known to him to be living within that time, is on the state and not on the defendant." We think that this request was sufficiently complied with when the jury were instructed, as they were, that the state "must prove affirmatively and beyond a reasonable doubt that the first husband or wife was alive at the date of the marriage. This is not presumed as a matter of law, 20 from proof that he or she was alive at a prior date, for the presumption that the accused was innocent will nullify the presumption of the continuance of life. Hence, in the absence of direct evidence that the earlier spouse is alive when the later marriage was solemnized, the jury must acquit." This charge taken in connection with what the court said on the same subject immediately following put upon the State the burden of proving affirmatively and beyond a reasonable doubt that the defendant had not been continually absent from his wife for five years and that she was known to him to be living within that time. 30

It is also urged that there was error in permitting the State to ask of the justice who married the parties, "Is that Ada Hobson?" after the prosecutor had asked her to stand. This, the defendant claimed, was not a legal identification. Why it was not, is not indicated in the brief, nor is the point argued, but we fail to see any error in asking a person to be identified to stand. 40

*Opinion*

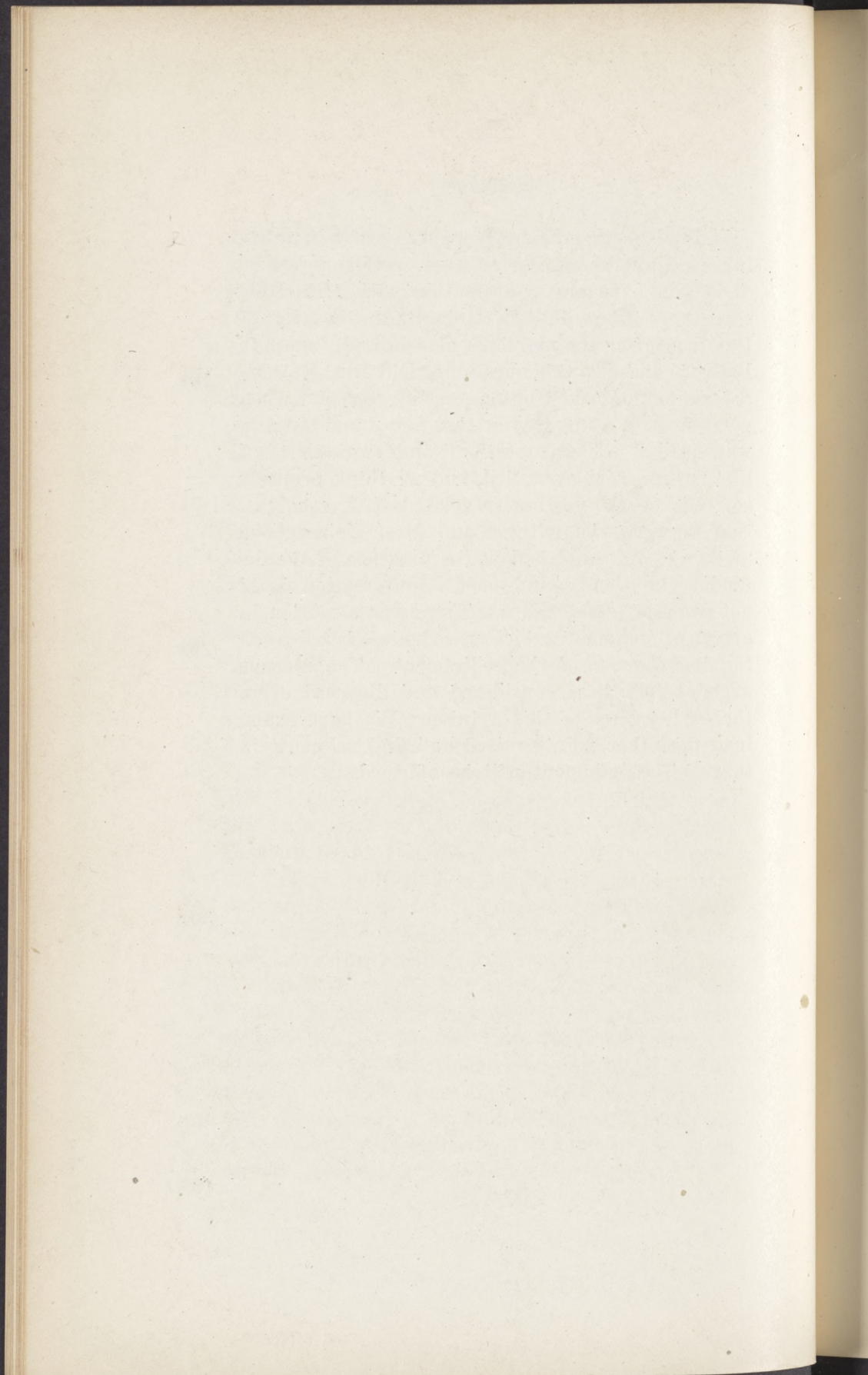
It is also argued that there was error in refusing to allow a witness to answer this question: "Did you have any conversation with Mrs. Hobson, the mother of Ada Hobson, in the city of Paterson after the marriage of Ada and James P. Reilly?" and also this question: "Did Mrs. Hobson, the mother of Ada Hobson, on any occasion when you saw her, state to you that her daughter Ada was dead?" These questions and two others of like nature were overruled, and we think properly so, because the testimony related to a conversation between the witness and Mrs. Hobson, the mother of Ada, not had in the presence of the defendant or of Ada, and such a conversation could not excuse the defendant. There was a motion in arrest of judgment which was denied, based upon the insufficiency of the indictment. The reasons urged being those considered and disposed of in the earlier part of this opinion. We have examined the other points raised and find no merit in them. The judgment will be affirmed.

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## Writ of Error and Return.

NEW JERSEY, SS.

The State of New Jersey to James C. 10  
Connolly, Esquire, Judge of our Court  
(L.S.) of Common Pleas of the County of  
Union, constituting the Court of Quar-  
ter Sessions of said County.

Greeting: Because in the record and proceed-  
ings, and also in the giving of judgment upon a cer-  
tain indictment against James P. Reilly, Junior,  
late of the City of Elizabeth, in the County of  
Union, for bigamy. Pro ut the said indictment and 20  
counts therein, whereof he hath been indicted and  
is, therefore, before you convicted by a certain jury  
of the County of Union, taken between the State of  
New Jersey, and the said James P. Reilly, Junior,  
as it is said, manifest error hath intervened to the  
great damage of the said James P. Reilly, Junior,  
as from his complaint, we have received informa-  
tion, we being willing in his behalf to correct the  
error in due manner, if any there shall be, and  
that speedy justice be done unto him, the said 30  
James P. Reilly, Junior, command you that if judg-  
ment be therein given, then that you distinctly and  
openly send under your seal the record and proceed-  
ings aforesaid, with all things touching the same, to  
our Supreme Court of Judicature, to be held at the  
City of Trenton, on the eighteenth day of January  
next, together with this writ, that the record and  
proceedings aforesaid being inspected, we may fur-  
ther cause to be done thereupon, for correcting that 40  
error, what of right and according to the laws and  
customs of New Jersey ought to be done.

*Writ of Error and Return*

Witness Honorable William S. Gummere, Chief Justice of our Supreme Court at Trenton aforesaid this 29th day of December, A. D., 1914.

WM. C. GEBHARDT  
Clerk.

10 WILLIAM R. WILSON,  
Attorney.

"The answer of James C. Connolly, Esquire, Judge of the Court of Common Pleas of the County of Union, constituting the Court of Quarter Sessions of said County within named.

20 "In obedience to the command of this writ, and pursuant to Sections 136 and 137 of an Act entitled, "An Act relating to Courts having Criminal Jurisdiction and regulating proceedings in criminal cases (Revision of 1898," I herewith return the indictment against James P. Reilly, Junior, the entire record of the proceedings had upon the trial of said cause, the bill of exceptions as signed and sealed by me in said cause, whereof mention is made within, and all things touching and concerning the same, to the Supreme Court of Judicature at Trenton, within specified, at the time and place within mentioned, I, the Judge of the Court of Common Pleas and of the Court of Quarter Sessions within mentioned, under my seal and hereunto annexed, send, as within I am commanded, as appears by the schedule hereto annexed.

30

JAMES C. CONNOLLY (Seal),  
Judge of the Court of Common  
Pleas of the County of Union,  
constituting the Court of Quarter Sessions of said County.

40

*Writ of Error and Return*

The execution of this writ appears by the schedule hereto annexed.

In Testimony Whereof, I, James C. Calvert, Clerk of the County of Union and of the Court of Common Pleas and [L. S.] Court of Quarter Sessions in and for said County have hereunto subscribed my name and affixed the seal of said Courts the fifteenth day of January, A. D., 1915. 10

JAMES C. CALVERT,  
Clerk.

STATE OF NEW JERSEY, }  
COUNTY OF UNION, } ss.: 20

Be it remembered, That at the Court of Oyer and Terminer, holden at the City of Elizabeth in and for the County of Union, on the first Tuesday of October, in the year of Our Lord one thousand nine hundred and fourteen, before the Honorable James J. Bergen one of the Justices of the Supreme Court of Judicature of the State of New Jersey, and the Honorable James C. Connolly Judge of the Court of Common Pleas in and for the County of Union, upon the oaths of John W. Clift, Daniel J. Leonard, Fred Blackwell, William W. Gilbert, S. Merchant Meeker, Charles Stein, William W. Coriell, Robert J. Mitchell, Arthur P. Campbell, Elliott J. Hall, Howard M. Anderson, George L. Delatour, Henry A. Rath, Morris Koestler, Ernest D. Mulford, Harry Werner, Edward Aldrich, Everard C. Brewer, Edgar A. Knapp, Thomas B. Lindsay, James E. Febrey, John W. Titus, William Sefton, good and lawful men of 40

*Writ of Error and Return*

said County of Union, then and there sworn and charged to inquire on behalf of the State of New Jersey, in and for said County of Union, it is presented by at least twelve of said Jurors in the manner and for following, to wit:

10

## UNION OYER AND TERMINER.

October term, A. D. nineteen hundred and fourteen. Union County, to-wit:

The grand inquest for the State of New Jersey, and for the body of the County of Union, upon their oath.

20

Present, that James P. Reilly, Jr., late of the City of Elizabeth, in the County of Union, on the Sixteenth day of December, in the year of Our Lord one thousand nine hundred and eight, at the City of Paterson, in the State of New Jersey, did intermarry and have for his wife one Ada Hobson, and afterwards while he the said James P. Reilly, Jr., was so married to the said Ada Hobson, did on the thirtieth day of January in the year of Our Lord one thousand nine hundred and fourteen, at the City of Elizabeth in the County of Union and State of New Jersey, and within the jurisdiction of this Court, unlawfully intermarry with and take for his wife one Abbie Louise Miller, the said Ada Hobson being still alive, contrary to the form of the Statute in such case made and provided, and against the peace of this State, the Government and dignity of the same.

30

ALFRED A. STEIN,  
Prosecutor of the Pleas.

40

*Writ of Error and Return*

That at a Court of Quarter Sessions holden at Elizabeth, in said County of Union, on Friday the fifteenth day of October, in the year of our Lord, one thousand nine hundred and fourteen, before Honorable James C. Connolly, Judge of the Court of Common Pleas, constituting the Court of Quarter Sessions in and for said County of Union, according to the form of the Statute in such case made and provided the Grand Jury presented the indictment aforesaid, which said indictment was thereupon ordered by the Court of Oyer and Terminer of said County to be delivered to the Clerk of the Court of Quarter Sessions of said County who is directed to affile the same in the said Court of Quarter Sessions according to the form of the statute in such case made and provided, and thereupon the said indictment is delivered to the Clerk of said Court of Quarter Sessions and by said Clerk affiled and entered in said Court of Quarter Sessions of said County. 10  
20

That at the same term of the said Court of Quarter Sessions holden at Elizabeth aforesaid, on Monday the nineteenth day of October, in the year last aforesaid, comes the said James P. Reilly, Jr., in his own proper person and now here touching the premises in the said indictment above specified and charged upon him, being asked in what manner he would acquit himself thereof, says that he is not guilty thereof, and of this he puts himself upon the County, etc., and Alfred A. Stein, Esquire who prosecutes for the State in this behalf doth likewise the same. 30

That at the same term of the said Court of Quarter Sessions holden at Elizabeth aforesaid, on Monday the fourteenth day of December, in the year last aforesaid, before Honorable James C. Connolly, the Judge aforesaid, the said James P. Reil- 40

*Writ of Error and Return*

ly, Jr., being set to the bar, Alfred A. Stein, Esquire who prosecutes for the State moves the trial of the indictment aforesaid. Wherefore let a Jury thereupon come on this day last aforesaid, before this Court of Quarter Sessions aforesaid, by whom the truth of the matter may be better known, and who are not of kin to the said James P. Reilly, Jr., to recognize upon their oaths whether the said James P. Reilly, Jr., be guilty of Bigamy in the indictment aforesaid specified or not guilty, because as well the said Alfred A. Stein who prosecutes for the State in this behalf as the said James P. Reilly, Jr., has put himself upon the said Jury and the Jurors of the said Jury by George C. Otto, Esquire, Sheriff of said County of Union for this purpose impanelled and returned agreeably to the statute in such case made and provided, to wit:

- |                          |                          |
|--------------------------|--------------------------|
| 1.—Frank A. Engel        | 7.—William Bodine        |
| 2.—Frederick Flunke      | 8.—William G. Britton    |
| 3.—John J. Applegate     | 9.—J. Frank Doremus      |
| 4.—Joseph H. Angerbauer  | 10.—Stewart H. Davey     |
| 5.—Lorenzo C. Dilks      | 11.—William H. Armstrong |
| 6.—Herman A. Graves, Jr. | 12.—Edward G. Cook       |

who being chosen, tried and sworn to speak the truth of and concerning the premises upon their oaths, on the day and year last aforesaid, say that the said James P. Reilly, Jr., is guilty of Bigamy on him above charged in form aforesaid and as in the indictment aforesaid is above supposed against him.

That at the same term of the said Court of Quarter Sessions holden at Elizabeth aforesaid, in the

*Writ of Error and Return*

County aforesaid, on Saturday, the twenty-sixth day of December, in the year of our Lord, one thousand nine hundred and fourteen, before Honorable James C. Connolly, Judge of the Court of Common Pleas, constituting the Court of Quarter Sessions in and for said County of Union, according to the form of the Statute in such case made and provided, the said James P. Reilly, Jr., being set to the Bar, Alfred A. Stein, Esquire, who prosecutes for the State in this behalf moves for judgment on the said James P. Reilly, Jr. 10

Whereupon all and singular the premises being seen and by the Court now here fully understood— It is ordered and adjudged that the said James P. Reilly, Jr., having been convicted of the crime of Bigamy be imprisoned in the State Prison of this State for a minimum term of three (3) years and for a maximum term of of ten (10) years at hard labor upon this conviction that he pay the costs of this prosecution, which costs are taxed by the Court at the sum of one hundred and one dollars and forty-five cents, and that he be further imprisoned from and after the expiration of the imprisonment above imposed until the said costs are paid. 20

And the said defendant in Mercy, etc. 30

Judgment signed December 26, 1914. James C. Connolly, Judge.

**Testimony.**

UNION COUNTY COURT OF COMMON PLEAS,

October Term, 1914.

10

STATE

against

JAMES P. REILLY, JR.

} Indictment #1,  
for Bigamy.

20

Transcript of stenographer's notes of evidence taken in the above entitled matter before HON. JAMES C. CONNOLLY and a jury, at the Union County Court House, in the city of Elizabeth, New Jersey, on the fourteenth and fifteenth days of December, A. D. 1914, at 10 a. m.

Appearances:

ALFRED A. STEIN, ESQ., Prosecutor of the Pleas, for the State.

WM. R. WILSON, ESQ.,

FRANK PFAFF, ESQ.,  
for the Defendant.

30

A jury was then empanelled and found satisfactory.

Mr. Wilson: If your Honor please I would, before the jury is sworn, to withdraw the plea of not guilty temporarily for the purpose of making a motion.

The Court: I will allow you to do so.

40

Mr. Wilson: Thank you. This is an indictment for bigamy, and the charge is that on the sixteenth day of December, 1908, in

*Testimony*

the city of Paterson, the defendant did intermarry with one Ada Hobson, and that on the thirtieth day of January, 1914, more than five years thereafter, he contracted a marriage with Abbie Louise Miller. The indictment is not drawn in conformity with the statute. The indictment merely says that Reilly contracted a marriage with Ada Hobson on the sixteenth day of December, 1908, and while the said Hobson was alive on the thirtieth of January, 1914, he took for his wife one Abbie Louise Miller. Our statute says: "If any person having a husband or wife living, marries another person, shall be guilty of bigamy, et cetera, with this proviso: "That, but nothing in this section contained shall extend to any person whose husband or wife shall be continually remaining without the United States of America for the space of five years together, or whose husband or wife shall absent himself or herself one from the other, for the space of five years together, in any parts within this state or the United States, the one of them not knowing the other to be living within that time." That is what the indictment should state, and while the Prosecutor, as far as the indictment has begun, is all right and he makes a distinct averment that after the five years of defendant's marriage to Abbie Louise Miller, yet he doesn't go far enough and state that the said Reilly then and there knowing that the said Ada Hobson was living. Because of the fact of that being not inserted in the indictment, the Prosecutor may state it is a question of proof. It is not. It is a distinct averment

*Testimony*

and all the cases seem to hold that way. And it doesn't say in here "the said James P. Reilly, knowing she was then alive."

10 The Court: Your contention is that the indictment charges that the defendant was married a second time while his first wife was alive, but that the exception contained in the statute has not been noticed or observed in the drawing of the indictment?

20 Mr. Wilson: That is not it. Your Honor well knows that in every indictment, of course, the allegations are set out in the indictment; that the proof must be made of the allegations set out in the indictment. If the indictment is not full enough, why then you can't prove except what you have got in your indictment, and if the act says, "If the man does not marry within the five years," why then he is free. It comes within the statute of limitations, and I have some cases I would like to call your Honor's attention to.

30 The Court: There is no use reading them, Mr. Wilson; I am acquainted with the law in that respect. I think that it is a matter of proof on the part of the defendant. I think that he must show that he did not wilfully and knowingly violate the law by marrying a second time during the life of his lawful wife; and I do not want to anticipate what the ruling of the Court may be when that question comes up, at this time, but I think it is a matter of proof for him to show that he did not wilfully and knowingly marry a second time, while his first wife was alive. When that question comes up I will pass upon that question, but at this time I will refuse to do so.

40

*Judge William Duddleston—Direct*

Mr. Wilson: This indictment is drawn under the statute. It is a statutory offense, and not under the common law, and being a statutory offense my view is this: As I find from the cases, that all the necessary ingredients of the crime must be set out in the indictment, and if a man marries—five years having elapsed and the Prosecutor not stating in there that it was well known to him that the first wife was alive. It should be stated in there. 10

The Court: I will deny your motion.

Mr. Wilson: I except to your Honor's ruling.

The Court: Yes.

Exception allowed, signed and sealed accordingly. 20

JAMES C. CONNOLLY,  
Judge.

Mr. Wilson: We plead not guilty.

The jury having been empanelled and found satisfactory, they were sworn at this point.

Mr. STEIN opens the case for the State. 30

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Judge WILLIAM DUDDLESTON, produced as a witness in behalf of the State, being duly sworn on his oath, according to law, saith:

*Direct Examination by Mr. Stein:*

Q. Where do you live, Judge? A. Paterson, New Jersey.

Q. And were you living in Paterson, New Jersey, in 1908? A. Yes, sir. 40

*Judge William Duddleston—Direct*

Q. Do you know a young woman by the name or formerly of the name of Ada Hobson? A. I have met her.

Q. And do you know a man by the name of James P. Reilly? A. I have met the gentleman.

10 Q. And is James P. Reilly here in court now? A. I believe he is; sitting.

Q. And where is he? A. Right over there (pointing to the defendant).

Q. Sitting behind his counsel? A. Yes, sir, sitting behind his counsel.

Mr. Wilson: Which one; first, second or third gentleman?

A. Third one.

20 Q. Is Ada Hobson here in court; have you seen her? A. Yes, sir.

Q. (Stand up Ada Hobson.) Is that Ada Hobson?

Mr. Wilson: I object, your Honor, to that sort of identification.

The Court: I will allow that. You may take an exception.

Exception allowed, signed and sealed accordingly.

30 JAMES C. CONNOLLY,  
Judge.

A. Yes, sir.

Q. How long have you known Ada Hobson? A. I never knew her until December 16, 1908.

Q. Since that time have you known if she still lived in Paterson, have you? A. Yes, sir.

Q. Does she live in Paterson? A. Yes, sir.

40 Q. Is this Ada Hobson? A. That is the young lady I married to James P. Reilly.

*Judge William Duddleston—Direct*

Mr. Wilson: I object to that. What authority has he to marry anybody? I move it be stricken out.

The Court: I will allow it to stand and grant you an exception.

Exception allowed, signed and sealed accordingly. 10

JAMES C. CONNOLLY,  
Judge.

Q. Where did you perform the ceremony between her and James P. Reilly?

Mr. Wilson: We object as immaterial.

The Court: I will allow it; you may have an exception.

Exception allowed, signed and sealed accordingly. 20

JAMES C. CONNOLLY,  
Judge.

A. At my office, No. 571 Main Street, Paterson, New Jersey.

Q. Where is your office? A. No. 571 Main Street, Paterson, New Jersey.

Q. In Paterson, New Jersey? A. Yes, sir.

Q. In what official capacity, if any, did you perform the ceremony between Ada Hobson and James P. Reilly, Jr.? 30

Mr. Wilson: I object.

The Court: I will allow it.

Mr. Wilson: If your Honor please, as it stand now I don't want to be captious; now here is an ordinary individual that performs a marriage ceremony without—

The Court: I will allow him to go on that way at the present time. 40

*Judge William Duddleston—Direct*

Mr. Wilson: Exception.

The Court: You may except; I will allow your exception.

Exception allowed—signed and sealed accordingly.

10

JAMES C. CONNOLLY,  
Judge.

(Question repeated by the stenographer.)

A. As a Justice of Peace.

Q. Are you still Justice of Peace? A. No, sir.

Q. When were you elected or appointed as a Justice of Peace?

20

Mr. Wilson: I object to all the testimony.

The Court: I will allow the question.

A. In 1907 I was elected as a Justice of Peace.

Q. And did you perform this—and for how long were you elected a Justice of Peace? A. Five years.

Q. And you performed this marriage ceremony between these parties, Reilly, and Ada Hobson, when in 1908? What month? A. December sixteenth.

30

Q. Did you bring any record with you of the marriage? A. Yes, sir.

Q. Which you made at the time? A. Yes, sir.

Q. Is that the record which you made at the time of the marriage? A. Yes, sir.

40

Mr. Wilson: If your Honor please I am strenuous in my objection. This goes before the jury without this man showing that he was authorized in any way to perform the marriage.

*Judge William Duddleston—Direct*

Q. Where is the record of that marriage, is this the record that you have just produced? A. No, this is a copy of the record. I filed the record with the Clerk of Vital Statistics.

Mr. Wilson: I object, if your Honor please. 10

The Court: He has only stated what is the law.

Mr. Wilson: What is that?

The Court: That he files an original and keeps the copy. If this man never occupied any official position but led those people to believe that he was an officer, and he performed a ceremony and they subsequently cohabited, lived together as man and wife, and then subsequent to that time the defendant in this case married another woman, during the life of the first woman, whom he married, he would have been violating the law. So that I have allowed this evidence to go in, you have my ideas of the law in this respect. 20

Mr. Wilson: Then I except to your Honor's ruling, if your Honor will pardon me.

Exception allowed—signed and sealed accordingly.

JAMES C. CONNOLLY, 30  
Judge.

Q. Now what record was it that you say you sent to the Register of Vital Statistics of the State of New Jersey? A. Marriage records.

Q. Where did you take that record from? A. Here is the record that I filed with the clerk of the Vital Statistics.

Q. That book that you hold in your hand is a report to the State? A. Yes, sir.

Q. And you keep the stub? A. Yes, sir. 40

*Judge William Duddleston—Direct*

Q. And make that record on the stub and the record you sent to the Register of Vital Statistics, is that right? A. Yes, sir.

Q. Now the record of this marriage you have is where? A. It should be in Trenton.

10 Q. The record you have. A. It is here.

Q. And it is contained on what? The stub? A. On the stub of the marriage certificate.

Q. Now at the time you performed this ceremony was any record made of it in your office? A. No, only what I have on the stub here.

Q. So that is the record, isn't it? A. Yes, sir.

Q. And did you make that a week afterwards, a day afterwards, or an hour after the marriage? A. I made that the day of the marriage; the evening of  
20 the day of the marriage.

