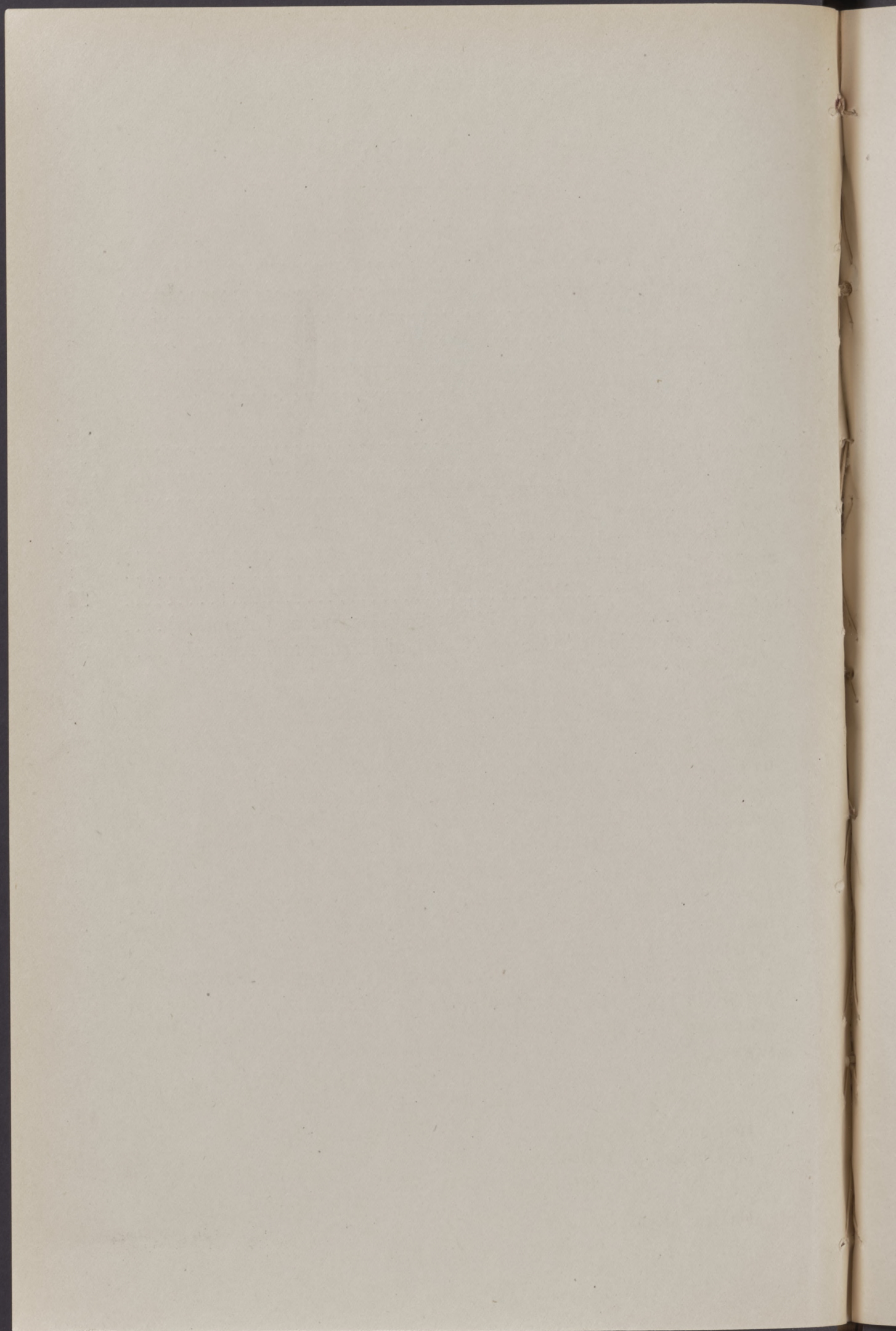


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Writ of Error from Court of Errors and Appeals.

WRIT OF ERROR.

Filed April 20, 1920.

New Jersey Court of Errors and Appeals

NEW JERSEY, *ss.*

10

The State of New Jersey, to our Justices of our
(L. s.) Supreme Court of Judicature, GREETING:

Because in the record and proceedings, and also
in the giving of the judgment, upon a certain indictment which
was in our said Supreme Court of Judicature, before you, be-
tween the State of New Jersey, defendant-in-error, and Anna
Gruich, plaintiff-in-error, on a writ of error issued out of our
Supreme Court of Judicature to the Judges holding the Court of
Oyer and Terminer, in and for the County of Essex, and con-
stituting the Court of General Quarter Sessions in and for said
county, as is said, manifest error had intervened to the great
damage of her, the said Anna Gruich, as from her complaint we
have received information, we being willing in this behalf to
correct the error in due manner if any there shall be, and that
speedy justice be done to her, the said Anna Gruich, do com-
mand you, that if judgment be thereupon given, then you send
distinctly and openly, under your seal, the entire record, pro-
ceedings and indictment aforesaid, with all things touching and
concerning the same, to our Court of Errors and Appeals, before
the judges thereof, on the 27th day of March next, and this writ,
that the records and proceedings aforesaid being inspected, we
may cause to be further done thereupon what of right and ac-
cording to law ought to be done.

20

30

Witness, EDWIN ROBERT WALKER, our Chancellor and President
Judge of our said Court of Errors and Appeals, at Trenton
aforesaid, the 9th day of March, A. D. nineteen hundred and
twenty.

THOMAS F. MARTIN,

Clerk.

40

HOWARD MACSHERRY,
McDERMIT & McDERMIT,
Attorneys.

FRANK M. McDERMIT,
Counsel.

New Jersey State Library

Writ of Error from Supreme Court.

RETURN.

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

WM. S. GUMMERE,
C. J.

WRIT OF ERROR.

20

New Jersey Supreme Court

NEW JERSEY, ss.

(SEAL) The State of New Jersey to Harry V. Osborne, Judge, holding a Court of Quarter Sessions in and for the County of Essex, GREETING:

30 Because in the record and proceedings and also in the giving of judgment in a certain indictment pending before you, in which said indictment Anna Gruich was defendant, and which said indictment was for abortion, and upon which indictment she is convicted, as we are informed, and, as we are further informed, manifest error hath intervened in the said proceedings and trial, to the great damage of the said Anna Gruich, as by her complaint we are informed, we, being willing that speedy justice should be done in this behalf, do command you that if judgment be thereon given distinctly and openly to send, under your seal, the said indictment, and the records and proceedings thereunder, with all things touching and concerning the same, also the entire
40 record of the proceedings had upon the trial of the said indictment, to our Supreme Court, on the twenty-fifth day of June next, together with this writ, that the record and proceedings aforesaid being inspected, we may further cause to be thereupon what of right and according to law ought to be done.

Return.

Witness, William S. Gummere, Esq., our Chief Justice at Trenton aforesaid, the fifth day of June, nineteen hundred and nineteen.

ENOCH L. JOHNSON,
Clerk.

10

HOWARD MACSHERRY,
Attorney.

Presented in open court this fifth day of June, 1919.

Judge.

RETURN.

20

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

I, Harry V. Osborne, Judge of the Court of Quarter Sessions in and for Essex County, New Jersey, do hereby certify and return to the Supreme Court of Judicature of the State of New Jersey the judgment, record and indictment, together with the entire record of the proceedings had at the trial and all things tending and concerning the same as by the written writ to me directed, I am commended.

30

(SEAL) Witness my hand and the seal of said Court at Newark, N. J., the day of A. D. 1919.

*Judge of the Court of Quarter Sessions,
Essex Co., N. J.*

40

Judgment Record.

Endorsed:

59, Dec., 1918.

NEW JERSEY SUPREME COURT.

10

THE STATE OF NEW JERSEY,

Defendant-in-Error,

vs.

ANNA GRUICH,

Plaintiff-in-Error.

*On Indictment
for Abortion.*

*On Writ of
Error to Essex
Quarter Sessions.*

Presented in open court on the 5th day of June, 1919.

20

H. A. OSBORNE,
J.

Bail \$2,000.

JUDGMENT.