The Court: Was it made in duplicate?

A. Yes, sir.

The Court: What did you do with the upper edge of the stub which you now hold?

A. I filed that with the Clerk of Vital Statistics.

30 Q. At Trenton. And this stub is the record you made of the marriage yourself? A. Yes, sir.

Q. Whose handwriting is that on that stub? A. The top is my handwriting. Down below is Mr. Bush.

Q. That is the witness's signature? A. Yes, sir.

Q. All the rest of it is in your handwriting? A. Yes, sir.

Mr. Stein: I am going to offer that in evidence.

40 Mr. Wilson: I object to its going in evidence.

*Judge William Duddleston—Cross*

The Court: I will allow that in evidence, but you may, if you desire, cross-examine on it before it is admitted.

*Cross-examination on the Stub Record by Mr. Wilson:*

10

The Court: To the extent of asking him questions with relation to that exhibit.

Q. Mr. Duddleston, you said you were a Justice of Peace when you performed this marriage? A. Yes, sir.

Q. Where is your certificate? A. My certificate is down in my office.

The Court: What certificate do you refer to Mr. Wilson? 20

Mr. Wilson: His certificate as Justice of Peace.

The Court: Certificate of election?

Mr. Wilson: Now he must have a certificate before he can qualify as a Justice of Peace; it must come from the Secretary of State.

The Court: And must be signed by the Governor? 30

Mr. Wilson: Yes, sir.

The Court: You have asked the question and he said it is at his office and it is not here.

Mr. Wilson: I object to the evidence as introduced by Mr. Duddleston.

The Court: I will refuse to grant your request.

Mr. Wilson: I except to your Honor's ruling. 40

The Court: Grant you an exception.

*Judge William Duddleston—Cross*

Exception allowed—signed and sealed accordingly.

JAMES C. CONNOLLY,  
Judge.

10 Q. Mr. Duddleston, did you make these entries?

A. Myself.

Q. All of them? A. All but the witnesses.

Mr. Stein: I object to that question because only entries of this marriage are relevant in this case.

Q. That is the entry with regard to James P. Reilly? A. Yes.

20 Q. Did you know these people before they came to your place—had you ever seen them before? A. I may have met them.

Q. That is not the question I asked you. A. No, I met so many people.

Q. After the marriage when was the first time you saw Ada Hobson?

30 The Court: I do not think that is a proper question. You are now simply examining on the record. You must not go into general cross-examination until the Prosecutor has completed his examination.

Q. Is this the only record of the marriage you made? A. No, I made a record on this stub of the record.

Q. What I mean is this: other than the stub or the sheet did you make any record in any book? A. No, sir, I didn't.

40 Q. When the parties came before you you put the record on this stub? A. Yes, sir.

*Judge William Duddleston—Cross*

Q. How old are you now Mr. Duddleston? A. Forty-two.

Q. Do you know the day of the week this December sixteenth was? A. I believe it was Saturday evening.

Mr. Wilson: I object to the introduction of it. 10

The Court: I will allow it in evidence.

Mr. Willson: I object to the introduction of that for the reason it states that the marriage was a marriage performed by one Mr. Duddleston who was Justice of Peace and the William Duddleston who appears now does not show his qualifications as Justice of Peace and that he was regularly appointed—appointed or elected—and certified by the Secretary of State that he was a Justice of Peace. 20

(Book entered in evidence and marked Exhibit No. 1 on the part of the State.)

Mr. Stein: I will offer at the same time the certificate of Jacob C. Price, Medical Superintendent, showing the record of the marriage of Ada Hobson to James P. Reilly, of Paterson, Passaic County, New Jersey, December 16th, 1908, by William W. Duddleston, Justice of Peace, Paterson, New Jersey. 30

And if there is no objection to it, I desire to read into the record now the record of the Justice of Peace.

Mr. Wilson: What is that?

Mr. Stein: The record of the Justice of Peace.

Mr. Wilson: This man has not qualified as a Justice of Peace. 40

*Judge William Duddleston—Cross*

Mr. Stein: I object to the statement, he is not a Justice of Peace.

The Court: I will allow you to read in the record which was admitted in evidence.

10 Mr. Stein: (Reading number one Exhibit) "State of New Jersey, Bureau of Vital Statistics, Report of Marriage. (Groom's) Name: James P. Reilly; residence, No. 130 Marshall Street; age: Twenty-three; color: white; (single or widower); occupation: lineman; birthplace, Dover; Father's name: James P. Reilly; Mother's maiden name: Annie T. Farrell; (Bride's) maiden name: Ada Hobson; Name, if widow (blank) residence, No. 146 Mill Street; age: 20 nineteen; color: white; (single or widow); birthplace, England; Father's name: William Hobson; Mother's maiden name: Margaret Atkinson; signature of person officiating and P. O. address: William W. Duddleston, Justice of the Peace, Paterson, N. J.; date: December 16th, 1908; witnesses of the marriage: Norman E. Bush, Annie M. Bush; residence of witnesses: Thirty Twelfth Avenue, Paterson, N. J.; Thirty-seven 30 Twelfth Avenue, Paterson, N. J. This stub will not be received as certificate of marriage."

The Court: By whom is the book furnished, the stub of which you now submitted in evidence?

A. By the Clerk of the Vital Statistics. He receives it from the State, I believe. From the Clerk of the Vital Statistics he furnishes me with those 40 books and the State issues them, I believe.

*Judge William Duddleston—Cross*

Mr. Stein: I desire now to read —

Mr. Wilson: I object to the paper you are offering.

The Court: What does the statute provide about the record proving itself?

Mr. Stein: It provides: "Such transcript shall be a copy of the return as originally made or a copy of the record thereof as recorded by the Clerk or Registrar of said board or other officer and shall be signed by said Clerk or Registrar or other officer and by him certified to be a true copy of said return or record, and thereupon such certified transcript shall be received as prima facie evidence of the matters and facts therein stated." Laws of 1900, page No. 370. 10

The Court: Well, Mr. Wilson objects to it.

Mr. Wilson: I don't object to the introduction of the paper, but when I get through I am going to have something to say of what is in the paper. The paper itself of course is admissible in evidence for what it is worth. This is the law. Your Honor understands as well as I do. That that paper which is certified by the Clerk of Vital Statistics is evidence of what he certifies there, of a paper of that kind being in his office; but as to the truth of the paper that is another thing. I don't object to the paper Your Honor has in his hand. 30

The Court: I will allow it in evidence on the statement made by the attorney for the defendant. It does not appear that he objects to the paper going in evidence as a record of matters which appear in the office of the Bureau of Vital Statistics. 40

*Judge William Duddleston—Cross*

Mr. Wilson: That is exactly it.

The Court: But there are matters contained in that which he will attack outside of and apart from the evidence.

10 (Certificate of Marriage entered into evidence and marked Exhibit No. 2 for the State.)

Mr. Stein: (Reading Exhibit No. 2 State):  
 “State of New Jersey, Bureau of Vital Statistics. I, Jacob C. Price, Medical Superintendent of the Bureau of Vital Statistics of the State of New Jersey do hereby certify that the foregoing and annexed is a true copy of a certain certificate of marriage, as taken from and compared with the original now remaining on file in my office. In testimony whereof I have hereunto set my hand and affixed the Official Seal of said Bureau, at Trenton, this sixteenth day of November, A. D. 1914. Jacob C. Price, M.D., Medical Superintendent, Attest: David I. Smith, Registrar. State of New Jersey, Bureau of Vital Statistics, Certificate of Marriage. Full name of husband, James P. Reilly. Maiden name of wife, Ada Hobson. Place of marriage, Paterson, Passaic County, New Jersey. Date of Marriage, December 16, 1908. Residence (Groom’s) No. 130 Marshall Street, Paterson. Age, twenty-three; number of marriage, one. Color, white; occupation, lineman; birthplace, Dover, New Jersey. Father’s name, James P. Reilly; Mother’s name, Annie T. Farrell. (Bride’s) Resident, 146 Mill Street, Paterson, age, nineteen; number of marriage, one; color, white; name, if a widow (blank); birthplace, Eng-  
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*Judge William Duddleston—Cross*

land; Father's name, William Hobson; Mother's maiden name, Margaret Atkinson; Witnesses: Norman E. Bush, Annie M. Bush. Signature of person officiating and P. O. address, William W. Duddleston, Justice of the Peace, Paterson, N. J.

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*Cross examination by Mr. Wilson:*

Q. Mr. Duddleston, how long have you been living in Paterson? A. I was born in Paterson.

Q. And you say you were elected Justice of the Peace in 1907? A. I think it was in the year 1907.

Q. Don't you know? A. No, I wouldn't say for sure.

Q. When did you commence to act as Justice of the Peace? A. In the following May, when I was elected in November.

20

Q. Did you have an office as Justice of the Peace in Paterson? A. Yes, sir.

Q. I understand you to say that the paper you presented here, that is an alleged record of James P. Reilly, was one furnished you by the Secretary of State? A. By the Clerk of Vital Statistics.

Q. Are you sure of that? A. He is the gentleman I received it from.

30

Q. Are you sure of that? A. Yes, sir.

Q. Do you know a man named Holland? A. Yes, sir.

Q. He was a Justice of the Peace in Paterson, too, wasn't he? A. Yes, sir, he was. I suppose some of his records—

Q. You answer my question. I move that be stricken out. A. I-know what is there.

The Court: No talk like that. Counsel

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*Judge William Duddleston—Cross*

will simply ask questions; the witness will answer them.

10 Q. This is not a paper sent you by the Secretary of State's office, is it? A. That is a paper——

Q. No, answer my question. A. That is a paper received from the Clerk of Vital Statistics, Paterson, New Jersey.

Q. Do you know Franklin Holland? A. I do.

Q. He was a Justice of the Peace in Paterson? A. He was a Justice of the Peace in my office.

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

20 Q. And he had been a Justice of the Peace for some time, hadn't he? A. For a number of years.

Q. And this is a book that was used by Franklin Holland, isn't it? A. Sometimes and sometimes by myself.

Q. Holland performed a great many marriages, didn't he? A. He did.

Mr. Stein: Is that cross examination? I am asking this man about the marriage he performed with this defendant.

The Court: I will allow this.

30 Q. Do you know the occasion of the marriage of Ada Hobson with James P. Reilly? A. I do.

Q. You remember it distinctly? A. I do.

Q. You remember the parties when they came before you? A. I do, yes, sir.

40 Q. And the day or the evening that you say you married Hobson with Reilly; you recollect the girl very well, and Reilly very well? A. I knew they at that time came in my office. I don't know as I ever met the people before that time.

*Judge William Duddleston—Cross*

Q. When did you next see Ada Hobson? A. That I couldn't say.

Q. That is you couldn't or wouldn't say?

A. I could not say.

Q. Do you remember being a witness; subpoenaed as a witness in this court in this case some time ago? A. I do, yes, sir.

10

Q. Was that the first time you came to Elizabeth? A. Yes, sir, that is the first time—yes, sir.

Q. On that occasion do you remember seeing a young woman named Ada Hobson here? A. Yes, sir.

Q. You spoke to her, didn't you? A. I did, yes.

Q. You didn't know her before you spoke to her, did you? A. Oh, yes, I did; I asked her if she wasn't Miss Hobson.

20

Q. Didn't you say to her, "Are you Ada Hobson?" A. Well, that I couldn't just recall my words; what I said at that time.

Q. And "are you the young woman that I married in Paterson?" A. Did I say "are" or "ain't"?

Q. I am asking you the question. A. I don't remember.

Mr. Wilson: Don't mind correcting my English. I will get my English straight if you will get your yarn straight.

30

Mr. Stein: I object to those remarks by counsel.

The Court: I will allow those remarks to stand to show just how this case is being conducted.

Q. Didn't Ada Hobson say to you, "I don't know you"? A. That I couldn't say.

Q. And didn't you say, "Why didn't I marry you"? A. I said—

Q. No— A. Yes.

40

*Judge William Duddleston—Cross*

Q. And she says "no you didn't," didn't she say that? A. No, sir; no, sir.

Q. And didn't she say to you, "A Mr. Holland married me"? A. No, sir, she didn't.

10 Q. And didn't you say to her that "Holland was in my office"? A. No, sir.

Q. She told you, didn't she, that you didn't marry her? A. No, sir.

Q. Why did you ask her if she was Ada Hobson if you know her? A. I don't know why I asked her. I said, "You are Mrs. Hobson, aren't you?" that is what I said.

Q. You asked her if she was Mrs. Hobson? A. Yes, sir.

20 Q. You knew she wasn't Mrs. Hobson, didn't you? A. That she wasn't?

Q. Yes? A. Yes, she was Mrs. Reilly, but she goes under the name of Miss Hobson.

Q. Why did you ask her if she was Miss Hobson, if you knew you had married her to a man named Reilly? A. That is the name she goes under at the present time.

Q. Then she goes under the name of Ada Hobson, doesn't she? A. I believe she does.

30 Q. What did you do with the other portion of this certificate? A. I filed it with the Clerk of the Vital Statistics.

Q. Are you sure? A. Positive.

Q. And is that the only place you ever filed it? A. Yes, sir.

Q. You are sure of that? A. Yes, sir.

Q. Did you ever file a record of this marriage any other place than the Bureau of Vital Statistics? A. No, sir.

40 Q. Did you ever file a record of this marriage any other place than the Bureau of Vital Statistics? A. No, sir.

*Judge William Duddleston—Cross*

Q. You didn't know the law required you to, did you? A. I don't think it did at that time.

Q. You mean at that time?

The Court: What part of the Vital Statistics did you file it with?

10

A. Paterson.

Q. City Clerk? A. Yes, sir.

The Court: And it was his duty to transmit it to Trenton?

A. Yes, sir.

Mr. Wilson: That is what I am asking.

20

Q. Was it at Paterson? A. Yes, sir.

Q. When did you file it there? A. It may have been the eighteenth or nineteenth, I couldn't say.

Q. When was it? A. I don't know which it was.

Q. Didn't you file a record of this alleged marriage with the City Clerk of Paterson, within a year? A. Within a year of that time—

Q. No, within a year now? A. No, sir, I did not.

Q. When did you file it? A. In December, 1908. But the date, I couldn't be positive what day I filed it. It was in December, 1908, I filed it.

30

Q. Is Mr. Holland alive? A. No, sir, he is not.

Q. When did he die? A. He died in 1910.

Q. I find two blank reports of marriage.

Mr. Stein: Don't answer until I object.

The Court: I will allow him to show there was two blank reports of marriage.

Q. I find that there are two blank reports of marriage, and then there is a report of marriage

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*Judge William Duddleston—Redirect*

by Holland; then I find there is another blank report of a marriage, can you explain that?

The Court: Is that so?

10 A. Evidence is here, but why this here is blank I can't say. There is two blank. Mr. Holland used the same book as I did. But the cause of them being blank, I don't know.

Mr. Stein: I object for this reason. We are proving the record of this marriage. I don't care whether that man Holland forgot in his old age to use several blanks; we are proving the record of this marriage.

20 The Court: I will allow it.

Q. After this alleged marriage of Miss Hobson and Reilly, when did you next see Reilly, Mr. Duddleston? James P.? A. That I couldn't say when I met him.

Q. Was it lately? A. I never remember seeing him until here this morning. I might have run across him several times.

30 Q. But you never remember? A. No, sir. I met so many people that I can't tell who I met.

Mr. Wilson: That is all.

*Re-direct examination by Mr. Stein:*

Q. Mr. Duddleston, the witnesses, Norman E. Bush and Annie M. Bush, do you know them?

A. I met them there the same evening. I married Mr. and Mrs. Bush the same evening I married Mr. and Mrs. Reilly.

40 Q. Did you know them before that? A. No, sir.

*Ada Hobson—Direct—Cross*

Q. Do you know where they are now? A. Mrs. Bush is dead.

Q. Do you know that? A. That is the accounts in the paper.

Q. Where is Mr. Bush? A. He is out of town, I believe, he left town shortly after.

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ADA HOBSON, produced as a witness, on behalf of the State, being duly sworn on her oath, according to law, saith:

*Direct examination by Mr. Stein:*

Q. You are a married woman? A. Yes, sir.

Q. What is your married name? A. Reilly.

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Q. Reilly. Who is your husband? A. James Reilly.

Q. Is he here in Court? A. Yes, sir.

Q. Where is he? A. Over there.

Q. How long ago did you marry him? A. Six years. Married on the sixteenth of December.

Q. Where? A. In Justice Holland's office.

Q. In Justice Holland's office; who performed the ceremony? A. I don't remember the man, but Mr. Duddleston said he did.

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Q. You wouldn't say he did not, of course, because you don't remember, is that the idea? A. Yes, sir.

Q. It was in Justice Holland's office, and Mr. Duddleston said he did it? A. Yes, sir.

Q. And is this the same Jimmie Reilly you married? A. Yes, sir.

*Cross examination by Mr. Wilson:*

Q. Mrs. Reilly, do you know the day of the marriage? A. December sixteenth, 1908.

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*Rev. Frank A. Smith—Direct*

Q. And after the marriage how long did you see your husband?

Mr. Stein: I want—

A. We lived together one week.

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Mr. Stein: If your Honor please I must urge for the purposes of the State this be confined to a strict cross examination. I make that known to Your Honor now so the Court might see through some of the things I anticipate will happen.

The Court: You will have to make her your own witness and we don't want you to make her your own witness now while she is on the stand for the State. You can call her later if you desire.

20

Q. Mrs. Reilly, do you remember the man that married you? A. No, I do not.

Q. Was it a young man or an old man? A. I couldn't say that.

Mr. Wilson: I suppose a little later on. I suppose I could make her my witness now.

The Court: I know, but it will confuse things.

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Mr. Wilson: I understand; all right That is all.

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REV. FRANK A. SMITH, produced as a witness on behalf of the State, being duly sworn on his oath, according to law, saith:

*Direct examination by Mr. Stein:*

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Q. Mr. Smith, where do you reside? A. No. 1262 Waverly Place, this city.

*Rev. Frank A. Smith—Direct*

Q. And you are a minister of the Gospel? A. I am.

Q. Connected with what church? A. I am pastor of the Central Baptist Church of this city.

Q. Do you know the defendant who sits here at this table? A. Yes, sir.

Q. Did you ever see him before? A. Yes, sir.

Q. Do you know a young woman by the name of Abbie Louise Miller? A. I do.

Q. Did you ever see her before? A. Oh, yes, many times.

Q. And the occasion of your first acquaintance with them, firstly where did you meet these two?

A. I met Abbie Miller when her mother died a great many years ago, in my first parish when I was called to attend the funeral; and then the first time I knew Reilly to identify him by name was when he was in my house to be married. I had seen him before that; he was a lineman working on wires on my street.

Q. Did you perform the marriage ceremony between Abbie Miller and James P. Reilly? A. Yes, sir, I did.

Q. When was that? A. Thirtieth of January, early in the evening.

Q. Have you a record of the marriage with you? A. I have a stub.

Q. Will you please produce it? (Witness produces book with stub in it.) A. The stub is part of the license; the parties go to the City Clerk and obtain a license.

Q. Just tell us what is that the record of? A. That is the record of the marriage between James P. Reilly and Abbie Louise Miller.

Q. Which you retain? A. Which I retain.

Q. Who made this? A. That was the marriage return with the license on the back.

*Rev. Frank A. Smith—Direct*

Q. Where was it returned to? A. That was put into an envelope addressed to the City Clerk, and put in a mail box.

Q. By whom? A. By my own hand.

10 Q. That has to be entered? A. Goes to the City Clerk and then Bureau of Vital Statistics.

Q. That is your own record? A. That is my own private record.

Q. Is it all in your handwriting? A. All of it is in my own handwriting.

Mr. Stein: I offer that in evidence.

20 Q. There isn't any question about you being a regularly ordained minister? A. Twenty-two years ago I begun my professional career.

Mr. Wilson: I admit he is a minister of the Gospel since this date.

Q. Have you got your—

30 The Court: The stub which you have here, and from which the certificate which you mailed to the City Clerk was taken, was furnished to you by the City Clerk originally?

A. That is the license book, Your Honor.

The Court: And the stub which you have here shows all that appears on the face of that certificate which you say you returned?

A. Yes, it does.

40 Mr. Wilson: The young lady, what was her name?

*Rev. Frank A. Smith—Direct*

A. Abbie Louise Miller.

(Certificate stub book of the second marriage entered in evidence and marked Exhibit No. 3, State.)

Mr. Stein: May I also at this time offer in evidence the Bureau of Vital Statistics stub record showing this marriage?

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Mr. Wilson: There is no objection to them.

(Certified copy of record of second marriage entered in evidence and marked Exhibit No. 4, State.)

Mr. Stein: I desire to read into the record, if your Honor please, the record of the marriage as retained by the Rev. Frank A. Smith. (Reading.) State of New Jersey, Bureau of Vital Statistics; stub to be retained by person solemnizing marriage. Report of Marriage: (Groom's) Name: James P. Reilly, Jr. Residence, 709 Jackson avenue; age, twenty-eight; color "w"; occupation, electrician; single, widowed or divorced, single and divorced crossed out; No. of marriage, two; birthplace, Dover, N. J.; father's name, James P. Reilly; mother's maiden name, Mary Farrell. (Bride's) maiden name, Abbie D. Miller; name, if widow (blank); residence, No. 709 Jackson avenue; age, twenty; color, "w"; birth place, Morristown, N. J.; single, widowed or divorced, widowed and divorced crossed out; No. of marriage, one; father's name, Lawrence H. Miller; mother's maiden name, Abbie L. Lindsey; signature of person or office of society officiating and P. O. address, Frank A. Smith, Elizabeth, N. J., date, Jan. 30, 1914, a. m., 8 p. m.; witnesses of the marriage,

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*Rev. Frank A. Smith—Direct*

Clara Bird, Blanche V. Smith; residence of witnesses (blank)."

I desire to read into the record the Certificate of the Vital Statistics, certifying to this marriage. (Reading.)

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"Certified copy of Marriage License and Certificate: James P. Reilly, Jr., and Abbie L. Miller, Elizabeth, N. J., Jan. 30th, 1914. State of New Jersey, Bureau of Vital Statistics. Certificate and Record of Marriage: Full name of husband, James P. Reilly, Jr., maiden name of wife, Abbie Louise Miller; place of marriage, Elizabeth, New Jersey; date of marriage, January thirtieth, eight p. m., 1914. (Groom's) Residence, No. 709 Jackson Avenue, Elizabeth; age, twenty-eight years; color, white; single, widowed or divorced, single and divorced crossed out; number of marriage, two; occupation, electrician; birthplace, Dover, New Jersey; father's name, James P. Reilly; mother's maiden name, Mary Farrell. (Bride's) Residence, No. 709 Jackson Avenue, Elizabeth; age, twenty; single, widowed or divorced (not crossed out); number of marriage, one; color, white; name, if a widow (blank); birthplace, Morristown, N. J. father's name, Lawrence H. Miller; mother's maiden name, Abbie L. Lindsey; witnesses, Mrs. Clara Bird; Mrs. Frank A. Smith; residence of witnesses (blank); signature of person or officer of society officiating and P. O. address, Frank A. Smith, Central Baptist Church; number of license, eighty-six; County of Union, City of Elizabeth; This is to certify that any person, religious society, institution or organization authorized by law

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*Rev. Frank A. Smith—Direct*

to perform marriage ceremonies within the State of New Jersey to whom this may come, he or they, not knowing any lawful impediment thereto, is hereby authorized and empowered to solemnize the rites of matrimony between Abbie Louise Miller, of Elizabeth, in the County of Union and State of New Jersey, and James P. Reilly, of Elizabeth, in the County of Union and State of New Jersey, and to certify the same to be the said parties, or either of them, under his hand and seal in his ministerial or official capacity. In testimony whereon I have hereto set my hand and affixed the seal of said town, township or city of Elizabeth, this twenty-ninth day of January, nineteen hundred and fourteen, 11:30 a. m. John F. Kenah, City Clerk. State of New Jersey, Bureau of Vital Statistics. I, Jacob C. Price, Medical Superintendent of the Bureau of Vital Statistics of the State of New Jersey, do hereby certify that the foregoing and annexed is a true copy of a certain certificate of marriage, as taken from and compared with the original now remaining on file in my office. In testimony whereof I have hereto set my hand and affixed the official seal of said Bureau, at Trenton, this sixteenth day of November, A. D., 1914. Jacob C. Price, M. D., Medical Superintendent; Attest: David I. Smith, Registrar." 10  
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Q. Mr. Smith, at the time you performed this ceremony you asked the groom among other things, according to your record, the question, whether or no he was single?

Mr. Wilson: I object to the question. It is a leading question. 40

*Mrs. Abbie Miller Reilly—Direct*

Q. What did you ask him about his then state—  
A. I asked him if he had been married before.

Q. And what was his answer? A. Second.

Q. Did you ask him whether that wife was still living? A. I asked him whether he was a widower or divorced.

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Q. What did he say? A. He said he was a widower.

Mr. Stein: That is all.

Mr. Wilson: That is all, sir.

*By Mr. Stein:*

Q. Blanche Smith, mentioned here, is your wife?  
A. Yes, my wife.

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Mr. Stein: That is all.

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MRS. ABBIE MILLER REILLY, produced as a witness, being duly sworn on her oath, according to law, saith:

*Direct examination by Mr. Stein:*

30 Q. Since when are you calling yourself Abbie Miller? A. Well, I think it is about two weeks ago that Mrs. Clark informed me. About two weeks ago.

Q. Louder. Are you a married woman? A. I thought I was.

Q. Well, whom did you marry? A. James P. Reilly.

Q. The man sitting here at the table? A. Yes, sir.

40 Q. And where did you marry him? A. Rev. Frank Smith's house, January thirtieth.

*Mrs. Abbie Miller Reilly—Direct*

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

Q. How long did you live with him? A. I lived with him from then up until he was arrested.

Q. And where did you come from this morning to get to this Court? A. I came from the hospital.

Q. What were you doing there? A. Why, I was taken there last night. 10

Q. What is your physical condition? A. Confinement.

Q. You are about to be confined? A. Not just about. I thought I was.

Q. And found out this morning it was all right to come up here, did you? A. Yes, sir.

Q. Who is the father of your unborn child? A. James P. Reilly.

Q. Has this man any other child? Has this man a child living? If you know? 20

Mr. Wilson: I object.

A. He has.

The Court: On what ground?

Mr. Wilson: It will be hearsay.

The Court: He says "if you know."

Mr. Wilson: Well, she must have got the information from somebody and is incompetent to testify. 30

(Question repeated by the stenographer.)

The Court: I will allow the question.

Mr. Wilson: I except to Your Honor's ruling.

The Court: Yes.

Exception allowed—signed and sealed accordingly. 40

JAMES C. CONNOLLY,  
Judge.

*Mrs. Abbie Miller Reilly—Direct*

A. He has.

Q. With whom was that child living after the marriage? A. With me.

Q. What was it, a boy or a girl? A. A little girl.

10 Q. Do you know by what woman he had this child? A. By the——

Mr. Wilson: I object to that.

The Court: I will rule that out.

Q. Did he tell you by what woman he had this child? A. Why the one that is dead.

Q. By the one that is dead? A. Yes, sir.

20 Q. That one was the one that is dead? What was her name? Did he tell you? A. Mary McGee.

Q. Did you know, when you married James P. Reilly, that he had a wife living? A. I did not. He posed to me as a widower.

Q. Where did you meet him? A. At my cousin's house.

Q. Where was that? A. No. 08 Westfield Avenue.

Q. How long after you first met him that you became married to him? A. Two months.

30 Q. Do you know his mother? A. I do.

Q. Did she ever come to visit you? A. Yes, sir.

Q. What was it that firstly brought his mother to your house? A. Why, just to spend a day there, as near as I can tell.

Q. You and he lived happily together after you were married? A. Why, partly so, I thought.

Q. Yes, partly so. Did the mother of Reilly call upon you at any time when you were not living happily? A. She did.

40 Q. Who got her to go there, if anybody did?

*Mrs. Abbie Miller Reilly—Direct*

Mr. Wilson: I object to that, if Your Honor please, that is hearsay.

A. I couldn't tell you.

The Court: I will rule that out.

Mr. Stein: I said who got her to go there, if anybody did? Suppose she was the one? I withdraw that question and put it in another way.

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Q. Did Mrs. Reilly, the mother of this man, come to your house as a result of any trouble you had with him?

Mr. Wilson: I object to that.

The Court: I will rule it out.

20

Q. Did you ever have any talk—did Mrs. Reilly, the mother of James P. Reilly, ever have any talk with her son in your presence concerning his past life? A. She did.

Q. When was that? A. That was a week previous to my being married two months. I can't tell you the date.

Q. Week previous to your being married two months? A. Yes, sir.

30

Q. According to that you were married about a month and three weeks when this happened? A. Must have been.

Q. Where were you living? A. No. 709 Jackson Avenue.

Q. And how did your mother-in-law, Mrs. Reilly, come to be there that day? A. I couldn't exactly tell you what brought her down.

Q. Well, what was the talk that took place between Reilly and his mother in your presence?

40

A. There was several conversations.

*Mrs. Abbie Miller Reilly—Direct*

Q. Well, go on and give us some of them. A. Well, at the time, the most important time—

Q. Let me put it for you this way: How did you first find out that Reilly had another woman living that he was married to? A. His mother came down there after there had been a little bit of trouble.

10

Q. Between you and your husband? A. Yes, sir. His mother came down there thinking she could help things out.

Mr. Wilson: Was Reilly there then?

A. He wasn't.

Q. Only tell us what happened when Reilly came in. Never tell anything that Mrs. Reilly said to you unless he was present; and you can tell everything she said to her son in your presence. Go on.

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A. It was at an evening then. And she informed him that he was a bigamist.

Q. How did she come to tell him he was a bigamist? A. Well, I wasn't in the room when they first started, but I heard those words that he was a bigamist.

Q. When you came out was that the first you had heard, that he was a bigamist? A. It was.

30

Q. When you came out there, Mrs. Reilly, they were having some talk there; when you came out, what was it they were saying as near as you can remember, firstly? A. The first words I remember that Mr. Reilly said he was going to quit the bunch and he was getting his clothes ready to leave when his mother told him he was a bigamist.

Q. How did she say it? How did she say you are a bigamist? Do you remember her exact words? A. I can't remember her exact words.

40

Q. What did Reilly say to that? A. I don't remember what he said.

*Mrs. Abbie Miller Reilly—Direct*

Q. What did Mrs. Reilly say to you in his presence after that? A. She turned to me and said we would go down and get a warrant sworn out for him because he was going to run away.

Q. Did you go? A. Yes, sir, I did.

Q. Who went with you? A. Mrs. Reilly.

Q. The mother of James? A. Yes, sir.

Q. Did you swear out a complaint? A. I did.

Q. Then where did you go with Mrs. Reilly, the mother of James? A. Up to my cousin's house.

Q. When did you next see Reilly again? A. I think it was two or three days after, I don't know which.

Q. Where did you see him? A. At the home, over on Jackson Avenue.

Q. At your own home? A. Yes, sir.

Q. What time of day did he come in? A. At night.

Q. What hour? A. I couldn't tell you the hour.

Q. What was said between you? A. It was after supper.

Q. What was said between you, Mrs. Reilly? A. I just spoke to him as he came in and there wasn't much passed between Mr. Reilly and myself when he came in.

Q. There wasn't much? A. No, sir.

Q. What did you say to him? A. I just said "hello" to him.

Q. What did he say to you? A. I couldn't tell you.

Q. Did he say anything to you? A. I don't remember.

Q. What was next said? A. I don't remember anything else until the bell rang.

Q. Was there anything said at all between you about police headquarters and you going down there? A. We had a conversation, but I don't remember what it was.

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*Mrs. Abbie Miller Reilly—Direct*

Q. Did he ask you any questions about your going down to police headquarters? A. I don't think he did.

Q. And your mother came in while he was there, you say? A. Yes, sir.

10 Q. What did she say? A. I don't know what she said, as I was in my room with a nervous chill.

Q. Did you have that before he came in, that nervous chill? A. No, sir.

Q. You got it after he came in? A. Yes, sir.

Q. What happened after that? A. I tried to plead with Mr. Reilly and see what the trouble was

Q. What is that? A. I tried to plead with Mr. Reilly and see what the trouble was.

20 Q. Plead with Mr. Reilly to see what was the trouble. What trouble were you pleading with him about? A. Why he went away.

Q. What did he say? A. He wouldn't give me any satisfaction.

Q. What did you do or say? A. I didn't bother any more with him, and went in and told his mother what he done.

Q. In his presence? A. No, sir, not in his presence.

30 Q. Where did you go then? A. I was in the bed room with his mother.

The Court: Speak louder.

Q. With his mother. Did he go in there? A. No, sir.

40 Q. Now, then, did you—what did you do when you heard he was a bigamist and had another wife living; what did you next do? Did you go to anybody and do anything about it? I don't want to press you too hard. Tell the story. A. I handed

*Mrs. Abbie Miller Reilly—Direct*

the girl's name that his mother had gave me and the justice that married him; I handed that to detective Hess, and he was going down to investigate next morning.

Q. Did Reilly ever find out? A. Find out what?

Q. That you had given it to Hess? A. Yes, sir. 10

Q. Was there anything said by Reilly in the presence of his mother about giving them to Hess?

A. He owned up to being married to her.

Q. How did he own up? A. He said it was true.

Q. What was true? A. That he had married Ada Hobson.

Q. Did he ask you anything then as to what you were going to do about it or anything? A. He did.

Q. What did he say? A. I don't remember exactly what his exact words were. 20

Q. As near as you can remember? A. Well, really, I couldn't exactly tell you what he did say.

Q. Mrs. Reilly, do you remember something that his mother said then that you ought to do in his presence? A. Yes, sir.

Q. What was it? A. She said that he would get a divorce from Ada Hobson and remarry me.

Q. And remarry you. What did Jim say? A. He said that would be all right, he would do it.

Q. Did the mother-in-law say anything to you that you should say in the meanwhile, while this was going on? A. I don't understand what you mean. 30

Q. She thought the best thing for him to do was to get a divorce? A. Yes, sir.

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

Q. Was there any suggestion as to how you should live, what you should do in the meanwhile?

A. We should part.

Q. What to do, if anything? A. Go up to his mother's house. 40

*Mrs. Abbie Miller Reilly—Direct*

Q. Under what name were you to go, if any?

A. We didn't discuss that at all.

Q. Did not discuss that part. What did Jim say about it? A. He agreed to separate, so did I. I said it didn't look right for him to get a divorce and me to be as his wife, and he finally agreed to—

10

Q. Agreed to go away from him? A. Yes, sir.

Q. And he was to try to get a divorce? A. I don't know about that.

Q. What did he say about that? A. I agreed to leave him. We agreed to break up and I to go to his mother's and he to stay in town.

Q. Now then when you found out he had a wife living in Paterson by name of Ada Hobson, did you also try to find out when it was that he married the woman—named Mary—when he married the woman by whom he had this little child you were keeping for him? A. He told me that before.

20

Q. Yes. But when you found out that before he married that second wife, he was already married to Ada Hobson, did you talk that over with him? A. I don't remember.

Q. You don't remember whether you talked that over or not. Now after you were married to Reilly, the defendant was he—so far as you know—was he acquainted or did he go with another woman? A. Well, I couldn't say as far as I know. I heard he did. It was only hearsay.

30

Mr. Stein: Then I ask myself that be stricken out.

The Court: And I will order that stricken out.

Q. Have you been in correspondence during the time you were living with Reilly, with Reilly's mother? A. I have.

40

*Mrs. Abbie Miller Reilly—Direct*

Mr. Wilson: I object if your Honor please.  
I don't see how it is competent.

The Court: I don't know yet; we will see.

(Letter marked No. 5 for Identification  
for State.)

Q. I show you a letter No. 5 for Identification  
and ask you whether you ever received that letter?

10

A. I did.

Q. Who wrote that letter? A. His mother.

(Letter marked No. 6 for Identification for  
State.)

Q. I show you another marked No. 6 for Identifi-  
cation and ask you if you know who wrote that  
letter, and whether you received it? A. No, I  
didn't receive it.

20

Q. You didn't receive that one? A. No, sir, it  
was sent to his mother.

Q. That was sent to his mother.

(Letter marked No. 7 for Identification for  
State.)

Q. I show you No. 7 Marked for Identification  
and ask you whether you received that letter? A.  
Yes, sir.

30

Q. And whose handwriting is that? A. His  
mother's.

(Letter marked No. 8 for Identification for  
State.)

Q. I show you No. 8 that is addressed to Mrs.  
Bird; who is Mrs. Bird? A. That is my own.

Q. You didn't receive this No. 8 for Identifica-  
tion, either, did you? A. No.

40

*Mrs. Abbie Miller Reilly—Cross*

(Letter marked No. 9 for Identification for State.)

10 Q. Here is one, No. 9 for Identification, and ask you to look those three pages over. A. They were sent in my name; a part to Mr. Reilly and part to myself.

Q. They were sent in your name to you for you and Mr. Reilly to read? A. Yes, sir.

Q. Did you get the letter? A. Yes, sir.

Q. Who sent the letter? A. Mrs. Reilly.

Q. Mrs. Reilly, the mother of James P.? A. Yes, sir.

*Cross-examination by Mr. Wilson:*

20 Q. How old are you, Mrs. Reilly? A. I am twenty-one.

Q. And you know James Reilly? A. I do.

Q. And you knew him for two months before you married him? A. Yes, sir.

Q. And it was a love match, wasn't it? A. I think so.

Q. Well he says so. James has always thought a great deal of you hasn't he? A. I thought he did, but I couldn't tell you—

30

The Court: Next question.

Q. You found out first that Ada Hobson was alive, didn't you, from the mother? A. I didn't find out she was alive, I found out he was a bigamist, that he had married Ada Hobson.

Q. You heard that out from his mother? A. I did.

40 Q. And how long after you were married, A. About, it was a week previous to me being married two months.

*Mrs. Abbie Miller Reilly—Cross*

Q. You spoke to James about it, didn't you? A. I did.

Q. And James said: "I thought she was dead?"

A. He didn't.

Q. What did he say? A. I don't remember his words, but I know he didn't say that.

Q. Didn't he say he thought she was dead?

10

The Court: She said he didn't, no.

Q. Didn't he cry? A. Yes, sir.

Q. And James said: "I am sorry, I will do everything in my power?" A. He did.

Q. And he said next—didn't he say: "I can't live with you because I have been doing wrong?" A. No, sir.

Q. Didn't he say he would take care of you? A. He offered to support me before this came up and I wouldn't let him.

20

Q. And his mother came down and said: "We will see if this matter can't be adjusted?" A. I don't know what she did when she came down.

Q. She said, "James will have to live here until the thing is fixed in Court?" A. I don't know.

Q. She said you must come and live in my house, didn't she? A. No, it was Mr. Reilly suggested me going up there.

30

Q. And you went up to his mother's house in Paterson? A. Yes, sir.

Q. And James Reilly stayed here? A. Yes, sir.

Q. And James Reilly said: "I will do everything I can possibly do." A. There wasn't anything more said as to the night we agreed to part.

Q. James said: "I will love you just as much." A. He did.

Q. And then he says: "Stay with my mother," and you stayed five weeks, didn't you? A. I stayed

40

*Mrs. Abbie Miller Reilly—Cross*

from the twenty-first of April until the eighth of May.

Q. And then James said "Now I am doing everything I can, but the law says I can't live with you until this is adjusted?" A. No, sir.

10 Q. What is that? A. He did not.

Q. He didn't live with you after that time? A. We did.

Q. Did you? A. I came back and lived with him.

Q. After you knew he had a first wife living? A. Yes, sir.

Q. Why did you do that? A. Simply because his mother and father coaxed me to give him another trial.

20 Q. You were willing to give him another trial? A. I was.

Q. Then he explained to you that he had not seen Ada Hobson for five or six years. A. He didn't explain at all.

Q. You knew that he hadn't known her over five or six years? A. No, sir.

Mr. Stein: I object.

The Court: I will allow the question and answer.

30

Q. Then you lived with him for how long after you knew this? A. From the twenty-eighth of May, to twenty-first of June.

Q. Why did you do that? A. Simply because he denied he had been married after he owned up to it.

Q. You didn't find out, did you? You didn't really make any inquiries? A. I handed it to a man named Hess, but I withdrew.

40 Q. You did not make a complaint yourself against your own husband for bigamy? A. No, sir.

*Mrs. Abbie Miller Reilly—Cross*

Q. Well, he finally left you, didn't he, by saying that the law wouldn't let him live with you any longer? A. No, sir, he left me, but it wasn't with that understanding?

Q. What is that? A. He left me, but it wasn't with that understanding. 10

Q. Was he arrested afterwards? A. On the twenty-first of June.

Q. What is that? A. He was arrested on the twenty-first of June.

Q. While he was living with you? A. Yes, sir.

Q. You didn't make any complaint against him?

A. No, I don't know as a positive fact—

The Court: What difference will that make; she is not being tried for any crime she committed. 20

Mr. Wilson: It proves this: this woman is not injured.

Mr. Stein: The state is injured.

Mr. Wilson: She lives with this man until the twenty-first of June, and then while he is living with her a complaint is made by some outsider other than that woman, and he is dragged from the house, when the man has made up and he is trying to do everything he can to repair the damage. 30

The Court: She is not being tried for the commission of any crime. I will not allow you to go any further with that kind of testimony.

Q. You have said, Miss Miller, that you didn't want to prosecute your husband? A. I did.

Q. And he has told you all along that he is willing to rectify any mistake that he made? 40

*Mrs. Abbie Miller Reilly—Cross*

Mr. Stein: I object.

The Court: I will not allow that question.

10 Q. Now the Prosecutor may object to this; don't answer it. You didn't want to prosecute James P. Reilly, did you?

The Court: I will not allow that question even though the Prosecutor did not object to it.

Mr. Wilson: I except to Your Honor's ruling.

Exception allowed—signed and sealed accordingly.

JAMES C. CONNOLLY,  
Judge.

20 *By Mr. Stein:*

Q. When do you expect your child? A. In February.

Q. In February. That is all.

*By Mr. Wilson:*

Q. You say you first found out about this sometime in April? About the bigamy?

Q. Yes? A. In March.

30 Q. You knew then that he had a previous wife living? A. No, sir; I knew it then.

Q. And you were living with him then? A. I was.

Q. And then you went away in April up to his house A. Up to his mother's.

Q. What is that? A. Up to his mother's.

Q. And you came down in May? A. Yes, sir.

Q. And lived until June with him? A. Yes, sir.

40 Q. Then you must have got pregnant with him after you came from his mother's house in May?

*Mrs. Abbie Miller Reilly—Cross*

The Court: What difference does it make when she got pregnant?

Mr. Wilson: As effecting her credibility, what she has testified to. She lived on\* in March. That is in March she knew he was guilty of it. From what Reilly said they must have parted in April, which they did. She knew then that he had a previous wife living, she comes back and lives with him in April, and she became pregnant then.

10

The Court: There is testimony brought out by the State of the fact that she is pregnant, and I will allow, therefore, you to ask her when she became so.

Q. Then you must have become pregnant in the latter part of April or May? A. Must have been.

20

Q. What is that? A. I couldn't exactly tell you.

Q. There is just one question I want to ask you. You went to Mrs. Reilly's house when? A. Twenty-first of April.

Q. And you came back to your own place in Elizabeth, when? A. Eighth of May. I came to my cousins. We started housekeeping the thirteenth of May in furnished rooms.

Mr. Wilson: That is all.

30

*By Mr. Stein:*

Q. You told Mr. Wilson a little while ago, Mrs. Reilly, that after he was accused of being a bigamist by his mother and owned up to it, he subsequently denied it. A. He did.

Q. And it was after he denied it again that you went back with him for another trial?

40

*Mrs. Ada Hobson Reilly—Direct—Cross*

The Court: That is the testimony.

Mr. Stein: The State is going to rest.

The Court: There are some letters that are marked for identification. Is it not your intention to offer them in evidence? You have got to make your case now.

10

Mr. Stein: I may have them offered in rebuttal.

Mr. Wilson opens the case for the defendant, Mrs. Ada Hobson Reilly. Recalled as a witness for the defense.

*Direct examination by Mr. Wilson:*

20 Q. Mrs. Reilly, after your marriage to James P. Reilly, did you live with him? A. One week.

Q. One week? A. Yes.

Q. Then what happened? A. Then I left him.

Q. And when did you next see him? A. I never saw him until I saw him in jail.

Q. How long ago is that? A. I don't know how long; about two months ago, isn't it?

Q. Yes. Is that the first time since the day of the marriage? A. Yes, sir.

30

*Cross examination by Mr. Stein:*

Q. No questions.

*By the Court:*

Q. You never saw him during all the period after your marriage, or one week after your marriage, until you saw him in jail? A. That is all.

40 Q. Did you communicate with him by letter? A. No, I did not.

*Mrs. Elizabeth Garrabrant—Direct*

Q. Did he communicate with you? A. No, he did not.

Q. Had you heard from anybody he was in Paterson or elsewhere in the State? A. No, I didn't hear anything about him.

Q. Did you make any inquiries about him? A. No, I didn't. 10

Q. Did you ever meet him? A. No, I didn't.

Q. Never heard of him? A. No, sir.

Q. You still regard him as your lawful husband? A. Yes.

Q. You haven't sought any divorce on account of his having married this other woman? A. Well, I didn't have any grounds for divorce.

The Court: That is all. 20

*By Mr. Stein:*

Q. You say you left him; why did you leave him? A. Because he didn't support me.

Mr. Stein: That is all.

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MRS. ELIZABETH GARRABRANT, produced as a witness on behalf of the defendant, being duly sworn on her oath, according to law, saith: 30

*Direct examination by Mr. Wilson:*

Q. Mrs. Garrabrant, you know James Reilly? A. Yes, sir.

Q. And you know Ada Hobson? A. Yes, sir.

Q. Did you know Ada Hobson's mother, Mrs. Hobson? A. Yes, sir. 40

Q. Did you hear of the marriage of Ada with James Reilly?

*Mrs. Elizabeth Garrabrant—Direct*

Mr. Stein: That is a pure question of hearsay he is asking now.

The Court: I suppose it is only introductory. I will allow this question.

10 A. Yes, sir.

Q. Did you have an opportunity of seeing Mrs. Hobson after the marriage of Ada with James Reilly?

Mr. Stein: Which Mrs. Reilly are you speaking of?

A. Yes.

Mr. Stein. I object.

20

The Court: Don't answer any questions until the Court tells you.

Q. How soon after the marriage of Ada to James P. Reilly did you see Mrs. Hobson, the mother of Ada?

Mr. Stein: I object. What difference is that?

The Court: What is your object, Mr. Wilson?

30

Mr. Wilson: One of them not knowing the other to be living within that time.

The Court: That concerns the mother of Mrs. Reilly. How will that have anything to do with this case?

Mr. Wilson: This way: Mrs. Garrabrant meets the mother.

The Court: I do not want to hear this.

Mr. Wilson: I offer to prove by this witness—

40

The Court: This is all going to the jury without becoming evidence and I won't al-

*Mrs. Elizabeth Garrabrant—Direct*

low you to make any statement since I have ruled it out. I rule it out.

Mr. Wilson: I will ask the question, and your Honor rule on the question.

The Court: Yes.

Q. Don't answer now until the Prosecutor objects. Did you have any conversation with Mrs. Hobson, the mother of Ada Hobson, in the city of Paterson after the marriage of Ada with James P. Reilly?

10

Mr. Stein: When Reilly wasn't present?

Mr. Wilson: Yes.

The Court: Question overruled.

Mr. Wilson: I except to your Honor's ruling.

20

The Court: Exception granted.

Exception allowed—signed and sealed accordingly.

JAMES C. CONNOLY,  
Judge.

Q. Did Mrs. Hobson, the mother of Ada Hobson, on any occasion when you saw her, state to you that her daughter Ada was dead?

30

Mr. Stein: I object.

The Court: Question overruled.

Mr. Wilson: I except to your Honor's ruling.

Exception allowed—signed and sealed accordingly.

JAMES C. CONNOLY,  
Judge.

Q. Did you make any inquiry with regard to the 40

*Mrs. Elizabeth Garrabrant—Direct*

death of Ada H. Hobson, the wife of James P. Reilly?

Mr. Stein: I object to that. It doesn't make any difference whether she did.

The Court: Question is overruled.

10 Mr. Wilson: I except to your Honor's ruling.

Exception allowed—signed and sealed accordingly.

JAMES C. CONNOLLY,  
Judge.

Q. Now don't answer this question. Did you know, from anything that you heard, that Ada Hobson was reported as being dead?

20

The Court: Question overruled.

Mr. Wilson: I except to your Honor's ruling.

Exception allowed—signed and sealed accordingly.

JAMES C. CONNOLLY,  
Judge.

Q. Did you ever see Abbie Miller? A. Yes, I have.

30

Q. Where? A. Well, at my sister's house.

Q. Where is that? A. In Paterson.

Q. While Abbie Miller was in your sister's house in the city—

Mr. Wilson: Scratch that out.