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

30

Be it remembered at a Court of Oyer and Terminer, holden at Newark, in and for the County of Essex, on the third Tuesday in September, in the year of our Lord, one thousand nine hundred and eighteen, by the Honorable William S. Gummere, Chief Justice of the Supreme Court of Judicature of the State of New Jersey, and holding the said Court of Oyer and Terminer, in and for the County of Essex, New Jersey, by the oath of Elvord C. Chamberlain, Ralph M. Smith, Joseph Torrens, George J. Ferry, Jr., William Provost, W. Nelson Knapp, J. Harry Connor, James B. Chalmers, James M. Beldon, Fred Strebinger, Oscar J. Wirtz, William Tries, Jr., Charles P. Schmidt, Frank J. Bock, Joseph Byrenes, Frederick W. Crempien, Frank Pannick, Thomas B. Cryer, William M. Bayles, James S. Throckmorton, Daniel Cronin, George H. Vanderhoof, Dr. Frank A. Caruso, good and lawful men of the said County of Essex, duly

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Judgment Record.

commissioned and then and there duly sworn and charged to enquire in behalf of the State of New Jersey, in and for the said County of Essex, it is presented in manner and form following, to wit.

Essex Oyer and Terminer,

10

September Term, A. D. 1918.

Essex County, to wit: The Grand Jurors of the State of New Jersey, in and for the body of the County of Essex, upon their oath present that Anna Gruich, late of the City of Newark, in the County of Essex aforesaid, on the fourteenth day of June, in the year of our Lord one thousand nine hundred and eighteen, with force and arms at the city aforesaid, in the county aforesaid, and within the jurisdiction, in and upon one Helen Hunter, a woman then pregnant with child, did use divers instruments to the Grand Jurors aforesaid unknown, with intent to cause and procure the miscarriage of the said Helen Hunter—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. And the Grand Jurors of the State of New Jersey, in and for the body of the County of Essex, upon their oath aforesaid, do further present that the said Anna Gruich, late of the City of Newark, in the County of Essex aforesaid, on the fourteenth day of June, in the year of our Lord one thousand nine hundred and eighteen, with force and arms at the city aforesaid, in the county aforesaid, and within the jurisdiction of this court, did maliciously and without lawful justification, with intent to cause and procure the miscarriage of one Helen Hunter, a woman then pregnant with child, administer to and prescribe for the said Helen Hunter and advise and direct her, the said Helen Hunter, to take and swallow a certain poison, drug, medicine and noxious thing, to the Grand Jurors aforesaid unknown—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.

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40

And the Grand Jurors of the State of New Jersey, in and for the body of the County of Essex, upon their oath aforesaid, do further present that the said Anna Gruich, late of the City of Newark, in the County of Essex aforesaid, on the fourteenth day

Judgment Record.

of June, in the year of our Lord one thousand nine hundred and eighteen, with force and arms at the city aforesaid, in the county aforesaid and within the jurisdiction of this court, unlawfully, maliciously and without lawful justification, in and upon one Helen Hunter, a woman then pregnant with child, did use divers
 10 means, to the Grand Jurors aforesaid unknown, with intent to cause and procure the miscarriage of the said Helen Hunter—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.

J. HARRISON,
Prosecutor of the Pleas.

On the eighth day of October, A. D. nineteen hundred and eighteen, on which day the said indictment was presented by the
 20 Grand Jury aforesaid to the said Court of Oyer and Terminer, and the said Justice did then and there order the said indictment to be handed down to the Court of Quarter Sessions, in and for said County of Essex, and then and there the said indictment was duly delivered and duly filed by the clerk of said court and an entry of such order and delivery and filing was there and then made in the minutes of said court at the same time, pursuant to the statute in such case made and provided.

And afterwards, that is to say, on the tenth day of October, nineteen hundred and eighteen, at the Court of Quarter Sessions, holden at Newark, in and for the County of Essex, before the
 30 Honorable Harry V. Osborne, Presiding Judge of the Court of Common Pleas, Anna Gruich, in the custody of John R. Flavell, Sheriff of the County of Essex aforesaid, and the said Anna Gruich being brought before the bar in her own proper person and forthwith being demanded of and concerning the premises in the above indictment specified and charged upon her, how she would acquit herself thereof, says that she is not guilty
 40 thereof, and therefore for good and evil she puts herself upon the country, &c., and J. Henry Harrison, prosecutor of the Pleas of said State, for said County of Essex, in this behalf doth the like.

Therefore, let a jury thereupon come before the Court of Quarter Sessions, to be holden at Newark, in and for the County

Judgment Record.

of Essex, on the twenty-eighth day of October, nineteen hundred and eighteen, then next ensuing, twelve free and lawful men, each of whom shall be a citizen of this State and resident within the County of Essex aforesaid, above the age of twenty-one years and under the age of sixty-five years, by whom the truth of the matter may be better known and who are not of the kin of the said Anna Gruich to recognize upon their oath whether the said Anna Gruich is guilty of the premises in the said indictment specified or not guilty, because the said J. Henry Harrison, Esq., Prosecutor, &c., as the said Anna Gruich puts herself upon the jury and the same time is given to the parties aforesaid at the same place.