Q. What year was that? A. This year.

Q. Do you know about what month? A. No, I couldn't tell you.

40

Q. While Abbie Miller was at your sister's house in the City of Paterson, and you say you saw her there, did the question of the death of Ada Hobson, the wife of James Reilly, come up?

*Mrs. Elizabeth Garrabrant—Direct*

Mr. Stein: Was James Reilly there?

Mr. Wilson: No, Abbie Miller was.

Mr. Stein: If the defendant wasn't there, I object to that.

(Question repeated by the stenographer.)

The Court: That must have been in March of this year; and after the marriage. 10

Q. Yes, sir.

The Court: And before the return of Reilly's second wife back to him, again, in Elizabeth.

Mr. Wilson: Yes, sir.

The Court: I will disallow the question.

Mr. Wilson: I except to your Honor's ruling. 20

Exception allowed—signed and sealed accordingly.

JAMES C. CONNOLLY,  
Judge.

Q. Were you ever at Reilly's mother's house in the city of Paterson when Abbie Miller and James P. Reilly were there? A. Yes, once.

Q. Yes. On that occasion did the question of the death of Ada Hobson come up when Abbie Miller and James P. Reilly were present? A. They were talking about it. 30

Mr. Stein: Let us have the time.

Q. Do you remember what month it was? A. No, I do not recollect. I didn't pay much attention to it when I was there. It was before he got arrested I know. 40

*Mrs. Elizabeth Garrabrant—Direct*

*By the Court:*

Q. It was before he was arrested? A. Yes.

Q. Do you remember whether it was wintertime, spring or summer? A. It was summer.

10 Q. You know he was arrested on the thirteenth of June? A. I think this was about May.

Q. I am wrong on that, he was arrested on the twenty-first of June. Can you fix in your mind about when it was that they were present, when the question of Ada Hobson's death was discussed?

A. Well, I think it was about in May.

Q. About in May. Where was that, in Paterson? A. In Paterson, in my sister's house.

20 *By Mr. Stein:*

Q. At your sister's house? A. Yes.

Q. Who is your sister? A. Mrs. Reilly.

Q. Then you are an aunt of this defendant? A. Yes.

*By Mr. Wilson:*

30 Q. Do you know who brought up the conversation with regard to the death of Ada? A. I think my sister did.

Mr. Stein: I move "think" be stricken out.

The Court: I will allow that, but I want her to mention her sister's name.

A. Mrs. James P. Reilly.

Q. Who first spoke about it, if you know? A. Why my sister, Mrs. Reilly.

40 Q. And to whom did she address her conversation? A. Well, she told me. She said to me—

*Mrs. Elizabeth Garrabrant—Direct*

Q. And who was present at the time? A. James Reilly.

Q. Who else? A. Well Abbie; she was in the dining room; Abbie was. And James was out in the kitchen.

*By the Court:*

10

Q. James was in the kitchen? A. Yes, with the mother and me.

*By Mr. Wilson:*

Q. Did Abbie hear this? A. I don't think she was paying any attention to what we were talking about.

20

*By the Court:*

Q. What did the sister say to James? A. She said, "what are you going to do?"

Q. Who said that? A. My sister.

Q. Mrs. Reilly? A. Mrs. Reilly said, "what are you going to do," and he said: "Mother I thought she was dead," and he said, "I don't know what to do," and he cried. And so he said, "the best thing I can do is we live apart and have the marriage annulled," and he said, "You take care of Abbie yourself," that is Mrs. Reilly, and he said, "I will get a divorce from Ada and get married over again." And I said, "well that is the best thing you can do."

30

Q. At the conversation at that time did anything come up about anybody consulting the old Mrs. Hobson? A. Yes.

Mr. Stein: That, of course, is not leading.

40

*Mrs. Elizabeth Garrabrant—Cross*

The Court: The question is leading; I will strike it out.

Q. What else was mentioned there; what further conversation was carried on there? A. Well I said to Abbie then—

10 Q. That is right.

Mr. Stein: Was James there when you said it to Abbie?

A. No, he was in the dining room.

Q. Was he near enough so he could hear what was going on? A. I don't know whether he heard it or not.

20 Q. Did he afterwards come back to where you were all talking? A. Yes.

Q. When he came back was Abbie Miller and you there? A. No, she stayed out of the room.

Q. What is that? A. No, she stayed out of the room.

Q. Did you ever see Abbie Miller any other place than in Paterson? A. Yes.

Q. Where? A. At her mother's in Elizabeth.

Q. And who was there at the time? A. The aunt.

30 Q. And who else? A. My sister, and Mrs. Reilly.

Q. And was James there? A. No, sir.

Mr. Wilson: That is all.

*Cross-examination by Mr. Stein:*

Q. You are the aunt of James? A. Yes, sir.

40 Q. Did you ever know that James had been married to a girl named Mary who was his second wife, now dead? A. Well, I couldn't swear whether he was married or not.

*John Reilly—Direct*

Q. You knew he had a child by her, didn't you?

A. Yes.

Q. You knew she is dead and buried in Mount Olivet Cemetery here? A. Yes, sir.

Q. When did she die, do you know? A. No, I couldn't recollect.

10

Q. You know this child is still living? A. Yes, sir.

Q. And this second one—Abbie Miller, took that child in when they married? A. I couldn't say anything about that.

Mr. Stein: That is all.

---

JOHN REILLY, produced as a witness on behalf of the Defendant, being duly sworn on his oath, according to law, saith:

20

*Direct examination by Mr. Wilson:*

Q. Mr. Reilly, where do you live? A. No. 382 Boulevard, Paterson, New Jersey.

Q. You live in Paterson? A. Yes, sir.

Q. What is your occupation? A. Painter.

Q. You are the brother of James? A. Electrician.

30

Q. You are the brother of him? A. Yes, sir.

Q. Did you ever know Ada Hobson? A. Well, yes, sir. I knew her—

Q. Did you hear of the marriage of your brother to one Ada Hobson?

Mr. Stein: That is leading.

A. Yes, sir, I met Mrs.—

40

*John Reilly—Direct*

Do not answer any question that is objected to until the Court tells you to do so. Do not be too willing.

Q. Did you know a Mrs. Hobson? A. Yes, sir.

10 Q. Now don't answer these questions until the Prosecutor says so.

The Court: I think the Court will have to determine this question.

Q. Did you know—now wait until the Court instructs you—did you know of the fact of the marriage of Ada Hobson with James? A. Well, James brought her home and introduced her as his wife.

Q. Did you know about that? A. Yes, sir.

20 Q. Now don't answer this question. Did you hear of the death of Ada Hobson?

Mr. Stein: I object.

The Court: Question overruled.

Mr. Wilson: I except to Your Honor's ruling.

Exception allowed—signed and sealed accordingly.

30

JAMES C. CONNOLLY,  
Judge.

Q. Did you ever go, with your brother James P. Reilly, and your brother-in-law, Charles Russ to—don't answer this question now—to Mrs. Hobson's house, the mother of Ada, to find out whether she was alive or dead?

40

The Court: The question is overruled for several reasons; it is a leading question in the first place.

*John Reilly—Direct*

Mr. Wilson: I except to Your Honor's ruling.

Exception allowed—signed and sealed accordingly.

JAMES C. CONNOLLY,  
Judge. 10

Q. Did you ever find out from any source that Ada Hobson who married your brother was dead?

The Court: Question overruled.

Mr. Wilson: I except to Your Honor's ruling.

Exception allowed—signed and sealed accordingly.

JAMES C. CONNOLLY,  
Judge. 20

Mr. Wilson: If the Court please, under the act, I am going to show, or endeavor to show, by young Reilly and James P. Reilly that after the report came out of the death of Ada Hobson, that they went to the house of Mrs. Hobson, the mother of Ada, to verify what they had heard.

The Court: I have no objection to your bringing that out, but not in the way that you are attempting to do it. 30

Q. Now do not answer this question. Did you ever go to Mrs. Hobson's house, the mother of Ada?

A. Yes, sir.

Q. What did you go there to find out? A. I went with my brother. (Question and answer repeated by the stenographer.)

Q. Who else did you go with? A. Mr. Russ.

Q. What relation is he to you? What was your object in going to Mrs. Hobson's house? 40

*John Reilly—Direct*

Mr. Stein: I object to what this witness's object was in going to this house.

The Court: I will allow the question because he said the brother was with him.

Mr. Wilson: I withdraw the question.

10 The Court: He went there with his brother.

Q. What was your object in going to Mrs. Hobson's house with your brother and Russ? A. My brother wanted to find out if his wife was dead.

The Court: You were asked what was your object in going there. A. We went down to a show in the afternoon, and he asked us to go down there with him. Just went around in the afternoon together.

20 Q. Did you go to Mrs. Hobson's house? A. Yes, sir, we did.

Q. That is the mother of Ada? A. Yes, sir.

Q. Did you see Mrs. Hobson? A. I seen a lady come to the door and I heard my brother say "Mrs. Hobson, is Ada dead."

30 Mr. Stein: I object to the testimony or attempted testimony to show what a dead person stated, where the State is absolutely shut off. You could disprove absolutely nothing, that a lot of dead people said. What he is going to say now is objectionable. That is not the way to prove what a dead person said.

40 The Court: He is about to tell a story and conversation. He is about to detail a conversation which took place between the defendant in this case and a person now deceased. An objection is raised against such testimony by the Prosecutor. What have you to say as to the objection?

*John Reilly—Direct*

Mr. Wilson: This is the idea about it. Reilly was informed something about his wife—

Mr. Stein: Another reason I object, is the time is not fixed.

Mr. Wilson:—(continuing) and then the man goes to the very place where he could hope to find out about his wife and then he is told what happened to his wife. Now it is for this purpose. 10

The Court: I understand the purpose it is for. It is a legal question as to the right to detail such a conversation now in the absence of this person; where the person is shown to be dead—

Mr. Wilson: The act says this: neither knowing that the other was alive. It is competent for the purpose of verifying. He gets some information that what he had heard is absolutely true regarding his wife, and he goes to the best place, to the mother of the wife. 20

(At this point Counsel go into a long argument on this question.)

The Court: I want to say this is the adjournment hour and it will give you time to examine the law on that question. 30

Mr. Stein: The date when this happened, before this witness leaves the stand.

Q. Tell the date? A. On Thanksgiving Day, in the afternoon, in 1909.

Mr. Stein: 1909?

The Court: Yes, Thanksgiving Day, in the afternoon.

Adjourned at 12.55 p. m. until 2 p. m. 40

*John Reilly—Direct*

Two p. m. session.

JOHN REILLY, resumed.

*Direct examination (resumed) by Mr. Wilson:*

19

(After a long extended argument on this question the Court ruled as follows) :

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The Court: The object of the question put to the witness is to ascertain from him what the mother of the defendant's wife said on an occasion when he went there with his brother, the defendant in the case. The State objects to the testimony on the ground that she is now dead, and that no testimony ought to be given because she is dead. Now it seems to me that if I rule out this testimony I may do an injustice to the defendant. It may be that he went with the witness to this woman for the purpose of making inquiry through her, as to whether her daughter, defendant's wife, was alive or dead. That may be and I would be doing an injustice. At the same time there is another angle from which this kind of testimony may be viewed. There is no way by which the State can deny the statements made by the witnesses because the person who was sought and who was talked to about her daughter is dead, and can't be produced in Court to deny anything that this witness may say, so that the State is at a disadvantage. Yet I think that under the peculiar circumstances surrounding this case, and everything connected with it that it is better that I should allow the testimony to go in, and rely upon the State, under its cross-examination, perhaps, to shake it if it

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*John Reilly—Direct*

is not true. That is a disadvantage at which the State is placed, yet I feel that I ought to allow this testimony to go in. I think that I am, under the rules of law, permitted to allow testimony of this character to be placed before the jury. I think that it would be a great injury to the defendant if the Court should rule it out. And while the State suffers some disadvantage by allowing it in, yet I think that the disadvantage that the defendant in the case would suffer would be far greater than that which the State suffers from allowing it in. I will allow the question to stand.

10

Mr. Stein: May I ask your Honor to allow the State an exception in this case. There is a question under the State vs. Meyer, whether the State could not appeal and it is pretty broadly hinted that the State might appeal because the State is just as much interested in this thing as the defendant. And I put it on this ground, and it may be that I would not succeed before the Supreme Court in allowing this appeal, but I am very much interested in the prosecution of this case because of the crime, and I ask your Honor to allow the State an exception for whatever it may be worth to the ruling on this ground: That it does not make any difference whether this man inquired from the mother of Ada Hobson and got information from her, and if he did get such information that she was dead in the way in which he got it, that wouldn't be a sufficient defense.

20

30

The Court: You are raising another point now.

Mr. Stein: No. I repeat that objection.

40

*John Reilly—Direct*

The Court: When that question comes up I will instruct the jury on that. You are reaching the question now whether this man acted in good faith in marrying this woman. That is a different question.

10

Mr. Stein: I do that because Mr. Wilson raises the question, they could not find Ada Hobson, and so they asked the mother, and are going to ask your Honor whether you will—

20

The Court: I will allow you an exception. It is not usual for the State to take an exception to the ruling of the Court but since you say in the Meyer case there is a hint the State may appeal, I will allow it, and I hope you will not stop here if the case goes against you, but that you will go up to the Supreme Court so that the upper Court may decide on this question.

Exception allowed, signed and sealed accordingly.

JAMES C. CONNOLY,  
Judge.

30

Q. I understood you to say that you and your brother, James P. Reilly, and your brother-in-law, Charles Hess, went to the house of Mrs. Hobson, the mother of Ada Hobson, on this Thanksgiving Day, 1909? A. Yes, sir.

Q. Do you know what the purpose of going there was? A. Yes, sir.

40

Q. Just tell what happened when you got there. Just tell the Court and jury what happened? A. We stood on the sidewalk, which is very close to the door, my brother-in-law and I; my brother goes up and he knocked on the door and a lady comes to the door, and she opened the door and I heard my

*John Reilly—Direct*

brother say: "Is this true Mrs. Hobson?" And Mrs. Hobson she said, "Yes, it is true, I don't want to see you; she is dead and buried."

Mr. Stein: I move the testimony that Mrs. Hobson made this statement be stricken out, because it is not shown that it was Mrs. Hobson was the woman made the statement. 10

The Court: I will allow it to stand.

Q. Do you know Abbie Miller? A. Yes, sir; I did.

Q. Did you ever see Abbie Miller? A. Yes, sir.

Q. When? A. At my brother's house where they were living, when they were married.

Q. And after that? A. I seen her once down Morris avenue. 20

Q. And when did you see her on Morris avenue; whose presence besides yourself? A. My brother.

Q. And did the question came up as to the death of Ada Hobson at that time? A. Yes, he had wanted to leave her and she threatened to have him arrested.

Mr. Stein: Don't you answer any more until I get a chance to object.

The Court: Ask your question. 30

Q. Did the question of Ada Hobson's death—when you were at Elizabeth at Abbie Miller's house, did it come out? A. Yes, sir, it did.

Q. Did your brother say anything to Abbie Miller about the death of Ada Hobson, what he had learned of her death?

Mr. Stein: I object because the time is not fixed. 40

*John Reilly—Direct*

Q. I withdraw that question. When was the occasion of your visit at the house of Abbie Miller in Elizabeth, when your brother was with you and Abbie Miller was present, what was the date? A. I boarded with them. I don't know the date. But  
10 when my mother.

Q. When did you board with the Millers? A. I boarded with them. I came back after January.

Q. January of this year? A. No, sir, of last year. January of last year.

Q. January, 1913? A. Yes, sir.

Q. How long did you stay there? A. I guess it was two or three months, I am not positive. Until the trouble came up.

Q. Until the trouble came up? A. Yes, sir.

20 Q. Can you tell the occasion of your brother James being there when the subject of the death of Ada Hobson came up? The particular month, if you know? A. I can't think of the month.

Q. You can't think of the month? A. No, sir.

Q. Was it before his arrest or not? A. Yes, sir, before his arrest.

Q. Was it before Abbie went to your mother's house in Paterson or afterwards? A. Yes, sir.

Q. When? A. Before.

30 Q. How did the death of Ada Hobson arise, come up? A. My mother thought it was best when she found it out to notify my brother.

The Court: You cannot tell that.

Q. What was said at the house?

The Court: I shall order his answer to be stricken out. He cannot tell what was in his mother's mind.

40

Q. I understand that, it is very proper. What

*John Reilly—Direct*

was said by your brother when you and your brother and Abbie Miller were present at her house in Elizabeth about the death of Ada? A. They spoke of the parting and thought my brother should get a divorce from the first wife and go back and live with her. And she agreed to do that and go up and live with my mother. 10

Q. Was anything said by your brother to Abbie Miller about the death of Ada? What he thought of the death of Ada?

Mr. Stein: I object to what he thought.

Q. What he said of her. A. Yes, sir, they spoke of it in there.

Q. What is that? A. They spoke of it when my mother told them. 20

The Court: In where?

A. In Mrs. Miller's house. In my brother's house and then they agreed to part and go away.

Q. What was said by your brother in regard to the death of Ada; what did your brother say about that? A. He said he was going to get a divorce.

Q. No. Before that, how did he know Ada was alive? A. My mother told him. 30

The Court: How do you know your mother told him Ada was alive?

A. My mother told him. My mother found it out.

The Court: Did you hear her tell him?

A. Yes, sir.

The Court: Where?

A. In the house. 40

The Court: In Elizabeth?

*John Reilly—Direct*

A. Yes, sir.

10

The Court: Was this in the same conversation that was had between your mother, your sister-in-law, and your brother, concerning the divorce?

A. Up in the house, do you mean?

The Court: No, of the death. Her being alive?

A. No, sir.

The Court: Was it before that?

20

A. It was before that, yes.

The Court: How long before?

A. I don't know which was the date. I did not know Mrs. Hobson was alive until my mother told me, because I had not been home.

Q. Was anything said by your brother on the occasion that Abbie Miller and you and your brother was present at the house?

30

Mr. Stein: I submit he has answered that three times.

Mr. Wilson: That is not the point about the thing.

Q. Was anything said by your brother when you and Abbie Miller were present as to the death of Ada Hobson at any time; yes, or no? A. Yes, sir.

40

Q. What was said? A. He said he didn't know she was alive.

*John Reilly—Direct*

Q. What else did he say? A. He was going to look into the matter, he said.

Q. From anything that was said by your brother when you and Abbie Miller were present—was anything said by your brother to Abbie Miller when you were present on that day as to when Ada Hobson had died? A. I didn't hear. 13

Q. What led you and James—your brother, and Nuss to go to Mrs. Hobson's house? A. My brother asked me to go. He wanted to find out—

Q. Yes, don't answer this question. Did you or did your brother or brother-in-law get any information as to the death of Ada Hobson, before you went to Mrs. Hobson's house, from anybody?

Mr. Stein: I object to that. 20

The Court: I think the form of the question is objectionable.

Mr. Wilson: I withdraw the question.

Q. Why did you go to Hobson's house to find out?

Mr. Stein: He has answered that. I object. He said to find out.

The Court: Yes, that is answered.

Q. Had you heard— 20

The Court: You are leading.

Q. Had you or not heard that Ada Hobson was dead?

Mr. Stein: I object to it, because if he had heard it, it would be hearsay and he could not testify to it.

The Court: The question is had his brother heard it, the defendant. What difference does it make? 40

*John Reilly—Cross*

Mr. Stein: I object because he could not tell what he heard.

Mr. Wilson: I think it is confirmatory.

The Court: I think it is not proper.

Mr. Wilson: I except to your Honor's ruling.

10

Exception allowed—signed and sealed accordingly.

JAMES C. CONNOLLY,  
Judge.

*Cross examination by Mr. Stein:*

Q. After you had been to this woman's house, where did you and the other fellows go? A. Up to my house.

20

Q. Up to your house? A. Yes, sir.

Q. And that was all there was to it? There was no more looking about? A. I don't know what he did; that's all I did.

Q. You were only asked to go with him once? A. Yes, sir.

Q. What kind of a house was this that Mrs. Hobson lived in—or the woman you saw living in?

A. It was on Marshall Street in Paterson.

Q. What kind? A. Small structure house, and the steps are very close to the sidewalk.

30

Q. You are anticipating; I am not coming to that at all. I want to know whether it was a house with a store in it; whether she lived on the first floor, second floor or third; whether it was a dwelling house that she lived in or what? A. I can't tell that.

Q. You can't tell whether there was a store underneath? A. Yes, there was no store underneath; it looked to be two families house and there was windows upstairs and downstairs.

40

Q. Two separate entrances? A. No, only one

*John Reilly—Cross*

up; and one door; one stoop down to the sidewalk.

Q. How far back from the sidewalk does that house set? A. Right out on the sidewalk.

Q. Very close? A. Yes, sir.

Q. How close? A. Just so close you can stand with one foot on the sidewalk, and with one on the stoop. 10

Q. Was there flags and curbs all the way over to the posts of this house? A. There is no posts in front of this house.

Q. Up to where the grass is? A. There is no grass.

Q. This house is built right up to the flag? A. Yes, sir.

Q. Are the steps anchored upon the sidewalk? A. Yes, sir. 20

Q. Whereabouts in the sidewalk were you standing when you heard these things? A. Right near the door.

Q. Who is Nuss? A. My brother-in-law.

Q. So you went over with your brother and your brother-in-law? To Mrs. Hobson's house? A. Yes, sir.

Q. Did you ever see Mrs. Hobson before in your life? A. No, sir.

Q. Did you know whether it was Mrs. Hobson you were talking to? A. Only what I heard— 30

Q. Do you know is the answer. Do you know whether the woman is Mrs. Hobson? What was the number of the house? A. I didn't pay that much attention.

Q. You know Paterson pretty well? A. Yes, sir.

Q. Where were you on? A. Marshall Street.

Q. Marshall Street, near what other street? A. Near Oliver Street. 40

Q. Marshall near Oliver Street? A. Yes, sir.

*John Reilly—Cross*

Q. You were, at that time, living in Elizabeth, weren't you? A. No, sir.

Q. Where were you living? A. I was home at that time.

Q. Where is your home? A. In Paterson.

10 Q. Paterson, New Jersey? A. Yes, sir.

Q. And your brother and you are both Patersonians, aren't you? A. Yes, sir.

Q. You both know Paterson very well? A. Yes, sir.

Q. How long have you lived in Paterson? A. I should judge about twelve or fourteen years.

Q. And when you left Paterson you came to Elizabeth? A. No, sir.

Q. Well, your brother did, didn't he? A. I don't know where he went.

Q. But you have been living in Elizabeth with him, haven't you? A. Yes, sir, but that is lately.

Q. Since he married this Miller girl? A. Yes, sir.

Q. You knew Ada Hobson quite a while? A. Yes, sir, I worked with her a while.

Q. Where? A. In Barber's Mill.

Q. Did your brother work there, too? A. No, sir.

39 Q. How long did he keep company with Ada Hobson before he married her, if you know? A. I don't know.

Q. Was it two or three months? A. I don't know.

Q. Did you ever see him out with her much? A. No, sir, never seen him.

Q. Never seen him out with her? A. No, sir.

Q. Has Ada Hobson changed in appearance since you knew her? A. Yes, sir, she has got thinner.

40 Q. You know Ada Hobson has been living in

*John Reilly—Cross*

Paterson right straight along? A. No, sir, I don't.

Q. You know that now? A. Yes, sir.

Q. She has been working and living in Paterson right straight along since she left your brother?

A. As far as I understand she has, yes.

Q. When did your brother come from Paterson to Elizabeth? A. I don't know. I went away before he did. I went up to Morristown to work for O. N. Hughson, undertaker.

Q. Forget when you went? A. Week following; week following Thanksgiving Day.

Q. Week following Thanksgiving Day of what year? A. In 1909.

Q. Your brother was still in Paterson then, wasn't he? A. Yes, sir.

Q. And your brother was in Paterson right straight along up to then when you went to Mrs. Hobson's house, as you supposed it to have been? A. No, sir.

Q. Where had he been? A. I don't know. He went away from home.

Q. For how long? A. I don't know how long.

Q. You were home, weren't you, up until Thanksgiving Day? A. Yes, sir.

Q. You don't know how long your brother was away from Paterson? A. I did not keep track of it.

Q. He wasn't away very long? A. My brother was always a rambler.

Q. He never stayed away long? A. Yes, sir, for years at times.

Q. Years? A. Yes, sir.

Q. Years? A. Yes, sir.

Q. After he married Ada Hobson, you knew he worked and lived in Paterson? A. Yes, sir.

Q. And he lived in Paterson when he married

*John Reilly—Cross*

Ada Hobson in 1908, and for over a year, didn't he?  
A. No, sir.

Q. Where did he live? A. I don't know where he lived. He was away from home.

Q. You never was much interested in where your brother went? A. No, sir, I didn't take that much interest.

Q. When did your interest in your brother begin? A. What?

Q. When did your interest in your brother begin? A. When he asked me to go down with him and find out about his wife.

Q. Did you do it? A. I did.

Q. What did you say to this women—— A. He said he was——

Q. (continued)——to this women who came to the door? A. I said nothing.

Q. Was it explained to you why you would have to go along to do this job? A. No, sir.

Q. Just what did he say to you about going down to Ada Hobson's house? A. My brother-in-law and I spoke about going down to a show.

Q. That is Nuss, is it? A. Yes, sir, Mr. Nuss, and I on Thanksgiving afternoon, and we asked the brother to go along and he said he was going down to see Mrs. Hobson, and we said wait until we go down and we will go along with you.

Q. What was that for? A. Just merely company.

Q. You could hear everything that this woman who was supposed to be Mrs. Hobson said? A. Yes, sir.

Q. Why, did she talk loud? A. Quite loud.

Q. Did she seem to be angry? A. Yes, sir, seemed to be.

Q. Just tell us what she said. A. He said Mrs. Hobson is this true that Ada's dead; she said, Yes,

*John Reilly—Cross*

that is true, she is dead and buried and I don't want to see you.

Q. And then what? A. That's all; she slammed the door in our face.

Q. And you didn't go any further to ask any further questions of anybody? A. No, sir, we went right home. 10

Q. Did you know your brother's second wife?

Mr. Wilson: I object, that isn't cross examination.

The Court: I will rule it out.

Q. Has your brother any children? A. Yes, sir.

Q. How many?

The Court: Is that material? 20

Mr. Wilson: I will object to it.

The Court: I will allow it. There is some evidence showing he had one child and this last woman that he married took it into her house and took care of it.

Mr. Stein: I am offering this testimony before the second marriage for the express purpose of showing that no inquiry was made, or if one was made, that notwithstanding, he then married again, anyhow. Or rather before he inquired about this, he married again. This inquiry was made on Thanksgiving Day in 1909; and of course I disclose that, so Your Honor might know what I am after, so the Court may rule on the thing. 30

Mr. Wilson: I understand they are confined to the first marriage; to the marriage to Miss Miller January thirty-first, 1914.

The Court: What are you talking about now? 40

The question has been allowed.

*John Reilly—Cross*

Q. How many did he have? A. One child.

Q. Was that child a child by marriage to Ada Hobson?

Mr. Wilson: I object, if Your Honor please.

10 The Court: I will allow it.

Mr. Wilson: If he knows?

A. No, sir.

Q. Was it by marriage to the Miller girl?

Mr. Wilson: I object unless he knows there was a marriage to the Miller girl.

(Questions repeated by the stenographer.)

The Court: I will allow the question.

20 Mr. Wilson: I except to your Honor's ruling.

Exception allowed—signed and sealed accordingly.

JAMES C. CONNOLLY,  
Judge.

A. Was it by the Miller girl? A. No, it wasn't.

Q. You boarded with your brother after he married the Miller girl? A. Yes, sir.

30 Q. You know they were husband and wife didn't you? A. That's what they told me.

Q. Was that child by a marriage with anybody?

Mr. Wilson: I object to the question, if your Honor please.

The Court: On what ground do you object to it?

Mr. Wilson: It is not cross-examination.

40 The Court: I think that is so, and I will rule it out.

*John Reilly—Redirect*

Mr. Stein: I will make him my witness, if your Honor permits it, and ask him the question then.

The Court: Not now, but subsequently.

Q. How old are you A. Twenty-three years old. 10

Q. Do you know a young lady Venetta Minturn?

A. Yes, sir, I do.

Mr. Stein: That is all.

*Redirect Examination by Mr. Wilson:*

Q. The Prosecutor has asked you how you come to know Ada Hobson and you said that you worked in the same Barber's Mill with her? A. Yes, sir. 20

Q. How long did you work in that mill with her? A. Only a short time.

Q. After your brother's marriage you mean? A. No, sir, this Mrs. Hobson worked in the mill I got in, about a year before she married, and before she was married she claimed me as her brother-in-law, and I denied it. I didn't know. She was telling people in the mill I was her brother-in-law, and I didn't know anything of the marriage.

The Court: You do not know that Mrs. Hobson was going around and telling that? 30

A. Not until she told me herself.

The Court: Did she tell you herself?

A. Yes, sir, I asked her.

Q. When did you leave the mill? A. It was 1908 I left the mill.

*Charles Nuss—Direct*

CHARLES NUSS, produced as a witness, on behalf of the defendant, being duly sworn on his oath, according to law, saith:

*Direct examination by Mr. Wilson:*

19 Q. Mr. Nuss, you live where? A. I live in Pater-  
son.

Q. What are you employed at? A. In the Lake-  
view Silk concern.

Q. Do you know James P. Reilly? A. I do.

Q. I believe you are the brother-in-law to Reilly?  
A. I am.

20 Q. Do you remember the occasion—don't an-  
swer until the Prosecutor objects—do you remem-  
ber the occasion when you and Reilly, that was  
on the stand before you, and James P. Reilly went  
to Mrs. Hobson's house?

Mr. Stein: I object to the question being  
put in that form, until he knows what house  
he went to.

The Court: I will allow the question.

A. I do.

30 Q. What occasion was that, Mr. Nuss? A. It  
was on Thanksgiving Day; we had Thanksgiving  
dinner together and after dinner we all went to a  
show and then it is we went to the house.

Q. What year was that? A. That was in 1909.

40 Q. Just state what you did and what James P.  
Reilly did, when you went to Mrs. Hobson's house,  
that time. A. We went to the house after the show.  
He wanted to go there before the show and we put  
it off until after the show. So we went after the  
show, he got on the steps into the house, on the  
stoop, and he knocks at the door and the woman

*Charles Nuss—Cross*

come to the door, who I think I am pretty positive about was Mrs. Hobson.

Mr. Stein: I object to the rubbing that in there where he thinks, or was pretty positive.

Q. How do you know it was Mrs. Hobson? A. 10  
James Reilly stood on the stoop; we stood alongside the stoop and he knocked at the door.

Q. Who did? A. James Reilly.

Q. Yes? A. And the woman came to the door and he said to her, and he said: "How do you do Mrs. Hobson," he said, "I came to see about Ada," and she said, "Well," and he said, "I came to see, I heard that Ada's dead, is that true facts?" and she said, "Yes, Ada's dead and I don't want to have 20  
anything to do with you any more."

Q. What did she do? A. She closed the door and we went about our business.

*Cross-examination by Mr. Stein:*

Q. You have never seen Mrs. Hobson in your life? A. What one?

Q. Mrs. Hobson? A. There is two Mrs. Hobson.

Q. Who are they? Who are the two Mrs. Hobsons? A. Well there is only one now alive, is that 30  
what you mean?

Q. Who are these two Mrs. Hobsons you have in mind? Two Mrs. Hobsons? A. Well I don't know.

Q. Well how many Mrs. Hobsons are there that you know? A. There used to be two; there is only one now. One is Mrs. Reilly now.

Q. Was she ever Mrs. Hobson before she was Mrs. Reilly? A. I guess she was.

Q. Her name is Miss Hobson. A. Well Miss 40  
Hobson.

*Charles Nuss—Cross*

Q. I am talking about Mrs. Hobson, did you ever see her in your life before? A. Not until I heard she was married.

Q. Did you ever see Mrs. Hobson before in your life, before that day? A. Mrs. Hobson?

10 Q. Yes? A. Did you ever see her?

Q. That was my question. What is the answer? Yes or no? A. I don't know what you said.

Q. Did you ever see Mrs. Hobson before the day that you and your brother-in-laws went down there to the house? A. Yes.

Q. Where? A. On the street.

Q. Did you know it was Mrs. Hobson? A. Well——

20 Q. Did you know it was Mrs. Hobson? A. Yes, I did.

Q. Who introduced you to her? A. Who introduced me to her?

Q. Yes? A. Why Mrs. Reilly.

Q. The old lady? A. Yes.

Q. So that when you went down there that day you knew it was Mrs. Hobson that came to the door? A. I did.

30 Q. Well, why didn't you say so before. I understood you to say heretofore that you didn't know it was Mrs. Hobson until Reilly said "Mrs. Hobson I came down here about Ada?" A. Well, I knew her.

Q. All right. Why didn't you go up on the porch? A. Why didn't I?

Q. Yes? A. There is only a little stoop there.

Q. Why didn't you go up? A. It is too small, I couldn't get on it.

Q. As small as that? A. Yes, sir.

Q. Is there any roof over this porch? A. Oh yes. I think there is.

40 Q. Do you know? A. Do I know?

Q. Yes? A. Certainly.

*Charles Nuss—Cross*

Q. Is there a roof? A. I believe so.

Q. How many steps are up on it? A. I couldn't say that. Maybe one or two.

Q. You were here in the Court room when your brother-in-law was testifying about this house, were you? A. Yes, sir.

Q. How far away did you stand from Mrs.—  
A. Right off the stoop. 10

Q. Right off the stoop; maybe about fifteen feet?  
A. We were closer than what you and I are.

Q. Close as that? A. Yes, sir.

Q. Close enough to touch Mrs. Hobson if you put your hand out? A. Certainly.

Q. You were interested in this matter to find out where this girl was? A. No.

Q. You weren't interested? Why did you go down there? A. Just simply as I told you before. 20

Q. Why did you go down if you weren't interested in knowing about this woman? A. We were all together. I told you before.

Q. I know you did. A. And that is the reason we went down there.

Q. Just because Reilly suggested you go down there with him, you went along? A. Yes, sir.

Q. Now he wanted to go before the show? A. Yes, sir.

Q. Why didn't you let him go? A. Why didn't we let him go? Because we didn't go that way. We had it made up to go to the show, me and his brother. 30

Q. You say he wanted to go before the show, why didn't you let him go? A. We took him along with us first, I told you.

Q. What did you say to him? A. I said, come on, we have tickets for the show. Come along with us and you can go up after.

Q. You are living in Paterson now? A. Yes, sir. 40

*Charles Nuss—Redirect*

Q. And you have always lived in Paterson? A. Yes, sir.

Q. How many years? A. Twenty-six.

Q. That is about your age, isn't it? A. Yes, sir.

Q. Lived there all your life? A. Yes, sir.

10 Q. When did you marry Reilly's sister? A. 1906, I believe.

Q. 1906. And I suppose you knew that Reilly was with Ada Hobson as his wife and that they were married? A. Well I didn't know about that.

Q. Didn't you know about that? A. I was only there one time on Sunday when he came over and he introduced us.

Q. As his wife? A. As his wife.

20 Q. Where was that; at your house? A. At his mother's house.

Q. Had you known Ada before that to see her on the streets of Paterson? A. I knew who she was.

Q. And you knew that Ada has been living right there in Paterson right straight along? Don't you?

Q. Do I know that?

Q. Yes? A. Why no.

Q. Where were you working? A. In Lakeview.

30 Q. What mill does she work at? A. I don't know.

Q. You did know, didn't you? A. I knew where she worked when she got married.

Q. And after that you didn't bother much to find out one thing or the other, did you? A. No.

Mr. Stein: That is all.

*Re-direct Examination by Mr. Wilson:*

40 Q. Don't answer until the Prosecutor has a

*Charles Nuss—Redirect*

chance. Did you know the fact of Ada Hobson leaving James Reilly, after the marriage? A. I do.

Q. Do you know as a fact that inquiries were made as to the whereabouts of Ada Hobson?

Mr. Stein: I object to that. 10

The Court: That is a very indefinite way of putting that question. Inquiries by whom, when and where, and how?

Mr. Wilson: I was just going to lead up to that.

The Court: The question is not definite enough. Don't answer this. Do you know as a fact that inquiries were made in the community where Reilly and she had lived as to her whereabouts? 20

The Court: By whom?

Mr. Wilson: By him or by Reilly?

The Court: I would like to know your complete question. Your questions as originally put I will rule out.

Q. After the marriage of James Reilly, when next did you see Ada Hobson? A. I never seen her until I seen her here. 30

Q. Now don't answer this question. Do you know whether Ada Hobson left the mill where she was employed about a week after she is alleged to have been married to James Reilly?

The Court: I will rule that out because it is a leading question. Leave it to him to say how long it was after the marriage and when it was. Do not put into his mouth dates and time. 40

*Charles Nuss—Redirect*

Q. Do you know from anything you heard in the city of Paterson in the community where they lived, if Ada Hobson had left the mill?

10 Mr. Stein: I object to that as pure hearsay.

(Question repeated by stenographer.)

The Court: I do not think that is a proper question. If you are trying to prove the public rumor of the neighborhood in which she lived I do not think that is the proper way to get it out. Reframe your question.

20 Q. Did you know from your own knowledge that Ada Hobson and James P. Reilly were not living together after their marriage? A. Sure I know that, yes, sir.

Q. Do you know whether after a week after their marriage that they lived together? A. After a week?

Q. After a week after they were married? A. They lived together about that long. About a week after.

30 Q. A week after that? A. No, when I was introduced to them on Sunday, they lived together one week; because I was there on Sunday when we met the wife the first time.

Q. Did you ever see Ada Hobson after that? A. No.

Q. Did you, at the request of James P. Reilly, make any inquiries in the city of Paterson as to her whereabouts?

Mr. Stein: I object to that.

40 The Court: That is rather leading. I will allow you to ask him if he made any inquiries as to her whereabouts; then following it up by asking at whose request.

*James P. Reilly—Direct*

Q. Did you make any inquiries as to her whereabouts? A. Only the time I went to the house.

The Court: We have had all that.

Q. I mean after that occasion? A. No.

10

Mr. Wilson: That is all.

JAMES P. REILLY, produced as a witness on behalf of the defendant, being duly sworn on his oath, according to law, saith:

*Direct examination by Mr. Wilson:*

20

Q. Mr. Reilly, in 1908 where were you living?

A. 1908 on Marshall Street.

Q. Where is that? A. In Paterson; Paterson, New Jersey.

Q. What is your business? A. My business is electrician.

Q. And up to the time of your arrest with whom were you working? A. New York Telephone Company.

Q. And how long had you been working for them? 30

A. I worked thirteen years for them.

Q. Thirteen years. You said up to the time of your arrest; when were you arrested? A. Where was I arrested?

Q. When? A. On the twenty-third of June.

Q. On the twenty-third of June? A. Twenty-first of June.

Q. Twenty-first of June? A. Yes, sir.

Q. Where have you been since that time? A. I have been over in the Union County Jail.

40

Q. Did you know Ada Hobson? A. I do.

*James P. Reilly—Direct*

Q. Were you married to her? A. I was.

Q. And did you live with her? A. One week.

Q. What happened then? A. Why she left me.

Q. Where did she go? A. Why I don't know where she went.

10 Q. Did you make any inquiries or not, for her?  
A. I made inquiries.

Mr. Stein: That is leading.

Q. Did you make any inquiries or not?

The Court: That is all right.

Q. Did you make any inquiries or not? A. I did.

20 Q. You did what? A. I made inquiries.

Q. Where did you inquire first? A. First place I went was to her mothers to bring her back; to make up and bring her back to take up housekeeping, and her mother told me she was out of town.

Mr. Stein: I object to that.

Q. Did your mother give you any information?  
A. No, she just told me—

30 Q. No. What did you next do? A. I used to stand on the corner of Main and Grand Streets, watching to see if she would go home from work that way, trying to meet her, but I never could see her coming home from work.

Q. How long a time did you stand in the City of Paterson looking for your wife? A. Why six months.

40 Q. And in the meantime what were you doing in Paterson; what work? A. I had a fractured collar-bone at the time, and I couldn't climb no poles and I had to drive a wagon for Mr. Dizell.

*James P. Reilly—Direct*

Q. Did you afterwards get any information with regard to your wife—did you afterwards get any information or later on? A. Later on.

Q. Did you get that after? A. Yes, sir, I did.

Q. Who did you get the information from? A. I got information from two people.

Q. And what was the nature of the information that you got from your wife? A. Two letters.

Q. Who from? A. One from my mother and one from Mrs. Garrabrant.

10

The Court: Who?

A. One from my mother and one from Mrs. Garrabrant.

The Court: That is your mother's sister?

20

A. Yes, sir.

Q. After you got the letters did you do anything with regard to what the letters stated? A. Yes, sir, I did.

Q. And what did you do?

Mr. Stein: I object to the question being put after the—

Mr. Wilson: I withdraw that question.

30

The Court: Reframe it.

Mr. Wilson: I will reframe it.

Mr. Stein: The letters are the best evidence.

Q. Did you learn anything about your wife? A. In the letters?

Q. No. Any time after her disappearance as you say? A. Not at all.

Q. Did you get it later on? A. Yes, sir, I got it later on.

40

*James P. Reilly—Direct*

Q. From the information that you got did you do anything? A. I did.

Q. What did you do? A. Why the first thing I done was get a train from Syracuse and come right in here.

10

The Court: In here to Elizabeth?

A. No, into Paterson; then it was on Thanksgiving Day when I took my brother-in-law to the house.

Q. Brother and your brother-in-law? A. Yes, sir.

Q. Just state from that what you did? A. What I did?

20

Q. To whose house? A. I went to my brother-in-law's house.

Q. Just state what transpired? A. I went to the door and Mrs. Hobson answered the door, and I said Mrs. Hobson is that true that Ada is dead? And she said, yes, it is true; Ada is dead and buried, and she slammed the door and she made some other remark, I didn't quite get what she said, but my brother-in-law told me.

30

Q. Never mind; tell what she said? A. She seemed to blame me about it; slammed the door in my face. That is what I felt about it.

Q. When was the last time you saw your wife? A. Last time I saw my wife was the night she left me.

Q. What was that? A. Last time I saw my wife was the night she left me.

Q. That is a week after you were married, I understand. And from that time, when next did you see her? A. Right since I have been brought here to the Union County Jail.

40

Q. Well how lately? A. I guess it was about a month or month and a half ago, around that time.

*James P. Reilly—Direct*

Q. What is that? A. Anywheres from a month or month and a half ago, I am not sure which it was.

Q. Do you know of your wife Ada Hobson coming to the County Jail about a month and a half or two months ago? A. Yes, sir.

10

Q. Do you remember that occasion when you and about ten other men being put up in line? A. Yes, sir.

Q. Do you remember my being there?

Mr. Stein: I object to that.

Q. When you were in the line in the Warden's office in the County Jail with eight or nine other men, do you know whether Ada Hobson was there?

20

Mr. Stein: I object to the question as being leading. When you were in the line, and telling the witness where he was.

Mr. Wilson: I withdraw the question.

Q. Do you remember the occasion of Ada Hobson coming to the jail? A. Yes, sir.

Q. Just state to the Court what happened? A. Why, I was working in on the floor and the warden came to me and called me out and called seven or eight other persons out with me; I am not sure which; I know it was six or seven at the least and I came over and I stood there; stood there.

30

The Court: Do not tell what you did.

Q. What happened? A. I noticed a woman and she walked along, and somebody said: is he there and I looked at her sharp and I knew it was my wife. That's the first.

40

*James P. Reilly—Direct*

Q. Do you know whether your wife was asked any question as to identifying any man in the line?

A. Yes, sir; I do.

Q. What was the question asked her? A. It was asked "is your husband there"?

10 Q. Was any name mentioned, or anything of the kind? A. Any name?

Q. Yes, sir. A. My name.

Q. Just mention it? A. James Reilly.

Q. Do you know who asked her that question?

A. I am not sure whether it was you or the warden.

Q. Either me or the warden? A. Yes.

20 Mr. Stein: Do I understand you went into the County Jail as Defendant's counsel and had a line up of prisoners there?

Mr. Wilson: I did not make the line up there.

Mr. Stein: It was made at your request?

Mr. Wilson: Yes.

A. Mr. Dodd said "put your hand on him," and she said "he is not there."

30 The Court: What does all that prove?

Mr. Stein: I move to strike it out.

The Court: What does that prove? I will not strike it out, but the fact that she could not pick him out; does not make any material difference in the case.

Mr. Wilson: This woman had not seen this man for several years.

The Court: Suppose so. That is not going to prove his innocence in this case.

40 Mr. Wilson: It is going to prove this one fact, that she did not know the man she married.

*James P. Reilly—Direct*

The Court: You could show that without going into your defense. You can even show that after five years when she met him for the first time she did not know him. All this testimony is crowding up the record and taking the Court's time.

10

Q. Do you know Abbie Miller? A. I do.

Q. And you married her? A. I did.

Q. And the reason why?

Mr. Stein: I object to the reason why he married her.

The Court: He married her.

Q. Was it founded on any belief?—

20

Mr. Stein: I object to that.

The Court: What do you mean by that, Mr. Wilson?

A. (continuing)—of the death of the other wife?

The Court: I suppose the only inference that could be drawn from his testimony is that he believed his wife was dead. I think that if there was not so many objections on both sides and counsel would allow the Court to rule on what was material and what was not material we would get along quicker and we might not make so many mistakes. When it comes to the other question which you raised you can address the Court on that as to whether intent is necessary on all those questions. Now, there is testimony before the jury at this time that he made inquiries at the house of Mrs. Hobson and was informed by her that her daughter was dead.

30

40

*James P. Reilly—Direct*

Now, you want to verify that by your present course of questions, but I don't think it is proper. You are drawing an inference or asking him to do so. Why did he get married?

10 Mr. Wilson: He says he thought his first wife was dead.

The Court: That is all in here. Don't you leave anything to the jury to determine in this case?

Mr. Wilson: Oh I do, your Honor, but this is the point. The statute says this: "*Knowing*"—knowing—knowing that the other is alive. That is the point about it. If there weren't that knowledge, marriage is not a crime.

20 The Court: I will rule on that question.

(Question repeated by the stenographer.)

The Court: I will rule that question out.

Q. Was it founded on any belief of your first wife's death, that led you to contract the second marriage? The marriage with Abbie Miller.

30 The Court: That is not a fair kind of question; that is leading your witness to make an answer that will be in accordance with your desires. You are instructing him, in other words, by the form of your question how to make his answer. Now, I will allow you to show this: whether he believed he was contracting lawful marriage; and if he said he did, then ask him why. I will allow you to go that far.

40 (Judge's question repeated by the stenographer: did you believe you were contracting a lawful marriage?)

*James P. Reilly—Cross*

A. I did.

The Court: I will allow you to ask him the further question "why did you think so?"

Q. Why did you think so? A. Why, because I thought my first wife was dead.

The Court: You have got all that out.

10

Q. Now, Mr. Reilly, when did you first know that your first wife was alive? A. Not until my mother came down and told me.

Q. And did you have any conversation with your wife about it? A. I did.

Q. Did you say anything to her or not as to living together? A. I did.

Q. Just tell the Court and jury what you said? A. Why, I talked it over with her and told her that I was afraid that if Mrs. Reilly number one found out I was living with her she would have me arrested. So the best thing she could do was break up until I got a divorce from her or get our marriage annulled, either one, and she didn't like to do it at first and then we decided she would go to my mother and live with my mother until I got a divorce from my first wife. And I was away from her five weeks living here on Rahway Avenue.

20

Q. Well, now I am up to that. Was there anything said or not as to your supporting your last wife? A. Yes, sir; there was.

30

Q. I might ask this—do not answer, the prosecutor may object.—You love Mrs. Miller, don't you?

Mr. Stein: The State is almost ready to admit it.

*Cross-examination by Mr. Stein:*

Q. Reilly, you remember your company keeping

40

*James P. Reilly—Cross*

days with Mrs. Reilly number three, otherwise known as Miss Miller?

Mr. Wilson: I object to the question because there is no evidence of Mrs. Reilly number three.

10

The Court: One wife was dead and left a child; and there is one wife—

Mr. Stein: Ada is number one; Mary is number two, and Abbie is number three.

The Court: I will allow the question.

Mr. Wilson: I object because it is not cross-examination.

The Court: I want to say with reference to that what I have often said before that when the defendant takes the stand in his own defense the scope of the examination is much broader than when a mere witness takes the stand. I think the State may even ask any question that is pertinent to the matter at issue.

20

(Question repeated by the stenographer.)

A. I do.

Q. You remember telling Mrs. Reilly number three, formerly Miss Miller that when you were nineteen years of age you got Ada Hobson in trouble?

30

Mr. Wilson: I object; there is no such evidence.

The Court: I do not remember any such.

Mr. Stein: That is for the purpose of showing that the defendant knew Ada Hobson was living—his wife—some information had come to the girl he was going to marry for the third time and he was explaining to her

40

*James P. Reilly—Cross*

that that Ada Hobson was not his wife at all, and I will go a little further—

The Court: It is the form of the question I will rule on.