10

And now, that is to say, the sixth day of January, nineteen hundred and nineteen, and on the sixth day of February, nineteen hundred and nineteen, to which date the issue was postponed and continued until the twenty-first day of February, nineteen hundred and nineteen, at the same Court of Quarter Sessions, holden before the Honorable Harry V. Osborne, Judge of the Court of Common Pleas, comes the said J. Henry Harrison, who prosecuted as aforesaid, and the said Anna Gruich and the jury of whom mention is before made, and by the said John R. Flavell, Sheriff of the County of Essex, for this purpose empanelled and returned, to wit: after the following number of challenges were exhausted: By the State two, by the defendant six, and two jurors were excused by the Court, Philip J. Jackson, Samuel E. Blair, George F. Corwin, Theodore A. Johnson, George Schneider, James P. Benbrook, Charles W. Wheaton, Alonzo O. H. Davis, George B. Cable, Ernest C. Van Winkle, Leslie Coffman, George Geiser, who, being called, were sworn upon that jury who to speak the truth of and concerning the premises and thereupon the trial of said issue was commenced and continued until the twenty-first day of February, nineteen hundred and nineteen, when the jury returned into court in charge of the officer sworn to attend them, and then and there in the presence of the prosecutor, defendant and court do say upon their oath they find the said defendant, Anna Gruich, guilty in the manner and form as charged in the indictment, and so they say all.

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Judgment Record.

Judgment Signed Whereupon all and singular, the prem-
 June 5, 1919. ises being seen and by the Court now
 Henry V. Osborne, here fully understood, it is on this fifth
 Judge. day of June, nineteen hundred and nine-
 teen, ORDERED and adjudged that the de-
 fendant be committed to the State Prison

10 of this State for a term of not less than eighteen months and not
 more than seven years at hard labor upon this conviction and
 from thence until the costs are paid, which costs are taxed by the
 clerk of the court at seventy-nine dollars and ninety-six cents.

This sentence to run concurrently with sentence imposed on
 • No. 159, April Term, 1919.

20

30

40

Richard Hunter, direct.

TESTIMONY.

RICHARD HUNTER, sworn in behalf of the State.

Direct examination by Mr. Blake.

Q Mr. Hunter, you are the husband of the first witness? A Yes, sir. 10

Q Do you know the defendant, Mrs. Gruich? A Yes, sir.

Q Where did you see her the first time? A The Sixth Precinct Court.

Q Had you ever seen her before that? A Not to know her.

Q Don't you know whether you had even seen this woman sitting at the end of the table any time before you went to the Sixth Precinct police station? A No.

Q Did you ever go with your wife to South Orange avenue? A Yes. 20

Q What number? A I don't remember it; it is by Howard street; that is all I know.

Q Who lives there? A Mrs. Gruich.

Q Did you see her there? A I didn't recognize her; I saw some woman, but it was dark there and I couldn't recognize her.

Q What floor was it on? A Second.

Q What time of night was it? A About half past seven, I should judge.

Q Do you know the number on South Orange avenue? A No. 30

Q Do you know where it is near? A Near Howard street, I think.

Q Wasn't there any light in the room? A I don't think there was.

By the Court.

Q Was the name on the door? A It is a three-family house with a store on the bottom floor.

Q Apartments upstairs? A Yes.

Q Were there bells or push buttons, or how did you get in? A I walked in there; there was no bell. 40

Q Any name or anything on the door? A There was a sign on the front door.

Q What did it say? A "Mrs. Gruich, Midwife."

Richard Hunter, direct.

By Mr. Blake.

Q What floor? A Second.

Q Did you go in that apartment that had that sign on the window? A Yes.

10 *The Court.* I think the witness' memory may be refreshed by reference to incidents or statements made at another time, as it is apparent at this time that he does not remember.

Mr. MacSherry. I may have lost the narrative. Has the time and place been fixed?

The Court. Yes; he is asked now whether he did not make a certain statement three months after the incident and about six months ago.

20 *Mr. MacSherry.* It is their witness and it is cross examination of their own witness. I will object to it.

The Court. Objection overruled.

Defendant's counsel prays an exception to this ruling of the Court, and the same is allowed and signed and sealed accordingly.

H. V. OSBORNE,
Judge.

30 *The Court.* You may call the witness' attention to any statement or incident for the purpose of refreshing his memory.

Q Did you state in the presence of Mr. Woodkoski in the probation office that your wife paid Mrs. Gruich, "I do not know how much, then we walked home"? A I don't remember that.

The Court. Did you make that statement?

Q Do you remember making the statement that has just been called to your attention? A Yes.

40 Q And that statement having been called to your attention, does that refresh your recollection as to what took place at the time you were in the room on South Orange avenue? Do you understand what I mean? A statement having been made to Mr. Woodkoski in the probation office in which you said your wife paid Mrs. Gruich some money; does that refresh your recollection?

Richard Hunter, cross.

tion as to what actually took place that June in the room on South Orange avenue? A No, sir.

Q And you don't remember? A No.

Q You don't remember your wife paying Mrs. Gruich any money? A I don't remember seeing any money paid at all.

Cross examination by Mr. MacSherry.

10

Q Did you pay Mrs. Gruich any money? A No.

Q Ever pay her any money? A No.

Q You are not living with your wife? A No.

Q How long since you lived with her? A About six months.

Q What say? A About six or seven months.

Q Well, is it, in your opinion, seven or six, do you think? A About seven.

Q And previous to this seven months how long did you live together? A Three months.

20

Q What? A Three or four months—four months.

Q What months were these? A From February 14th until the latter part of July, sometime.

Q Did you hear your wife talk to a woman there? A She was talking to her.

Q Did you hear what they said? A No; my wife went in first.

Q How many times did you go there with her? A Once.

Q Do you know the date? A In June.

Q Do you know the time of day? A No.

30

Q Didn't you hear a word that was said between these two people? A I wasn't listening.

By the Court.

Q That is not the question. The question is whether you heard them; people hear things sometimes when they are not listening. A I don't remember hearing anything.

Q How long did you remain in the room with your wife and this woman? A A couple of minutes.

Q Then what happened? A My wife and her went in the other room.

40

Q How long did you stay? A I should judge about five minutes.

Q Did they come back together? A I think my wife came out first; I don't remember.

Richard Hunter, cross.

Q Did the woman that you have mentioned come into the room while you and your wife were there? A Yes, sir.

Q Was there anything said by any of you after she came into the room? A There was something said, but I don't remember what it was; I wasn't listening; I didn't pay attention.

10 Q Weren't you paying attention? A I didn't think anything of it.

Q Do you know what your wife went there for? A Yes.

Q You were not interested in the matter? A I was interested, but I didn't think I would have to remember anything that would be said, so I didn't listen; didn't pay any attention.

Q How far away from them when they talked were you? You say they talked together, but you didn't hear them? A I was looking out the window and they were by the door in the other room.

20 Q Was that true before and after they left the room? A When they left the room I stayed by the window.

Q When they came back you didn't hear anything at all? A No; I don't remember anything being said.

By Mr. Blake.

Q Did you see your wife give this woman anything? A No.

Q Sure of that? A Yes.

Q At any time? A Not that I remember; no.

Q Well, now think. A No.

30 Q Did you make a statement to the officer here, Woodkoski? A Yes.

Q When did you make that statement? A About six months ago.

Q How soon after this occurrence in June? A Three months.

Q Three months after the occurrence in June did you tell Mr. Woodkoski anything about seeing your wife handing Mrs. Gruich something?

Objected to.

40 Q You haven't lived with your wife in seven months. Have you had intercourse with her during that time?

Mr. Blake. I object. You don't have to answer that question.

The Court. What is the purpose of that question.

Richard Hunter, cross.

Mr. MacSherry. Just as I said before, this apparent lapping over was close to the pregnancy. Now, that then becomes an incident.

The Court. The reason the testimony was admitted before was for the purpose of ascertaining whether there was an overlapping of pregnancy which might have some bearing upon this question at issue. If she is pregnant, it is quite apparent that somebody must have had intercourse with her. It is not necessary, for the purpose of your inquiry, to determine whether it was her husband or somebody else. I do not think this question is material. 10

Mr. MacSherry. I have always understood, in these cases, that the character of the complaining witness is a matter of investigation, particularly when it is so closely associated with the charge.