Mr. Wilson: And rebuttal is something that is going to be denied by the man on the stand; the question which has been asked some previous witness. No such question has ever been asked. 10

The Court: I will wait until the next question is put.

Q. Did you tell Miss Miller before you married her that you knew a girl by the name of Ada Hobson? A. I did.

Q. Did you tell Miss Miller that you had gotten her in trouble and didn't marry her? 20

Mr. Wilson: I object; that is not cross-examination, and not proper evidence, and not rebuttal.

The Court: That would not be rebuttal. It would not be rebuttal—the foundation for rebuttal at all. I will allow you to ask the question, but not for the purpose of rebuttal.

Mr. Stein: If your Honor please I want to show that he knowingly deceived wife number three about his first wife way back in the beginning. He is the defendant and I can show how he came to marry this woman, and what he has related about his past life and representations to her that he was a widower. 30

The Court: I will rule out the question as it stands now.

Q. Did you tell Miss Miller when you were about to become engaged to marry her that you were a widower? 40

*James P. Reilly—Cross*

Mr. Wilson: I object.

The Court: I will allow that.

Mr. Wilson: If he had asked Miss Miller that question on the witness stand——

10 The Court: As I remember the testimony he asked Miss Miller whether this man represented himself as a widower, and she said, in her testimony, that this man represented himself as a widower.

Mr. Stein: Not only a widower but the man who Reverend Frank Smith——

Mr. Wilson: Very well.

A. I did.

20 Q. Did you say what was the name of the wife that had died? A. No, sir.

Q. Did you tell——did you not tell Miss Miller that you were married but once, and that that wife was dead? A. No, sir; I did not.

Q. Now, then did you tell her that Ada Hobson was not your wife, never was your wife, that she was a girl you got in trouble but did not marry?

Mr. Wilson: I object.

30 The Court: I will rule that question out. You could have asked that from the witness when she was on the stand, and you didn't do it.

Mr. Stein: I need not do it. I purposely did not ask her that on the stand. I want to show that this man was concealing at the time, the fact that he was ever married to Ada Hobson at all and that Ada Hobson came in again before that. They became engaged and Ada Hobson came in again before they were married.

40 The Court: I will rule out the question.

*James P. Reilly—Cross*

Q. Did you tell Miss Miller that so far as you knew, Ada Hobson was living, and that you had left her subsequent to a certain discovery? A. No, sir.

Q. You did not tell her that? A. No, sir.

Mr. Wilson: Now, Mr. Stein, you won't be able to deny that. 10

Q. Did you say to Miss Miller "If my people ever tell you that I was married to Ada Hobson, do not believe it, because I was never married to her."

Mr. Wilson: I object, if your Honor please; that is a question you must ask Miss Miller when she was on the stand.

The Court: I look at that in a different light, Mr. Wilson, I think it is more cross-examination than anything else. The man has testified here that he married this girl, and his other wife, he thought, was dead at the time he married her, and any conversation that he had with the woman that he married relative to their proposed marriage is proper. I think it is more in the line of cross-examination, than anything else. 20

Mr. Wilson: But shouldn't that have been brought in when Miss Miller was on the stand? 30

The Court: I think it is a cross-examination of your witness, taking the whole trend of his testimony into consideration. I think it can be considered as cross-examination; that question, anyhow.

Mr. Wilson: I except to your Honor's ruling.

Exception allowed—signed and sealed accordingly. 40

JAMES C. CONNOLLY,  
Judge.

*James P. Reilly—Cross*

Q. When did you marry Mary A. Reilly?

Mr. Wilson: I object, if your Honor please; he has not been asked whether he ever married Mary A. Reilly.

10 The Court: I will allow it, and grant an exception.

Mr. Wilson: I take it.

Exception allowed—signed and sealed accordingly.

.....,  
Judge.

A. I am not quite sure whether it was 1910 or 1911.

20 Q. You are not quite sure? A. No, sir; I am not.

Q. How long did you live with Mary? A. I lived from the time I got married to her, until a year ago last May when I buried her in Elizabeth.

Q. How old is the child you had?

Mr. Wilson: I object to the question; the jury may get a false impression about this.

The Court: That is immaterial how old the child was; I will rule the question out. It is immaterial.

30 Mr. Stein: This is done for the purpose of contradicting, if your Honor please, the witness, as to when he discovered when Ada Hobson was dead, as he puts it, and also to show that he was married earlier than 1910 to Mary.

40 Mr. Wilson: I will object to it for another reason: it is primary law; it is fundamental law; it is academic law; it is settled by the laws of this State, that for the purpose of convicting a man of one crime, you cannot ask him if he committed the other.

*James P. Reilly—Cross*

The Court: I ruled on this thing several minutes ago, I think.

Q. When did your wife Mary die?

Mr. Wilson: I object.

10

The Court: I will allow that.

Mr. Wilson: I except to your Honor's ruling.

Exception allowed—signed and sealed accordingly.

.....,

Judge.

The Court: I understand between the time he married Ada Hobson and the time when he married the woman who is now the State's complaining witness, he had married another woman?

20

Mr. Stein: Exactly.

The Court: This woman who is now the State's complaining witness, is now the defendant's third wife?

Mr. Wilson: It was another crime for having married the second wife, and that is the point the State wants to get out; the fact that he has married Abbie Miller and previous to that he married somebody in between. That is charging him with the crime of bigamy in having married Abbie Miller, and that is trying to get before the jury and Court that between the time he married Ada Hobson, and the marriage to the other, he has committed something else.

30

The Court: There is some testimony in the case that he had a child that came to live with him when he married the present—

40

*James P. Reilly—Cross*

State's complaining witness, and I suppose that we ought not to go into that very far. He is not accused of that bigamy, if there was one; that bigamous marriage, if there was one.

10 Mr. Stein: But it goes, if your Honor please, all to the fact of showing whether this man married the Miller woman in good faith. What he did in between times, and that is what it is offered for.

(Question repeated by the stenographer.)

A. One year ago last May.

20 The Court: Let me ask a question there, will you, Mr. Prosecutor?

Mr. Stein: Yes.

The Court: Was the marriage to Mary a ceremonial marriage; either before a church of a justice?

A. Before a church.

The Court: In a church?

30 A. Yes, sir.

The Court: So that there was a legal marriage?

A. Yes, sir.

The Court: And that is less than five years before you married this Abbie Miller? That is less than five years before you married Abbie Miller, isn't that so?

40 A. I think it is; yes.

*James P. Reilly—Cross*

Q. Now, you knew where your wife, first wife, Ada Hobson, was working in Paterson after she left you? A. After she left me? No, sir; I didn't.

Q. You didn't know where she was working? A. No, sir.

Q. What made you lounge around street corners waiting for her to come from work? A. I said waiting to see if she did come from work. 10

Q. You didn't say you were waiting around street corners? A. I said I was standing around corners waiting to see.

Q. What corners did you stand on? A. Corner Main and Grand Street.

Q. What factory did you think she was in? A. I thought she was in factory that she was in before I married her. 20

Q. Why didn't you take a walk right down to the factory and see if she was there? A. I did not want to walk down there to have everybody to see me standing out in front of the gate.

Q. Why not? A. I did not want to walk down there to have everybody to see me standing out in front of the gate.

Q. You wanted your wife, didn't you? A. I did, yes, sir.

Q. Why did she ever come to leave you anyway? 30

A. I wasn't making very much money. I was making ten dollars a week and she said we couldn't live on that.

Q. On account of you weren't supporting her? A. I wasn't making very much money. I was making ten dollars a week and she said we couldn't live on that.

Q. Your wife said she left you because you couldn't support her? A. Yes, sir—we had the—

Q. That is not so when she said that. That she left you because you refused to support her? A. 40

*James P. Reilly—Cross*

I might not have been able to support her on ten dollars a week.

Q. But you did support her? A. I gave her all I made.

10 Q. You never made any inquiry about her except when you say you went with your brother and your brother-in-law down to Mrs. Hobson's house; isn't that so? A. No, I did not. I have only what the mother told me.

Q. No, you, yourself, made no other inquiry except the one, when you went to Mrs. Hobson's house and asked whether her daughter was dead; is that right? A. Yes, I have made other complaints.

20 Q. You did make another one? What other inquiry did you make to ascertain whether your wife, Ada Hobson, was living? A. Why, I inquired of everybody that I thought they knowed her; that she palled around with before I married her.

Q. Do you know the names of the people you asked about her? A. Well, I knew quite a few of them.

Q. Do you know their names? A. Yes, sir.

Q. Did you subpoena them here to-day to show whether you inquired of them; yes or no? A. Some of them.

30 Q. Who are they? A. Mr. Nuss is one; my two brothers.

Q. Mr. Nuss was one; your two brothers. A. My mother.

Q. Your mother, and your aunt? A. And my aunt.

Q. Didn't you inquire of anybody else? A. Yes; I inquired from other people.

Q. Who? A. Friends of hers.

Q. Who? A. Who?

40 Q. Yes. A. Mr. Bush, the man who stood up for us, for one.

*James P. Reilly—Cross*

Q. Yes. Who else? A. Also several of her friends, which I could not get at over in the Union County Jail.

Q. You had two lawyers to get them? A. I couldn't tell them where they could be found.

Q. Didn't your relations living in Paterson know where to get them? A. No, sir; my relations don't know who I talked around with. 10

Q. Didn't your relations visit you every week in the jail? A. My mother did.

Q. Did you tell your mother there was some people I inquired about her that I would like to have subpoenaed? A. Yes, I did.

Q. You did tell her the names? A. Yes, but she didn't know them.

Q. Did you tell Mr. Wilson, your counsel, the names? A. I have told my counsel a few of them and he said we didn't need them. 20

Q. Didn't need them. So the only one you inquired from concerning your wife and her whereabouts was her mother? A. And her friends.

Q. Who are they? A. Who are they?

Q. Who are her friends that you inquired about? A. My brother-in-law.

Q. Your brother-in-law was Nuss, who was with you? A. Yes.

Q. Any more? Your brother who was on the stand? A. And my brother who was on the stand. 30

Q. They weren't her friends, they were your friends; what friends of hers did you go to see to find out where she was? A. There was Mrs. Ayres.

Q. Where does she live? A. She did live in Passaic, at the time.

Q. Did you try to find out where she lives now? A. No.

Q. Did you try to find out? A. No, sir; I couldn't very well at the time. 40

*James P. Reilly—Cross*

Q. Did you ask anybody to find out for you where she lives? A. I didn't have no chance to ask anybody.

Q. Why? A. You only have five minutes to talk to anybody.

10 Q. You can't talk to your counsel more than five minutes in the Union County jail? A. Yes, you can.

Q. Did you talk to your counsel about Mrs. Ayres? A. Yes.

Q. Did you ask your counsel to subpoena that woman? A. I spoke of the fact—

Q. Did you ask your counsel to subpoena that woman, yes or no? A. I am not sure whether I did or not.

20 Q. Ada Hobson got any brothers living in Paterson? A. No, sir, she has not.

Q. Has she any relations living in Paterson at all? A. Not as I know of.

Q. Didn't you know any of her relations? A. Only her mother.

Q. Only one you ever knew after six months of hanging around Paterson—were you working during that time? A. Six months?

30 Q. Six months after your wife left you? A. Yes; I never was idle six months.

Q. You worked right straight along six months after she left you? A. I did.

Q. And during that six months all you did was to stand around corners? A. I beg your pardon?

Q. Stand around corners expecting to see her? A. Well, not that way. Not all that six months.

40 Q. I know you were working; I didn't mean standing there all the day long; after your work was over you stood around? A. I stood there from six o'clock every night until a quarter after six, not for the whole month.

*James P. Reilly—Cross*

Q. Didn't you say you stood around for six months? A. I didn't say for one month. I stood there often on the corner of Main and Grand Street at nights when she was going home.

Q. You were pretty well fixed about that particular corner; there must have been some particular reason. A. It was just on the way home for both of us. Both of us had to come past that corner. 10

Q. How did you know she had to come past there? A. How did I know? I didn't know she had to, but I know she came past there.

Q. Did you know she was coming past there? A. Before I married her, yes.

Q. After you married her? A. No, sir.

Q. Did you know where she was working at all? A. No, sir; I didn't. 20

Q. Why select that corner; wasn't it very likely she would come through some other street? A. Not very likely.

Q. Reilly, were you trying very hard to find her? A. Yes, sir.

Q. You went to only one corner? A. And we went to her house.

Q. Went to her house? A. Yes.

Q. And that was a year and a half—when did you marry her? A. 1908. 30

Q. And you never went anywheres near her mother's house to inquire about her until Thanksgiving Day, 1909; isn't that right? A. Yes, I believe it was.

Q. And you took your brother and your brother-in-law? A. And I took my brother and my brother-in-law.

Q. Before that for six months you stood around Paterson, and once in a while you went down to the corner to see if you could see her, is that right? 40

A. Yes, sir.

*James P. Reilly—Cross*

Q. Never changed your corner at all? A. Yes, sir; I did; I went to where the Hellvetia Hall and the Institute Hall was.

Q. You went around those halls? A. I went around those halls.

10 Q. And you never found her? A. No, sir.

Q. Then you left Paterson? A. Yes, sir.

Q. Did you ever tell anybody what you were going around looking for? A. I did.

Q. Do you know the names of the fellows? A. Yes.

Q. Did you subpoena them? A. I couldn't get them; I had my mother looking for them.

Q. All those people have disappeared? A. Yes, but her to write to.

20 Q. Which of them did you get her to write? A. Just one. Yes, sir.

Q. Only one fellow you spoke to; how many others did you speak to? A. He was the only one that I put any confidence in; I chummed around with him.

Q. Tell me about this one. A. Mr. Bush, the man who stood up for us.

Q. His wife is dead? A. I believe she is.

30 Q. How did you know; you were looking for Bush—

The Court: What difference does it make? I do not think it is important to the jury or the Court.

Q. You and your wife, that is, the third one, Abbie Miller, separated for a little while here in Elizabeth, didn't you? A. Five weeks.

40 Q. And when you came together again, didn't you say to your wife, "Don't believe this story about my being married to Ada Hobson; I never did marry her"? A. No, sir; I did not.

*James P. Reilly—Redirect*

Q. You did not. You heard your wife testify to that this morning? A. Yes, sir; I did.

Q. She is wrong about that, isn't she? A. She is positively wrong about this; yes, sir.

Q. Do you remember on the occasion in your home your mother in the presence of your third wife, Abbie Miller, called you a bigamist? A. Calling me a bigamist? 10

Q. Do you remember that; yes or no? A. No, sir.

Q. Did she call you a bigamist? A. No, sir.

Mr. Stein: That is all.

*Redirect examination by Mr. Wilson:*

Mr. Reilly, Mr. Stein asks you whether you made inquiries about your wife from any person and you said you did. A. Yes, sir. 20

Q. From whom did you inquire? A. From whom did I inquire?

Q. Yes. A. From her mother, my mother, my aunt, her sisters that had worked in the mill with her, friends of hers. And this other friend of hers and mine both, Mr. Norman Bush; he was a friend of mine and I used to ask him if he saw anything around of her; and I also—Mrs. Ayers from Pas- 30  
saic, I also asked her.

Q. Don't answer this question until the Court rules on it. When you asked Mrs. Ayres and your mother and the others with regard to your wife, did they tell you anything about her?

Mr. Stein: I object on this ground: that it is not redirect examination, and the parties can't be obtained. Those that are here can be put on the stand as to what they said, 40  
and those that are not here—Mrs. Ayers and

*James P. Reilly—Redirect*

10 Mrs. Bush—are in the same category with the mother, Mrs. Hobson, who is dead. We aren't in any position to contradict him. And further, I object on the ground that when I asked him about these persons, he was not asked what they had said. It is not redirect examination on the cross-examination.

Mr. Wilson: Your Honor knows as well as I do, that when questions of that kind are asked—

The Court: I will allow you to ask the question.

(Question repeated by the stenographer.)

20 A. Yes.

Q. What did Mrs. Ayers tell you with respect to your wife?

Mr. Stein: I object to that.

The Court: I rule that question out.

Mr. Wilson: I except to your Honor's ruling.

Exception allowed—signed and sealed accordingly.

30 JAMES C. CONNOLLY,  
Judge.

Q. Don't answer this now. What did Mrs. Garrbraut say with regard to your wife?

Mr. Stein: I object to it because Mrs. Garrbraut was on the stand and she is here in the court room and can say for herself.

40 The Court: If it is improper for him to tell, it would be improper for her to tell. I will rule it out.

*James P. Reilly—Recross*

Q. Don't answer this. Was it from any information you got from Mrs. Garrbraut or Mrs. Ayers that led you to go to Mrs. Hobson's house with regard to your wife?

The Court: I will allow that. That is not detailed conversation; that is simply giving the reasons upon which he acted. 10

A. Yes, sir.

Mr. Wilson: That is all.

*Recross examination by Mr. Stein:*

Q. After you say that the mother told you that Ada Hobson was dead, did you inquire when she died? A. When she died? Why, I didn't inquire off her mother, no. 20

Q. Did you go to City Hall to look up the records to see whether she was dead? A. I didn't think it was necessary.

Q. What is that? Answer the question. A. No.

Q. Did you inquire who was the undertaker that buried her? A. No, I didn't.

Q. You knew that your mother-in-law was angry with you when she spoke to you? A. I do; yes, sir. 30

Q. Did it occur to you at all at that time that Mrs. Hobson was speaking to you while she was under the influence of a passion?

Mr. Wilson: I object to that, it is an opinion.

The Court: I will allow the question.

Q. And that perhaps what she said was said under a great passion, and perhaps was not true? 40

*James P. Reilly—Recross*

Mr. Wilson: I object to that; it is irrelevant.

The Court: I will allow the question and you may take an exception.

10 Mr. Wilson: I except to your Honor's ruling.

Exception allowed—signed and sealed accordingly.

JAMES C. CONNOLLY,  
Judge.

A. I don't quite understand what you mean.

(Question repeated by the stenographer.)

20 A. Why, I didn't think that she was mad when I first went up there. Only when the door smalled and she made the remark. She didn't seem no different than she always did when I first saw her.

Q. Was she always in the heat of passion? A. No, sir; she was always a nice woman.

Q. And this day you said she seemed to blame you for the death of her daughter, and said, "I don't want to see you again," and she said, "She is dead and buried," and slammed the door. A. I didn't  
30 say that's what she said I said it looked like that to me.

Q. Didn't it seem to you it was up to you to inquire a little further into the truth of the statement that her mother had made or that she was concealing the daughter from you because of the truth you had had?

40 Mr. Wilson: I object; it is not proper for this reason: It was the mother of Ada Hobson, and Reilly had a right to believe that everything that a mother said about her daughter was true, no matter whether

*James P. Reilly—Recross*

the woman was in a passion or what she was.

The Court: I will allow the question. Answer.

(Question repeated by the stenographer.)

A. It didn't seem to me that way. 10

Q. You were satisfied? A. I took her mother's word.

Q. I didn't hear you. A. I was satisfied with her mother's word.

Mr. Stein: All right.

*By Mr. Wilson:*

Q. Don't answer if the Prosecutor is going to object. Did your mother and Mrs. Garrbraut tell you where they got the information about Ada's death? 20

The Court: I will refuse to allow the question to be put.

Mr. Wilson: I except to your Honor's ruling.

Exception allowed—signed and sealed accordingly.

JAMES C. CONNOLLY, 30  
Judge.

Mr. Wilson: That's our case.

Defendant rests.

*Mrs. Abbie L. Miller-Reilly—Recalled—Direct*

MRS. ABBIE L. MILLER-REILLY, re-called.

*Direct examination by Mr. Stein:*

Q. Did your husband Reilly tell you that as far as he knew Ada Hobson was living? A. He did.

10 Q. Did your husband tell you that—

Mr. Wilson: I object to this testimony as not being strictly rebuttal.

Q. (continuing)—if his people told you that he was married to her, Ada Hobson, not to believe it, as he never was married to her? A. He certainly did.

Mr. Wilson: I object to that question, on the ground as not being rebuttal.

20 Mr. Stein: That is the very thing I asked the defendant.

The Court: Your objection comes too late; the answer is given and the jury has got it.

Q. When he went to live with you the second time; that is, when you had separated for about five weeks or whatever it was—and when he lived with you a second time, did he deny that what his folks said about him being married to Ada Hobson? And say that he was not married?

30 Mr. Wilson: I object to that.

(Question repeated by the stenographer.)

The Court: I will allow that. I think there was some testimony on the direct examination.

Mr. Wilson: I except to your Honor's ruling.

Exception allowed—signed and sealed accordingly.

JAMES C. CONNOLLY,

40

Judge.

A. He did.

Mr. Stein: That is all.

*Mrs. Clara A. Bird—Direct*

MRS. CLARA A. BIRD, produced as a witness on behalf of the State, being duly sworn on her oath, according to law, saith:

*Direct examination by Mr. Stein:*

Q. Were you present in the home of Mrs.—in your home—were you present when Mrs. Reilly, the mother of the defendant, called him a bigamist? 10

Mr. Wilson: I object to that. Was he present? I object to the question anyway, no matter what the mother called. That is a legal question what a bigamist is. She may have thought it was some kind of a food. That is a legal question. It is calling for a conclusion of law; that is, that Mrs. Reilly had specified that her son was a bigamist as asked by that question. 20

The Court: This witness has not been on the witness stand before. Now, in the direct testimony, I think by Mrs. Reilly number three, as the Prosecutor calls her, stated that the mother of the defendant called him a bigamist. But he took the witness stand and he denied it. He said that was not so. Now here comes another person who, as I understand, was present at the time. And she is asked whether that is so or not. Whether those words were used. 30

Mr. Wilson: Isn't that part of the main case? Because, suppose we come back and deny what Mrs. Bird said?

The Court: I think that, strictly speaking, it is a part of the main case. And it is discretionary for the Court to allow. 40

*Mrs. Clara A. Bird—Cross*

A. Yes.

Q. And was Reilly there when she called him that? A. No.

Q. I mean were you present when Mrs. Reilly called her son a bigamist in his presence? A. Oh, yes.

10 Q. That is what I mean. Where did that happen, in your house or in Mrs. Reilly's house? A. I was living with Mrs. Reilly.

Q. That is, number three? A. Yes, sir.

Q. That was then in his own house? A. Yes.

Q. And Mrs. Reilly I speak of is the mother of Reilly, the defendant; were you present when his own mother said to him, "You are a bigamist"? A. I was.

20 Mr. Stein: That is all.

*Cross-examination by Mr. Wilson:*

Q. What led to that conversation, Mrs. Bird? A. It was some words that they had had.

Q. Some words they had? A. Some words they had in their home.

Q. And Mrs. Reilly said to her son this, didn't she: that she had just found out that Ada was alive? A. No; she didn't say nothing of the kind to me.

30 Q. No; but in the conversation? A. I don't know anything about that.

Q. You don't remember that? A. No.

Q. There was quite an extended conversation, wasn't there? A. I can't tell you if there was.

Q. Wasn't there more than that said in the conversation? A. I came out of the room and stood in the doorway, and as I got in the doorway, she said, "You are a bigamist, and you are got two or  
40 three wives living, and you ought to be behind the bars."

*Mrs. Clara A. Bird—Cross*

Mr. Wilson: I move that be stricken out.

Mr. Stein: I would like to call the Court's attention to the fact that questions being asked are not strictly cross-examination on my rebuttal.

The Court: I will rule upon the case 10  
again.

Q. Mrs. Bird, are you a married woman? A. I  
certainly am.

Q. What? A. I am.

Q. Is your husband alive?

The Court: How is that material?

A. I am a widow.

Q. That is, your husband is not alive? A. Yes, 20  
he is alive.

Q. And you are not living with him? A. No,  
sir.

Mr. Wilson: That is all I want to know.

Mr. Stein: The State will rest.

Mr. Wilson: We are through.

Mr. Wilson sums up the case for the de-  
fendant.

Mr. Stein sums up the case for the State.

30

**Defendant's Requests to Charge.**

(1)

That it is a question of fact for the jury whether  
the prisoner knew whether his first wife was alive.

(2)

That the burden of proof that a person charged 40  
with bigamy has not been continually absent from

*Defendant's Requests to Charge*

his wife for five years and that she was known to him to be living within that time is on the State and not on the defendant.

(3)

10 That to an indictment for bigamy it is a good defense that at the time of the bigamous marriage the man had a reasonable and bona fide belief that his wife was dead, even though five years had not elapsed since he had last heard of her.

(4)

20 That under a statute where the guilty knowledge is part of the statutory definition of the offence it must be averred in the indictment.

(5)

That while it is the duty of each juror to discuss and consider the opinion of others, he must decide the case upon his own opinion of the evidence and upon his own judgment.

(6)

30 That if the jurors have a reasonable doubt of the defendant's guilt, they must give him the benefit of that doubt and acquit him.