The Court. Even if that was so, this would not be the way to prove it. It is not the way to prove character. The character of the complaining witness has nothing to do with the matter. In the second place, it is not one of the elements of the crime. 20

Defendant's counsel prays an exception to this ruling of the Court, and the same is allowed and signed and sealed accordingly.

H. V. OSBORNE,
Judge. 30

Q Have you seen your wife in the last seven months? A Yes.

Q Where? A I met her in Olympic Park.

Q Casually? A Yes.

Q Have you been in the same house with her?

Objected to.

The Court. I do not know the purpose of this inquiry. I will permit the question until we find out what the purpose it.

Q (Question read.) A Yes. 40

Q When? A Several times.

Q Where? A Her house, where she is boarding.

Q Just calling? A Yes.

Q Anything beyond that?

Richard Hunter, direct.

Objected to.

(Question withdrawn.)

Q You were living with your wife at the time, in June, then, when she went to Mrs. Gruich's, were you not? A Yes.

10 Q When she got home do you know when it was that she began to flow? A No.

Q Do you know whether she was flowing when she went to Mrs. Gruich's? A She wasn't.

Q Do you know or do you simply know from what she says? A I know she wasn't.

Q Did you know when she began to flow? A A couple of days later.

Q How do you know that? A She told me she was sick.

Q Did you have a doctor for her? A No.

20 Q Why not? A She didn't want any.

Q Do you know if before your wife went to Mrs. Gruich's she took any drugs or anything like that? A Not that I know of.

RICHARD HUNTER, recalled on behalf of State.

Direct examination by Mr. Blake.

Q Mr. Hunter, did you give your wife anything on the 14th of June—any money?

Mr. MacSherry. I object to that as being too indefinite.

30 *The Court.* He is asked whether he gave her money.

Q Before you went up to Mrs. Gruich? A No.

By the Court.

Q You suppose you gave her money? A When she asked me for any.

Q Have you any definite recollection of having given her money on that day? A No.

By Mr. Blake.

40 Q You say you have not lived with your wife since last July? A Yes, sir.

Q Have you visited her? A Yes, sir.

Q Have you had intercourse with her? A Yes, sir.

Q How often? A Lots of time; I took her out nights, all night.

Richard Hunter, cross

By the Court.

Q Then when you say you have not lived with her you mean to say you haven't lived in the same apartment or rooms or house? A Yes, sir.

By Mr. Blake.

Q When were you out with her at night, do you remember?
A Several times—oh, lots of times.

10

Cross examination by Mr. MacSherry.

Q When? A The last time was about two months ago—a month and a half ago.

Q Did anybody talk to you during this five minute recess we had here in court? A Yes.

Q Who?

The Court. Just tell what took place.

20

A This gentleman here, he asked me—

By the Court.

Q Which one? Is this the man you mean (indicating)? A Yes.

By Mr. MacSherry.

Q Do you know who this gentleman is? A It is Mr. Mason.

Q Don't you know he is connected with the District Attorney's office? A Yes, sir.

30

Q What did he say to you? A He said they were trying to show that my wife was a prostitute.

Q He said that to you? A He wanted to make out I had intercourse with her.

Mr. MacSherry. I most respectfully submit to your Honor that this is very prejudicial to this defendant.

The Court. (After discussion.) The evidence shows that he was asked if he had intercourse with his wife, and he answered yes, and he is recalled to testify to that effect. I do not see how it prejudices the defendant one way or the other, because that is not the issue involved, whether this man had intercourse with his wife, or whether he is responsible for her present condition. The only question

40

Richard Hunter, cross

we are trying here is whether the defendant committed an abortion on the complaining witness on a certain date.

By Mr. MacSherry.

10 Q Have you contributed to your wife's support in the last seven months? A Yes.

Q Regularly? A Yes, sir.

(The jury retires.)

Defendant's counsel pray a general exception to the charge of the Court.

Exception allowed; let it be sealed, and it is signed and sealed accordingly.

(The jury returns into court.)

20

H. V. OSBORNE,
J.

The Court. Is there any question of law about which you desire to be enlightened?

The Foreman. No; we cannot agree.

30 *The Court.* I see no reason why you should not agree upon a verdict. You will therefore retire and continue your deliberations. I cannot discharge you after such a short consideration of the case. I see no reason why you should not reconcile the testimony and reach a verdict. You will retire.