(Question repeated by the stenographer.)

**Judge's Charge to the Jury.**

## UNION COUNTY COURT OF QUARTER SESSIONS.

STATE	}	An indictment No. 1 for Big- amy.	10
vs.			
JAMES P. REILLY, JR.			

HON. JAMES C. CONNOLLY, Judge of the Court  
of Quarter Sessions.

*Gentlemen of the Jury:*

The defendant is charged under the indictment 20  
with the crime of bigamy. The allegation of the  
indictment is that the defendant James P. Reilly,  
Jr., on the sixteenth day of December, 1908, en-  
tered into the married state with one Ada Hobson,  
and afterwards, on the thirtieth of January, 1914,  
during the lifetime of the said Ada, married Abbie  
Louise Miller. The statute under which the indict-  
ment is found provides that "Any person who, hav-  
ing a husband or a wife living, marries another per-  
son, shall be guilty of bigamy, but nothing in the 30  
act shall extend to any person whose husband or  
wife shall be continually remaining without the  
United States of America for the space of five years  
together, or whose husband or wife shall absent  
himself or herself, the one from the other, for the  
space of five years together, in any part within this  
State, or the United States, the one of them not  
knowing the other to be living within that time."

Now, under the evidence in this case, it appears 40  
that the defendant was married to Ada Hobson  
on the sixteenth of December, 1908, and that he

*Judge's Charge to the Jury*

lived with her for a period of one week, and it also appears that the defendant was married to the woman named Tillie Miller on January thirtieth, 1914. The defendant now says that he is not guilty of the crime of bigamy and that he comes within the provisions of the statute which holds a person innocent where it appears that he or she has not heard from the other person to whom he or she was married for the space of five years prior to the marriage complained of, or prior to the time when the second marriage was performed. And the defendant tells you that he never saw his wife after she left him in 1908, until he saw her here in the jail of this county. And I also desire to call your attention to the fact that Ada Hobson, in other words, Ada Reilly, his wife, swore that she never saw him during all the intervening time which covers a period of five years and more.

He also says that he went to Mrs. Hobson's house in the city of Paterson, on Thanksgiving Day, in the year 1909, in company with his brother and his brother-in-law, and made inquiry as to whether his wife was dead. And, he says, that Mrs. Hobson, the mother of his wife, told him that her daughter was dead and buried and that she did not want to have anything to do with the defendant, or words to that effect. His brother and his brother-in-law swore to the same fact.

Now, you are to decide from all the testimony whether the defendant was acting honestly when he took the woman Abbie Miller to be his wife, and whether he had reason to believe that his wife Ada Hobson was dead. If Reilly, the defendant, had been deceived by his wife as he describes, and if he had not heard from her for the period of five years, and didn't know that she was living during that time, or at the time he married, then he is

*Judge's Charge to the Jury*

not guilty. But you are the judges of the facts and you must decide from the testimony whether he knew that his wife was alive.

The law covering this subject has been defined by the courts—and I shall refer now to Underhill on Criminal Evidence, and he states—in discussing this phase of the law—

10

“That the accused may prove that he has been credibly informed that his wife had procured a divorce from him, and may show that he had made due inquiry, and endeavored to ascertain the truth. If he believed, with good reason, that such was the case, he should be acquitted, as the criminal intent was not present. The State must prove affirmatively, and beyond a reasonable doubt, that the first husband or wife was alive at the date of the void marriage. This is not presumed, as a matter of law, from proof that he or she was alive at a prior date, for the presumption that the accused is innocent will nullify the presumption of the continuance of life. Hence, in the absence of direct evidence that the earlier spouse is alive, when the later marriage was solemnized, the jury must acquit.”

20

Of course, in this case, the person referred to in the citation as the earlier spouse appeared here in court, so there is no question she was alive at the time the second marriage was performed, but under the statute, this defendant would be innocent of the crime of bigamy, if he did not know that she was alive, and if it appears that he had not heard from her during a period of five years prior to his marriage to Abbie Miller.

30

Now I desire to call your attention to some of the facts which are before you with reference to the defendant's conduct toward Abbie Miller when he married her. He told her that he was a widower. It does not appear any place in the testimony that

40

*Judge's Charge to the Jury*

he told her that his wife, Ada, had died, or the circumstances under which she left him. He simply told her he was a widower. Now, believing that the marriage was valid, they lived together until some time in the month of March. They were married the thirtieth of January of this year, and they lived together until some time in the month of March, when some trouble, that has not been explained to the jury, arose between the two, and then Reilly's mother came to their home. It appears that the first information that the Miller woman had that her husband was—had a wife living—came from the defendant's mother, and there was a discussion in the house about it. There was a talk with reference to the subject and the Miller woman agreed that she would go to Paterson, and live with Reilly's mother rather than remain with him under the peculiar conditions that surrounded their marriage.

Now, when he took the witness stand—Reilly he made some reference to what took place in the home when his mother came there, and he says that he said to Mrs. Reilly, "I told Mrs. Reilly that I was afraid that if wife number one found out that I had got married again, she would have me arrested." Now, as I remember his testimony, that is what he said on cross-examination. What inference are you to draw from that? Are you to draw this conclusion: that he himself did not hear of his wife Ada being alive until his mother came to his home, and that this language was used with reference to the information which he then received or was this language used without having been informed by his mother of the fact that Ada was alive? Was this statement made before he learned the fact made known by his mother, and was it then he said that he was afraid that certain pro-

*Judge's Charge to the Jury*

ceedings would be taken against him? Now, you have heard the testimony, and you are to decide whether this man has told a truthful story on the witness stand, when he said to you he believed his wife was dead for the period of five years at the time when he married Miss Miller. You are to determine that. 10

Now, he never made any inquiry after 1909 to ascertain whether she was alive. He never went to an undertaker to find out where she was buried. After the first six months when she left him he never made any further effort to ascertain anything about her, and he simply brings his brother and his brother-in-law to prove that he made inquiries on Thanksgiving Day, 1909, concerning her whereabouts, or whether she was alive. 20

There are facts, of course, and circumstances, in the case to which I might allude and which, perhaps, would throw some light upon the case, but you have heard all the testimony, and if I have neglected to direct your attention to any particular portion of it, to any part of it, any fact that you think material to this matter, why, you will remember it, you will give such credit to it as you think it deserves. 20

Now, in charging a jury on a criminal matter, it is the duty of the Court to say that the jury ought to feel that the defendant is guilty beyond a reasonable doubt, and if a reasonable doubt exist in their minds, they should, of course, give the defendant the benefit of that doubt. Now, I have frequently defined, before the juries in this court, what a reasonable doubt is, and the present panel has listened to me case after case defining what a reasonable doubt is, but still, as I am required to explain to you what a reasonable doubt is, I will do it over again: Now, a reasonable doubt is not 40

*Judge's Charge to the Jury*

any doubt; it is a doubt which one entertains after he has considered all of the testimony, pro and con; that is, all of the testimony for the defendant and against the defendant, and after considering it and giving it all the attention and all the weight to which it is entitled, then, if a reasonable doubt rests upon your minds, you are to give the benefit of that doubt to the defendant.

I am asked to make special charges to the jury by the attorney for the defendant. He has set them forth in written form.

The Court: Mr. Wilson, don't you think that I have charged the jury very fully in this case?

Mr. Wilson: I would like your Honor to charge just as requested; it seems to be the gist of the law.

Mr. Stein: In other words, you would like to charge the jury?

Mr. Wilson: Yes, I would like to charge the jury.

The Court: I refuse to charge the jury other than as I have charged.

Mr. Wilson: I except to your Honor's charge and also to your Honor's refusal to charge.

The Court: The Prosecutor has called my attention to what he considers an important part of the testimony in the case, and I desire, at his request, to call your attention to it. There was testimony on the part of Miss Miller to the effect that Mrs. Reilly, the mother of the defendant, called her son a bigamist at her home, that is, at Reilly's home in Elizabeth, and Mrs. Reilly was here in court sitting on the front bench when

*Judge's Charge to the Jury*

that testimony was given. She might have been called to deny that statement made by Miss Miller if the defendant wished to do so, but he did not call her. She was not brought forth as a witness to deny the statement made by Miss Miller. Now, you are to say whether, under those circumstances, that statement was really made by the mother of the defendant, and if it was made by her to him in the presence of Miss Miller, whom he had married, what weight it has in this case, and how far it will go to prove his guilt in the case. 10

Mr. Wilson: Will your Honor permit me to say something?

(Mr. Wilson then goes to the Judge's desk and whispers something to him.) 20

The Court: And the attorney for the defendant states that Mrs. Reilly, the mother of the defendant, was in court under a subpoena issued by the State. But that would make no difference. Being in court, the defendant had a right, if he wanted to, to call her, to deny the statement made by Miss Miller, if the statement was untrue.

Mr. Wilson: I except to your Honor's ruling refusing to charge as requested and also except to your Honor's charge. 30

Exception allowed—signed and sealed accordingly.

JAMES C. CONNOLLY,  
Judge.

December 26th, 1914, 10 A. M.

Mr. Wilson: If your Honor please, before sentence is passed, I would like to make a 40

*Judge's Charge to the Jury*

motion or two. I move an arrest of judgment for the following reasons:

**FIRST:**

Because no indictable offence is set forth in the indictment.

10

**SECOND.**

Because on the fact of the indictment it appears that the offence is barred by the statute of limitations and the exception in the statute to prevent its operation is not therein alleged.

**THIRD:**

That in this case where the statute exists limiting all prosecutions within a fixed period, the more exact course is to state the time correctly in the indictment, and then aver the exception, and when the exception is part of the limitation it must be pleaded.

20

**FOURTH:**

That the burden of proof that a person charged with bigamy has not been continually absent from his wife for five years, and that she was known to him to be living within that time is on the State and not on the defendant.

30

**FIFTH:**

That to an indictment for bigamy it is a good defence that at the time of the alleged bigamous marriage, the man had a reasonable and bona fide belief that his wife was dead, even though five years had not elapsed since he had last heard of her.

**SIXTH:**

That under the statute, where the guilty knowledge is part of the statutory definition of the offence, it must be averred in the indictment.

40

*Judge's Charge to the Jury*

## SEVENTH:

That there was error in the Court not charging that, while it is the duty of each juror to discuss and consider the opinion of others, he must decide the case upon his own judgment and upon his own opinion of the evidence.

10

## EIGHTH:

That while the indictment in this cause states that the first marriage took place December 16, 1908, and the last marriage on January 30, 1914, a period of more than five years, it does not state that the defendant knew his first wife to be alive when he contracted the second marriage.

I am led to make this motion for the reason that an examination—a further examination—of this matter since the trial has led me to believe that the contentions that I have set forth in this motion are the correct ones. I have examined the law very carefully since the trial, and the conclusion that I reached was that what I have read to the Court is the true view of the law. I have to make this motion before sentence is passed, and, of course, if the Court denies it, I will make an application—rather a plea—for mercy.

20

30

The Court: The Court will overrule your several motions.

Mr. Wilson: I except to your Honor's ruling.

Exception allowed—signed and sealed accordingly.

JAMES C. CONNOLLY,  
Judge.

40

## UNION COUNTY QUARTER SESSIONS.

THE STATE OF NEW JERSEY

vs.

JAMES P. REILLY, JR.

An Indictment  
for Bigamy.

10

I, JAMES C. CONNOLLY, Judge of the Union County Court of Quarter Sessions, who held the Court of Quarter Sessions at which the above stated cause was tried, do hereby certify that the foregoing is the entire record of the proceedings had upon the trial of said cause.

JAMES C. CONNOLLY,  
Judge.

20

**List of Exceptions.**

Pages: 6, 8, 9, 10, 12, 16, 47, 67, 76, 77, 77, 86, 87, 95, 103, 114, 156, 157, 158, 173, 175 and 177, and 200.

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40

*Bill of Exceptions***Bill of Exceptions.**

At the conclusion of the Court's charge, the defendant prays a general exception to the said charge, and to the Court's refusal to charge as requested and the same is allowed and signed and sealed accordingly. 10

JAMES C. CONNOLLY (Seal),  
Judge.

And the defendant by his counsel requested the Court to charge as follows: "That it is a question of fact for the jury whether the prisoner knew whether his first wife was alive," which the Court refused to charge, and thereupon the defendant prays an exception to said refusal so to charge, and the same is allowed and signed and sealed accordingly. 20

JAMES C. CONNOLLY (Seal),  
Judge.

And the defendant by his counsel requested the Court to charge as follows: "That the burden of proof that a person charged with bigamy has not been continually absent from his wife for five years and that she was known to him to be living within that time, is on the State and not on the defendant," which the said Court refused to charge, and thereupon the defendant prays an exception to said refusal so to charge, and the same is allowed and signed and sealed accordingly. 30

JAMES C. CONNOLLY (Seal),  
Judge.

And the defendant by his counsel requested the Court to charge as follows: "That to an indictment for bigamy it is a good defence that at the time of 40

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the bigamous marriage the man had a reasonable and bona fide belief that his wife was dead, even though five years had not elapsed since he had last heard of her," which the Court refused to charge, and thereupon the defendant prays an exception to said refusal so to charge, and the same is allowed and signed and sealed accordingly.

JAMES C. CONNOLLY (Seal),  
Judge.

And the defendant by his counsel requested the Court to charge as follows: "That under a statute where the guilty knowledge is part of the statutory definition of the offence, it must be averred in the indictment," which the Court refused to charge, and the defendant thereupon prays an exception to said refusal to so charge, and the same is allowed and signed and sealed accordingly.

JAMES C. CONNOLLY (Seal),  
Judge.

And the defendant by his counsel requested the Court to charge as follows: "That while it is the duty of each juror to discuss and consider the opinion of others, he must decide the case upon his own opinion of the evidence and upon his own judgment," which the Court refused to charge, and the defendant thereupon prays an exception to said refusal to charge, and same is allowed and signed and sealed accordingly.

JAMES C. CONNOLLY (Seal),  
Judge.

And the defendant by his counsel requested the Court to charge as follows: "That if the jurors have a reasonable doubt of the defendant's guilt they must give him the benefit of that doubt and

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acquit him," which the Court refused to charge, and the defendant thereupon prays an exception to said refusal to so charge, and the same is allowed and signed and sealed accordingly.

JAMES C. CONNOLLY (Seal),  
Judge. 10

That the Court below charged the jury as follows: "The Prosecutor has called my attention to what he considers an important part of the testimony in the case, and I desire, at his request, to call your attention to it. There was testimony on the part of Miss Miller to the effect that Mrs. Reilly, the mother of the defendant, called her son a bigamist at her home, that is, at Reilly's home, in Elizabeth, and Mrs. Reilly was here in court sitting on the front bench when that testimony was given. She might have been called to deny the statement made by Miss Miller if the defendant wished to do so, but he did not call her. She was not brought forth as a witness to deny the statement made by Miss Miller. Now, you are to say whether, under these circumstances, that statement was really made by the mother of the defendant, and if it was made by her to him in the presence of Miss Miller, whom he had married, what weight it has in this case, and how far it will go to prove his guilt in the case." To which instruction the defendant prays an exception, and the same is allowed and signed and sealed accordingly. 20 30

JAMES C. CONNOLLY (Seal),  
Judge.

That the Court below charged the jury as follows: "And the attorney for the defendant states that Mrs. Reilly, the mother of the defendant, was in Court under a subpœna issued by the State. But that would make no difference. Being in court the 40

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defendant had a right, if he wanted to, to call her to deny the statement made by Miss Miller if the statement was untrue." To which instruction the defendant prays an exception, and the same is allowed and signed and sealed accordingly.

10 JAMES C. CONNOLLY (Seal),  
Judge.

That the Court below permitted the witness William Duddleston, a witness for the State, to be asked the following: "Q. (Stand up, Ada Hobson.) Is that Ada Hobson?" To which the defendant prays an exception, and the same is allowed and signed and sealed accordingly.

20 JAMES C. CONNOLLY (Seal),  
Judge.

That the Court permitted the witness William Duddleston to state to the jury the following: "That is the young lady I married to James P. Reilly." To which the defendant prays an exception, and the same is allowed and signed and sealed accordingly.

JAMES C. CONNOLLY (Seal),  
Judge.

30 That the Court permitted the witness William Duddleston to testify in response to the following question: "Where did you perform the ceremony between her and James P. Reilly?" To which the defendant prays an exception, and the same is allowed and signed and sealed accordingly.

JAMES C. CONNOLLY (Seal),  
Judge.

40 That the Court permitted the witness William Duddleston to be asked the following question by

*Bill of Exceptions*

the Prosecutor of the Pleas: "In what official capacity, if any, did you perform the ceremony between Ada Hobson and James P. Reilly, Jr.?" To which the defendant prays an exception, and the same is allowed and signed and sealed accordingly.

JAMES C. CONNOLLY (Seal), 10  
Judge.

That the Court permitted the witness William Duddleston to be asked the following question by the Prosecutor of the Pleas: "When were you elected or appointed a justice of the peace?" To which the defendant prays an exception, and the same is allowed and signed and sealed accordingly.

JAMES C. CONNOLLY (L. S.), 20  
Judge.

That the Court stated in the trial of the cause as follows: "If this man never occupied any official position but led those people to believe that he was an officer, and he performed a ceremony and they subsequently cohabited, lived together as man and wife, and then subsequent to that time the defendant in this case married another woman during the life of the first woman, whom he married, he would have been violating the law. So that I have allowed this evidence to go in. You have my ideas of the law in this respect." To which the defendant prays an exception and the same is allowed and signed and sealed accordingly. 30

JAMES C. CONNOLLY (L. S.),  
Judge.

That the Court refused to permit the counsel for the defendant to ask one, Abbie Miller Reilly, a witness for the State, the following question: "You didn't want to prosecute James P. Reilly, did you?" 40

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To which the counsel for the defendant prays an exception, and the same is allowed and signed and sealed accordingly.

JAMES C. CONNOLLY (L. S.),  
Judge.

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That the Court refused to permit the Counsel for the defendant to ask the witness for the defendant, Elizabeth Garrabrant, the following question: "Did you have any conversation with Mrs. Hobson, the mother of Ada Hobson, in the City of Paterson, after the marriage of Ada with James P. Reilly?" To which the Counsel for the defendant prays an exception, and the same is allowed and signed and sealed accordingly.

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JAMES C. CONNOLLY (L. S.),  
Judge.

That the Court refused to permit the Counsel for the defendant to ask Elizabeth Garrabrant, a witness for the defendant, the following question: "Did Mrs. Hobson, the mother of Ada Hobson, on any occasion when you saw her, state to you that her daughter Ada was dead?" To which the Counsel for the defendant prays an exception, and the same is allowed and signed and sealed accordingly.

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JAMES C. CONNOLLY (L. S.),  
Judge.

That the Court refused to permit the Counsel for the defendant to ask Elizabeth Garrabrant, a witness for the defendant, the following question: "Did you make any inquiry with regard to the death of Ada Hobson, the wife of James P. Reilly?" To which the Counsel for the defendant prays an exception and the same is allowed and signed and sealed accordingly.

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JAMES C. CONNOLLY (L. S.),  
Judge.

*Bill of Exceptions*

That the Court refused to permit the Counsel for the defendant to ask Elizabeth Garrabrant, a witness for the defendant, the following question: "Did you know from anything that you heard that Ada Hobson was reported as being dead?" To which the Counsel for the defendant prays an exception and the same is allowed and signed and sealed accordingly. 10

JAMES C. CONNOLLY (L. S.),  
Judge.

That the Court refused to permit the Counsel for the defendant to ask Elizabeth Garrabrant, a witness for the defendant, the following question: "While Abbie Miller was at your sister's house in the City of Paterson, and you say you saw her there, did the question of the death of Ada Hobson, the wife of James P. Reilly, come up?" To which the Counsel for the defendant prays an exception, and the same is allowed and signed and sealed accordingly. 20

JAMES C. CONNOLLY (L. S.),  
Judge.

That the Court refused to permit John Reilly, a witness for the defendant, to answer the following question: "Did you hear of the death of Ada Hobson?" To which the defendant prays an exception and the same is allowed and signed and sealed accordingly. 30

JAMES C. CONNOLLY (L. S.),  
Judge.

That the Court refused to permit John Reilly, a witness for the defendant, to answer the following question: "Did you ever go with your brother, James P. Reilly, and your brother-in-law, Charles 40

*Bill of Exceptions*

Nuss, to Mrs. Hobson's house, the mother of Ada, to find out whether she was alive or dead?" To which the defendant prays an exception, and the same is allowed and signed and sealed accordingly.

JAMES C. CONNOLLY (L. S.),  
Judge.

10

That the Court refused to permit John Reilly, a witness for the defendant, to answer the following question: "Did you ever find out from any source that Ada Hobson, who married your brother, was reported dead?" To which the defendant prays an exception and the same is allowed and signed and sealed accordingly.

JAMES C. CONNOLLY (L. S.),  
Judge.

20

That the Court refused to permit John Reilly, a witness for the defendant, to answer the following question: "Had you or not heard that Ada Hobson was dead?" To which the defendant prays an exception, and the same is allowed and signed and sealed accordingly.

JAMES C. CONNOLLY (L. S.),  
Judge.

30

That the Court refused to permit the defendant to answer the following question: "What did Mrs. Ayers tell you with respect to your wife?" To which the defendant prays an exception and the same is allowed and signed and sealed accordingly.

JAMES C. CONNOLLY (L. S.)  
Judge.

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That the Court permitted the Prosecutor to ask the following question of the defendant: "Did it occur to you at all at that time that Mrs. Hobson

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was speaking to you while she was under the influence of a passion and that perhaps what she said was under a great passion and perhaps was not true?" To which the defendant prays an exception and the same is allowed and signed and sealed accordingly.

JAMES C. CONNOLLY (L. S.)

Judge.

10

That the Court refused to permit the defendant to answer the following question: "Did your mother and Mrs. Garrabrant tell you where they got the information about Ada's death?" To which the Counsel for the defendant prays an exception and the same is allowed and signed and sealed accordingly.

JAMES C. CONNOLLY (L. S.)

Judge.

20

That the Counsel for the defence before sentence was passed on the defendant asked the Court to arrest judgment for the following reason: "Because no indictable offence is set forth in the indictment." Which the Court refused and to which refusal the Counsel for the defendant prays an exception, and the same is allowed and signed and sealed accordingly.

JAMES C. CONNOLLY (L. S.)

Judge.

30

That the Counsel for the defence before sentence was passed on the defendant asked the Court to arrest judgment for the following reason: "Because on the face of the indictment it appears that the offence is barred by the statute of limitations and the exception in the statute to prevent its operation is not alleged in said indictment." Which

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the Court refused, and to which refusal the Counsel for the defendant prays an exception, and the same is allowed and signed and sealed accordingly.

JAMES C. CONNOLLY (L. S.)

Judge.

19

That the Counsel for the defence before sentence was passed on the defendant asked the Court to arrest judgment for the following reason: "That in this case where the statute exists limiting all prosecutions within a fixed period the more exact course is to state the time correctly in the indictment, and then over the exception, and when the exception is part of the limitation it must be pleaded." Which the Court refused, and to which refusal the Counsel for the defendant prays an exception and the same is allowed and signed and sealed accordingly.

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JAMES C. CONNOLLY (L. S.)

Judge.

That the Counsel for the defence before sentence was passed on the defendant asked the Court to arrest judgment for the following reason: "That the burden of proof that a person charged with bigamy has not been continually absent from his wife for five years, and that she was known to him to be living within that time is on the State and not on the defendant." Which the Court refused, and to which refusal the Counsel for the defendant prays an exception, and the same is allowed and signed and sealed accordingly.

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JAMES C. CONNOLLY (L. S.)

Judge.

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That the Counsel for the defence before sentence was passed on the defendant asked the Court to

*Bill of Exceptions*

arrest judgment for the following reason: "That to an indictment for bigamy it is a good defence that at the time of the alleged bigamous marriage, the man had a reasonable and bona fide belief that his wife was dead, even though five years had not elapsed since he had last heard of her." Which the Court refused, and to which refusal the Counsel for the defendant prays an exception and the same is allowed and signed and sealed accordingly. 10

JAMES C. CONNOLLY (L. S.)

Judge.

That the Counsel for the defence before sentence was passed on the defendant asked the Court to arrest judgment for the following reason: "That under the statute where the guilty knowledge is part of the statutory definition of the offence it must be averred in the indictment." Which the Court refused and to which refusal the Counsel for the defendant prays an exception and the same is allowed and signed and sealed accordingly. 20

JAMES C. CONNOLLY (L. S.)

Judge.