Mr. Unger. I pray an exception to the remarks of the Court upon the ground that the Court is trying to force the jury to arrive at a verdict.

Exception allowed; let it be sealed, and it is signed and sealed accordingly.

H. V. OSBORNE,
Judge.

40

Assignments of Error (Supreme Court).

home and she would make it very hard for my daughter's husband; she asked me if I would do the selfsame thing."

2. Because the Court refused to permit the defendant on cross examination to ask the defendant, Richard Hunter, the following question:

10 "Q You haven't lived with your wife in seven months; have you had intercourse with her during that time?"

3. Because the Court erred in divers respects in its charge to the jury.

4. Because, the jury having retired to consider their verdict and having returned and said to the Court they could not agree upon the verdict, the Court thereupon said to the jury:

20 "I see no reason why you should not agree upon a verdict. You will therefore retire and continue your deliberations. I cannot discharge you after such a short consideration of the case. I see no reason why you should not reconcile the testimony and reach a verdict. You will retire."

5. Because the said verdict and judgment is illegal and contrary to the law of the State of New Jersey.

Q Wherefore, the plaintiff-in-error, Anna Gruich, prays that the judgment aforesaid be reversed and for nothing holden, and that she may in all things be restored to what she has lost by reason of the said judgment, etc.

30

HOWARD MACSHERRY,
Attorney for Plaintiff-in-Error.

40

Causes for Reversal (Supreme Court).

CAUSES FOR REVERSAL.

Filed November 8, 1919.

NEW JERSEY SUPREME COURT.

STATE OF NEW JERSEY,

Defendant-in-Error,

vs.

ANNA GRUICH,

Plaintiff-in-Error.

*On Error to
Essex County
Court of Quarter
Sessions.*

10

*Causes for
Reversal.*

Anna Gruich, the plaintiff-in-error, by Howard MacSherry, her attorney, hereby specifies the causes in the record relied upon for the relief or reversal in the aforesaid cause as follows:

20

1. Because the Court permitted the introduction of illegal evidence on the part of the State in that he permitted the witness, Anna Oliver, over objection by the defendant, to testify to the details of a conversation not in the presence of the defendant, as follows:

“Q Did you have any conversation with Mrs. Gruich, the defendant, after the 15th of June? A Yes; she came to my home after she had been arrested; she came to my home and tried to bribe my daughter.”

30

By the Court.

Q She came to your home when? A On a Saturday.

Q What date? A I don't remember the date.

Q Before or after June 15th? A After.

Q How long after? A I should judge between five and six weeks.

Q And where? A At my home, Bergen street.

Q Did you have a conversation with her? A Yes, sir.

Q Who was present? A My daughter and I.

* * * *The Court.*

40

Q Tell us what was said by any of you? A She asked my daughter if she would say that her husband had given her medicine and she was flowing when she went to her home, and she would make it very hard for my daughter's husband; she asked me if I would do the selfsame thing,”

Causes for Reversal (Supreme Court).

2. Because the Court refused to permit the defendant on cross examination to ask the defendant, Richard Hunter, the following question:

“Q You haven’t lived with your wife in seven months; have you had intercourse with her during that time?”

10 3. Because the Court erred in divers respects in its charge to the jury.

4. Because, the jury having retired to consider their verdict and having returned and said to the Court that they could not agree upon the verdict, the Court thereupon said to the jury:

20 “I see no reason why you should not agree upon a verdict. You will therefore retire and continue your deliberations. I cannot discharge you after such a short consideration of the case. I see no reason why you should not reconcile the testimony and reach a verdict. You will retire.”

5. Because the said verdict and judgment is illegal and contrary to the law of the State of New Jersey.

Wherefore the plaintiff-in-error, Anna Gruich, prays that the judgment aforesaid be reversed and for nothing holden, and that she may in all things be restored to what she has lost by reason of the said judgment, &c.,

30 HOWARD MACSHERRY,
Attorney for Plaintiff-in-Error.

Opinion of Supreme Court.

OPINION OF SUPREME COURT.

Filed March 2, 1920.

NEW JERSEY SUPREME COURT.

November Term, 1919.

10

THE STATE OF NEW JERSEY,

Defendant-in-Error,

vs.

ANNA GRUICH,

Plaintiff-in-Error.

*On Writ of
Error.*

Submitted November Term, 1919; decided March 2, 1920.