That the Counsel for the defence before sentence was passed on the defendant asked the Court to arrest judgment for the following reason: "That there was error in the Court not charging that while it is the duty of each juror to discuss and consider the opinion of others, he must decide the case upon his own judgment and upon his own opinion of the evidence." Which the Court refused, and to which refusal the Counsel for the defendant prays an exception and the same is allowed and signed and sealed accordingly. 30

JAMES C. CONNOLLY (L. S.)

Judge. 40

*Assignments of Error*

10 That the Counsel for the defence before sentence was passed on the defendant asked the Court to arrest judgment for the following reason: "That while the indictment in this cause states that the first marriage took place December 16, 1908, and the last marriage on January 30, 1914, a period of more than five years, it does not state that the defendant knew his first wife to be alive when he contracted the second marriage." Which the Court refused, and to which refusal the Counsel for the defendant prays an exception and the same is allowed and signed and sealed accordingly.

JAMES C. CONNOLLY (L. S.)

Judge.

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**Assignments of Error.**

Afterwards to wit &c., comes the plaintiff in error by William R. Wilson, his attorney, and assigns error in the following respects for the reversal of the judgment in this cause.

30 1. That the judgment aforesaid was given against the said James P. Reilly, Junior, whereas by the law of the land judgment should have been given for him.

2. That the charge of the Court as a whole, and in each and every part thereof is illegal, and thereby defendant below suffered manifest wrong and injury which is cause for reversal.

40 3. That on the trial of the said plaintiff in error he suffered manifest wrong and injury in the admission of evidence and the charge of the Court, which prejudiced the said plaintiff in error in maintaining his defence upon the merits.

*Assignments of Error*

4. That the entire evidence as a whole did not show beyond a reasonable doubt that the said plaintiff in error was guilty of the crime charged, and did not justify the verdict found against him.

5. That the evidence in the cause is of such a nature that when fully and fairly considered it will not satisfy any thoughtful mind beyond a reasonable doubt of the guilt of the accused, and that upon said evidence the said plaintiff in error was entitled to an acquittal.

6. That the judge before whom the case was tried did not in his charge to the jury legally define a reasonable doubt so that the defendant below might have had the benefit of same.

7. That the judge did not charge the jury that if they were satisfied beyond a reasonable doubt from the evidence of the cause and the want of evidence of the innocence of the defendant, they should acquit him.

8. That the judge in his charge to the jury did not state that the defendant in error must before it could secure a conviction, prove its case by a preponderance of evidence.

9. That the defendant by his Counsel requested the Court to charge as follows: "That it is a question of fact for the jury whether the prisoner knew whether his first wife was alive." Which the Court refused to charge.

10. That the defendant by his Counsel requested the Court to charge as follows: "That the bur-

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*Assignments of Error*

10 den of proof that a person charged with bigamy has not been continually absent from his wife for five years and that she was known to him to be living within that time, is on the State and not on the defendant." Which the Court refused to charge.

11. That the defendant by his Counsel requested the Court to charge as follows: "That to an indictment for bigamy it is a good defence that at the time of the bigamous marriage the man had a reasonable and bona fide belief that his wife was dead, even though five years had not elapsed since he had last heard of her." Which the Court refused to charge.

20 12. That the defendant by his Counsel requested the Court to charge as follows: "That under a statute where the guilty knowledge is part of the statutory definition of the offence it must be averred in the indictment." Which the Court refused to charge.

30 13. That the defendant by his Counsel requested the Court to charge as follows: "That while it is the duty of each juror to discuss and consider the opinion of others, he must decide the case upon his own opinion of the evidence and upon his own judgment." Which the Court refused to charge.

40 14. That the defendant by his Counsel requested the Court to charge as follows: "That if the jurors have a reasonable doubt of the defendant's guilt they must give him the benefit of that doubt and acquit him." Which the Court refused to charge.

*Assignments of Error*

15. That the Court charged as follows: "The Prosecutor has called my attention to what he considers an important part of the testimony in the case, and I desire, at his request to call your attention to it. There was testimony on the part of Miss Miller to the effect that Mrs. Reilly the mother of the defendant called her son a bigamist at her home, that is, at Reilly's home in Elizabeth, and Mrs. Reilly was here in Court sitting on the front bench when that testimony was given. She might have been called to deny the statement made by Miss Miller if the defendant wished to do so, but he did not call her. She was not brought forth as a witness to deny the statement made by Miss Miller. Now you are to say whether, under the circumstances, that statement was really made by the mother of the defendant, and if it was made by her to him in the presence of Miss Miller, whom he had married, what weight it has in this case."

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16. That the Court below charged the jury as follows: "And the attorney for the defendant states that Mrs. Reilly the mother of the defendant, was in court under a subpoena issued by the State. But that would make no difference. Being in Court the defendant had a right, if he wanted to, to call her to deny the statement made by Miss Miller if the statement was untrue."

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17. That the Court erred to the prejudice and injury of the plaintiff in error by permitting William Duddleston, a witness for the State, to be asked the following: "Q. (Stand up Ada Hobson) Is that Ada Hobson?" Contrary to the objection of the plaintiff in error.

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18. That the Court erred to the prejudice and

*Assignments of Error*

injury of the plaintiff in error by permitting William Duddleston, a witness for the State to state the following: "That is the young lady I married to James P. Reilly." Contrary to the objection of the plaintiff in error.

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19. That the Court erred to the prejudice and injury of the plaintiff in error by permitting William Duddleston a witness for the State to be asked the following: "Where did you perform the ceremony between her and James P. Reilly?" Contrary to the objection of the plaintiff in error.

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20. That the Court erred to the prejudice and injury of the plaintiff in error by permitting William Duddleston a witness for the State to be asked the following: "In what official capacity, if any, did you perform the ceremony between Ada Hobson and James P. Reilly, Jr.?" Contrary to the objection of the plaintiff in error.

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21. That the Court erred to the prejudice and injury of the plaintiff in error by permitting William Duddleston a witness for the State to be asked the following: "When were you elected or appointed a justice of the peace?" Contrary to the objection of the plaintiff in error.

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22. That the Court erred to the prejudice and injury of the plaintiff in error in stating during the trial of the case in the presence of the jury the following: "If this man never occupied any official position but led those people to believe that he was an officer, and he performed a ceremony and they subsequently colabited, lived together as man and wife, and then subsequent to that time, the defendant in this case married another woman during the life of the first woman whom he mar-

*Assignments of Error*

ried he would have been violating the law. So that I have allowed the evidence to go in with the ideas of the law in this respect.

23. That the Court erred to the prejudice and injury of the plaintiff in error, in refusing to permit the Counsel for the defendant to ask one Abbie Miller Reilly, a witness for the State the following question: "You didn't want to prosecute James P. Reilly did you?" 10

24. That the Court erred to the prejudice and injury of the plaintiff in error in refusing to permit the Counsel for the defendant to ask the witness Elizabeth Garrabrant the following question: "Did you have any conversation with Mrs. Hobson, the mother of Ada Hobson, in the City of Paterson agter the marriage of Ada with James Reilly?" 20

25. That the Court erred to the prejudice and injury of the plaintiff in error in refusing to permit the Counsel for the defendant to ask Elizabeth Garrabrant, a witness for the defendant, the following question: "Did Mrs. Hobson the mother of Ada Hobson, on any occasion when you saw her, state to you that her daughter Ada was dead?" 30

26. That the Court erred to the prejudice and injury of the plaintiff in error in refusing to permit the Counsel for the defendant to ask Elizabeth Garrabrant a witness for the defendant, the following question: "Did you make an inquiry with regard to the death of Ada Hobson the wife of James Reilly?"

27. That the Court erred to the prejudice and injury of the plaintiff in error in refusing to per- 40

*Assignments of Error*

mit the Counsel for the defendant to ask Elizabeth Garrabrant, a witness for the defendant, the following question: "Did you know from anything that you heard that Ada Hobson was reported as being dead?"

10 28. That the Court erred to the prejudice and injury of the plaintiff in error in refusing to permit the Counsel for the defendant to ask Elizabeth Garrabrant, a witness for the defendant, the following question: "While Abbie Miller was at your sister's house in the City of Paterson, and you say you saw her there, did the question of the death of Ada Hobson, the wife of James P. Reilly come up?"

20 29. That the Court erred to the prejudice and injury of the plaintiff in error, in refusing to permit the Counsel for the defendant to ask John Reilly, a witness for the defendant, the following question: "Did you hear of the death of Ada Hobson?"

30 30. That the Court erred to the prejudice and injury of the plaintiff in error, in refusing to permit the Counsel for the defendant to ask John Reilly, a witness for the defendant the following question: "Did you ever go with your brother James P. Reilly and your brother-in-law Charles Nuss to Mrs. Hobson's house, the mother of Ada, to find out whether she was alive or dead?"

10 31. That the Court erred to the prejudice and injury of the plaintiff in error in refusing to permit the Counsel for the defendant to ask the following question: "Did you ever find out from any source that Ada Hobson who married your brother was reported dead?"

*Assignments of Error*

32. That the Court erred to the prejudice and injury of the plaintiff in error in refusing to permit the Counsel for the defendant to ask the following question: "Had you or not heard that Ada Hobson was dead?"

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33. That the Court erred to the prejudice and injury of the plaintiff in error in refusing to permit the Counsel for the defendant to ask the following question: "What did Mrs. Ayers tell you with respect to your wife?"

34. That the Court erred in permitting the Prosecutor of the Pleas to ask the following question of the defendant: "Did it occur to you at all at that time that Mrs. Hobson was speaking to you while she was under the influence of a passion and that perhaps what she said was under a great passion and perhaps was not true?" Contrary to the objection of the plaintiff in error.

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35. That the Court erred to the prejudice and injury of the plaintiff in error in refusing to permit the defendant to answer the following question: "Did your mother and Mrs. Garrabrant tell you where they got the information about Ada's death?"

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36. That the counsel for the defence before sentence was passed on the defendant asked the Court to arrest judgment for the following reason: "Because no indictable offence is set forth in the indictment which the Court refused whereby the defendant was prejudiced and injured."

37. That the Counsel for the defence before sentence was passed on the defendant asked the Court

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to arrest judgment for the following reason: "Because on the face of the indictment it appears that the offence is barred by the statute of limitations and the exception in the statute to prevent its operation is not alleged in said indictment. Which the Court refused whereby the defendant was prejudiced and injured.

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38. That the Counsel for the defence before sentence was passed on the defendant asked the Court to arrest judgment for the following reason: "That in this case where the statute exists limiting all prosecutions within a fixed period the more exact course is to state the time correctly in the indictment, and then aver the exception, and when the exception is part of the limitation it must be pleaded." Which the Court refused, whereby the defendant was prejudiced and injured.

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39. That the Counsel for the defence before sentence was passed on the defendant asked the Court to arrest judgment for the following reason: "That the burden of proof that a person charged with bigamy has not been continually absent from his wife for five years, and that she was known to him to be living within that time, is on the State and not on the defendant." Which was refused, whereby the defendant was prejudiced and injured.

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40. That the Counsel for the defence before sentence was passed on the defendant asked the Court to arrest judgment for the following reason: "That to an indictment for bigamy it is a good defence that at the time of the alleged bigamous marriage, the man had a reasonable and bona fide belief that his wife was dead, even though five years had not elapsed since he had last heard of her. Which was refused, whereby the defendant was prejudiced and injured.

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*Assignments of Error*

41. That the Counsel for the defence before sentence was passed on the defendant asked the Court to arrest judgment for the following reason: "That under the statute where the guilty knowledge is part of the statutory definition of the offence it must be averred in the indictment." Which was refused, whereby the defendant was prejudiced and injured. 10

42. That the Counsel for the defence before sentence was passed on the defendant asked the Court to arrest judgment for the following reason: "That there was error in the Court not charging that while it is the duty of each juror to discuss and consider the opinion of others, he must decide the case upon his own judgment and upon his own opinion of the evidence. Which was refused, whereby the defendant was prejudiced and injured. 20

43. That the Counsel for the defence before sentence was passed on the defendant asked the Court to arrest judgment for the following reason: "That while the indictment in this cause states that the first marriage took place December 16, 1908, and the last marriage on January 30, 1914, a period of more than five years it does not state that the defendant knew his first wife to be alive when he contracted the second marriage." Which was refused whereby the defendant was prejudiced and injured. 30

And the said plaintiff in error prays that the judgment aforesaid, for the errors aforesaid, and for the errors therein be reversed, annulled and altogether holden for nothing, and that he may be restored in all things, in which he has lost by reason of said judgment.

WILLIAM R. WILSON,  
Attorney for and of Counsel with  
Plaintiff-in-Error. 40

### Specification of Causes for Reversal.

Afterwards to wit. &c., comes the plaintiff in error by William R. Wilson, his attorney and specifies the following errors and causes in the record and proceedings therein relied upon for the reversal of the judgment in this cause.

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1. That the Court refused to quash the indictment on the motion of the Counsel for defendant before the jury was impanelled and sworn which is cause for reversal.

2. That the judgment aforesaid was given against the said James P. Reilly Junior, whereas by the law of the land judgment should have been given for him.

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3. That the charge of the Court as a whole, and in each and every part thereof is illegal, and thereby defendant below suffered manifest wrong and injury which is cause for reversal.

4. That on the trial of the said plaintiff in error he suffered manifest wrong and injury in the admission of evidence and the charge of the Court, which prejudiced the said plaintiff in error in maintaining his defence upon the merits.

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5. That the entire evidence as a whole did not show beyond a reasonable doubt that the said plaintiff in error was guilty of the crime charged, and did not justify the verdict found against him.

6. That the evidence in the cause is of such a nature that when fully and fairly considered it will not satisfy any thoughtful mind beyond a reasonable doubt of the guilt of the accused, and that

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*Specification of Causes for Reversal*

upon said evidence the said plaintiff in error was entitled to an acquittal.

7. That the judge before whom the case was tried did not in his charge to the jury legally define a reasonable doubt so that the defendant below might have had the benefit of same. 10

8. That the judge did not charge the jury that if they were satisfied beyond a reasonable doubt from the evidence of the cause and the want of evidence of the innocence of the defendant, they should acquit him.

9. That the judge in his charge to the jury did not state that the defendant in error must before it could secure a conviction, prove its case by a preponderance of evidence. 20

10. That the defendant by his Counsel requested the Court to charge as follows: "That it is a question of fact for the jury whether the prisoner knew whether his first wife was alive." Which the Court refused to charge.

11. That the defendant by his Counsel requested the Court to charge as follows: "That the burden of proof that a person charged with bigamy has not been continually absent from his wife for five years and that she was known to him to be living within that time, is on the State and not on the defendant." Which the Court refused to charge. 30

12. That the defendant by his Counsel requested the Court to charge as follows: "That to an indictment for bigamy it is a good defence that at the time of the bigamous marriage the man had a rea- 40

*Specification of Causes for Reversal*

sonable and bona fide belief that his wife was dead, even though five years had not elapsed since he had last heard of her." Which the Court refused to charge.

10 13. That the defendant by his Counsel requested the Court to charge as follows: "That under a statute where the guilty knowledge is part of the statutory definition of the offence it must be averred in the indictment." Which the Court refused to charge.

20 14. That the defendant by his Counsel requested the Court to charge as follows: "That while it is the duty of each juror to discuss and consider the opinion of others, he must decide the case upon his own opinion of the evidence and upon his own judgment." Which the Court refused to charge.

15. That the defendant by his Counsel requested the Court to charge as follows: "That if the jurors have a reasonable doubt of the defendant's guilt they must give him the benefit of that doubt and acquit him." Which the Court refused to charge.

30 16. That the Court charged as follows: "The prosecutor has called my attention to what he considers an important part of the testimony in the case, and I desire, at his request to call your attention to it. There was testimony on the part of Miss Miller to the effect that Mrs. Reilly the mother of the defendant called her son a bigamist at her home, that is, at Reilly's home in Elizabeth, and Mrs. Reilly was here in Court sitting on the front bench when that testimony was given. She might have been called to deny the statement made by  
10 Miss Miller if the defendant wished to do so, but he did not call her. She was not brought forth as

*Specification of Causes for Reversal*

a witness to deny the statement made by Miss Miller. Now you are to say whether, under the circumstances, that statement was really made by the mother of the defendant, and if it was made by her to him in the presence of Miss Miller, whom he had married, what weight it has in this case." 10

17. That the Court below charged the jury as follows: "And the attorney for the defendant states that Mrs. Reilly the mother of the defendant, was in Court under a subpoena issued by the State. But that would make no difference. Being in Court the defendant had a right, if he wanted to, to call her to deny the statement made by Miss Miller if the statement was untrue." 20

18. That the Court erred to the prejudice and injury of the plaintiff in error by permitting William Duddleston a Witness for the State to be asked the following: "Q. (Stand up Ada Hobson). Is that Ada Hobson?" Contrary to the objection of the plaintiff in error. 20

19. That the Court erred to the prejudice and injury of the plaintiff in error by permitting William Duddleston, a witness for the State to state the following: "That is the young lady I married to James P. Reilly." Contrary to the objection of the plaintiff in error. 30

20. That the Court erred to the prejudice and injury of the plaintiff in error by permitting William Duddleston, a witness for the state to be asked the following: "Where did you perform the ceremony between her and James P. Reilly?" Contrary to the objection of the plaintiff in error. 40

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10 21. That the Court erred to the prejudice and injury of the plaintiff in error by permitting William Duddleston, a witness for the State to be asked the following: "In what official capacity, if any, did you perform the ceremony between Ada Hobson and James P. Reilly Jr.?" Contrary to the objection of the plaintiff in error.

22. That the Court erred to the prejudice and injury of the plaintiff in error by permitting William Duddleston, a witness for the State to be asked the following: "When were you elected or appointed a justice of the peace?" Contrary to the objection of the plaintiff in error.

20 23. That the Court erred to the prejudice and injury of the plaintiff in error in stating during the trial of the case in the presence of the jury the following: "If this man never occupied any official position but led those people to believe that he was an officer, and he performed a ceremony and they subsequently cohabited, lived together as man and wife, and then subesquent to that time, the defendant in this case married another woman during the life of the first woman whom he married he would have been violating the law. So that I have  
30 allowed the evidence to go in with ideas of the law in this respect."

24. That the Court erred to the prejudice and injury of the plaintiff in error, in refusing to permit the Counsel for the defendant to ask one Abbie Miller Reilly, a witness for the State the following question: "You didn't want to prosecute James P. Reilly did you?"

40 25. That the Court erred to the prejudice and

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injury of the plaintiff in error in refusing to permit the Counsel for the defendant to ask the witness Elizabeth Garrabrant the following question: "Did you have any conversation with Mrs. Hobson, the mother of Ada Hobson, in the City of Paterson after the marriage of Ada with James Reilly?" 10

26. That the Court erred to the prejudice and injury of the plaintiff in error in refusing to permit the Counsel for the defendant to ask Elizabeth Garrabrant, a witness for the defendant, the following question: "Did Mrs. Hobson the mother of Ada Hobson, on any occasion when you saw her, state to you that her daughter Ada was dead?" 20

27. That the Court erred to the prejudice and injury of the plaintiff in error in refusing to permit the Counsel for the defendant to ask Elizabeth Garrabrant, a witness for the defendant, the following question: "Did you make an inquiry with regard to the death of Ada Hobson the wife of James Reilly?" 20

28. That the Court erred to the prejudice and injury of the plaintiff in error in refusing to permit the Counsel for the defendant to ask Elizabeth Garrabrant, a witness for the defendant, the following question: "Did you know from anything that you heard that Ada Hobson was reported as being dead?" 30

29. That the Court erred to the prejudice and injury of the plaintiff in error in refusing to permit the Counsel for the defendant to ask Elizabeth Garrabrant, a witness for the defendant, the following question: "While Abbie Miller was at your sister's house in the City of Paterson, and you say 40

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you saw her there, did the question of the death of Ada Hobson, the wife of James P. Reilly come up?"

10 30. That the Court erred to the prejudice and injury of the plaintiff in error, in refusing to permit the Counsel for the defendant to ask John Reilly, a witness for the defendant, the following question: "Did you hear of the death of Ada Hobson?"

20 31. That the Court erred to the prejudice and injury of the plaintiff in error, in refusing to permit the Counsel for the defendant to ask John Reilly, a witness for the defendant the following question: "Did you ever go with your brother James P. Reilly and your brother-in-law Charles Nuss to Mrs. Hobson's house, the mother of Ada, to find out whether she was alive or dead?"

32. That the Court erred to the prejudice and injury of the plaintiff in error in refusing to permit the Counsel for the defendant to ask the following question: "Did you ever find out from any source that Ada Hobson who married your brother was reported dead?"

30 33. That the Court erred to the prejudice and injury of the plaintiff in error in refusing to permit the Counsel for the defendant to ask the following question: "Had you or not heard that Ada Hobson was dead?"

40 34. That the Court erred to the prejudice and injury of the plaintiff in error in refusing to permit the Counsel for the defendant to ask the following question: "What did Mrs. Ayers tell you with respect to your wife?"

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35. That the Court erred in permitting the Prosecutor of the Pleas to ask the following question of the defendant: "Did it occur to you at all at that time that Mrs. Hobson was speaking to you while she was under the influence of a passion and that perhaps what she said was under a great passion and perhaps was not true?" Contrary to the objection of the plaintiff in error. 10

36. That the Court erred to the prejudice and injury of the plaintiff in error in refusing to permit the defendant to answer the following question: "Did your mother and Mrs. Garrabrant tell you where they got the information about Ada's death?"

37. That the counsel for the defence before sentence was passed on the defendant asked the Court to arrest judgment for the following reason: "Because no indictable offence is set forth in the indictment," which the Court refused whereby the defendant was prejudiced and injured. 20

38. That the Counsel for the defence before sentence was passed on the defendant asked the Court to arrest judgment for the following reason: "Because on the face of the indictment it appears that the offence is barred by the statute of limitations and the exception in the statute to prevent its operation is not alleged in said indictment." Which the Court refused, whereby the defendant was prejudiced and injured. 30

39. That the Counsel for the defence before sentence was passed on the defendant asked the Court to arrest judgment for the following reason: "That in this case where the statute exists limiting all 40

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prosecutions within a fixed period the more exact course is to state the time correctly in the indictment, and then aver the exception, and when the exception is part of the limitation it must be pleaded." Which the Court refused, whereby the defendant was prejudiced and injured.

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40. That the Counsel for the defence before sentence was passed on the defendant asked the Court to arrest judgment for the following reason: "That the burden of proof that a person charged with bigamy has not been continually absent from his wife for five years, and that she was known to him to be living within that time, is on the State and not on the defendant." Which was refused, whereby the defendant was prejudiced and injured.

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41. That the Counsel for the defence before sentence was passed on the defendant asked the Court to arrest judgment for the following reason: "That to an indictment for bigamy it is a good defence that at the time of the alleged bigamous marriage, the man had a reasonable and bona fide belief that his wife was dead, even though five years had not elapsed since he had last heard of her." Which was refused, whereby the defendant was prejudiced and injured.

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42. That the Counsel for the defence before sentence was passed on the defendant asked the Court to arrest judgment for the following reason: "That under the statute where the guilty knowledge is part of the statutory definition of the offence it must be averred in the indictment." Which was refused, whereby the defendant was prejudiced and injured.

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43. That the Counsel for the defence before sen-

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tence was passed on the defendant asked the Court to arrest judgment for the following reason: "That there was error in the Court not charging that while it is the duty of each juror to discuss and consider the opinion of others, he must decide the case upon his own judgment and upon his own opinion of the evidence." Which was refused, whereby the defendant was prejudiced and injured. 10

44. That the Counsel for the defence before sentence was passed on the defendant asked the Court to arrest judgment for the following reason: "That while the indictment in this cause states that the first marriage took place December 16, 1908, and the last marriage on January 30, 1914, a period of more than five years it does not state that the defendant knew his first wife to be alive when he contracted the second marriage." Which was refused, whereby the defendant was prejudiced and injured. 20

And the plaintiff in error prays that the judgment aforesaid, for the errors aforesaid, and for the errors therein be reversed, annulled and altogether holden for nothing, and that he may be restored in all things, in which he has lost by reason of said judgment. 30

WILLIAM R. WILSON,  
Attorney for and of Counsel  
with Plaintiff-in-Error.

**Joinder in Error.**

10 And hereupon, afterwards to wit; on the twelfth day of May A. D., nineteen hundred and fifteen the State of New Jersey by Alfred A. Stein, Prosecutor of the Pleas of the County of Union, comes into Court and says, that there is no error, either in the record and proceedings aforesaid, or in giving judgment aforesaid, and it prays here that the Court here may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid assigned for error and that the judgment aforesaid, in manner aforesaid given, may, in all things be affirmed, etc.

ALFRED A. STEIN,

20 Prosecutor of the Pleas of the County of Union in the State of New Jersey for the Defendant-in-Error.

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