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Before Gummere, Chief Justice, and Justices Minturn and Black.

For plaintiff-in-error, Howard MacSherry, Esq., and Edwin C. Caffrey, Esq.

For defendant-in-error, J. H. Harrison, Esq., and John A. Bernhard, Esq., Prosecutors of the Pleas.

Per Curiam:

The defendant in this case was convicted of committing an abortion on Helen Hunter on the fourteenth day of June, 1918. After the jury had retired to consider their verdict they came into court, and the following incident occurred: "The Foreman. No, we cannot agree. The Court. I see no reason why you should not agreed upon a verdict. You will therefore retire and continue your deliberations. I cannot discharge you after such a short consideration of the case. I see no reason why you should not reconcile the testimony and reach a verdict. You will retire." This, it is argued, is reversible error. It is the only point argued in the case. The argument is that it was tantamount to saying, agree on the facts and bring in a verdict of guilty; that it coerced them in finding the defendant guilty. We think the Trial Court did not overstep the province of the Court and what the Court said was not error.

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The judgment of the Essex Quarter Sessions is affirmed.

*Remittitur.***REMITTITUR.**

Entered March 5, 1920.

10	THE STATE OF NEW JERSEY, <i>Defendant-in-Error,</i> <i>vs.</i> ANNA GRUICH, <i>Plaintiff-in-Error.</i>	}	<i>On Error.</i> <i>Remittitur.</i> <i>Case No. 1.</i>
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20 The above-stated case having been submitted at the November Term, nineteen hundred and nineteen, in the New Jersey Supreme Court, by J. H. Harrison, Esq., attorney for the defendant-in-error, and Howard MacSherry, attorney for the plaintiff-in-error, and the Court having considered the matter and finding no error in the record and proceedings in the Essex County Court of Quarter Sessions;

It is thereupon ordered and adjudged that the judgment of the Essex County Court of Quarter Sessions, removed by the writ of error in this cause, be affirmed in all things with costs; and that the record be remitted to the Essex County Court of Quarter Sessions to be proceeded with according to law and the practice of said court.

30 Entered March 5, 1920,

On motion of

J. H. HARRISON,
 Prosecutor of the Pleas,
Attorney of Defendant-in-Error.

I, ENOCH L. JOHNSON, Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of a rule entered in the minutes of the Court in the above-stated cause.

40 In testimony whereof, I have set my hand and seal of said Court at Trenton, this thirteenth day
 (L. S.) of March, A. D. nineteen hundred and twenty.

ENOCH L. JOHNSON,
Clerk.

*Assignments of Error.***ASSIGNMENTS OF ERROR.**

Filed.

New Jersey Court of Errors and Appeals

THE STATE OF NEW JERSEY,

*Defendant-in-Error,**vs.*

ANNA GRUICH,

*Plaintiff-in-Error.**On Writ of
Error.**Assignments
of Error.*

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Afterwards, to wit, on the return day of said writ, in the Court of Errors and Appeals of the State of New Jersey, in the last resort in all causes of the State of New Jersey, comes the said Anna Gruich, by her attorneys, Howard MacSherry and McDermit & McDermit, and says that in the record and proceedings aforesaid and also in the giving of judgment aforesaid there is manifest error in this, to wit:

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1. In that upon the trial of said cause the Court refused to permit the defendant on cross examination to ask the State's witness, Richard Hunter, the following question: "Q You haven't lived with your wife in seven months; have you had intercourse with her during that time?"

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Because the Supreme Court held that the Trial Judge acted properly, after the jury had retired to consider their verdict and having returned and said to the Trial Court that they could not agree on the verdict, and the Trial Judge thereupon said to the jury:

"I see no reason why you should not agree upon a verdict. You will therefore retire and continue your deliberations. I cannot discharge you after such a short consideration of the case. I see no reason why you should not reconcile the testimony and reach a verdict. You will retire."

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And the plaintiff-in-error, Anna Gruich, prays that the judgment aforesaid be reversed and altogether held for nothing and

Specification of Causes.

that she may be restored to all things she has lost by reason of the said judgment, &c.

HOWARD MACSHERRY,
McDERMIT & McDERMIT,
Attorneys for Plaintiff-in-Error.

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SPECIFICATION OF CAUSES.

Filed

NEW JERSEY COURT OF ERRORS AND APPEALS.

20	THE STATE OF NEW JERSEY, <i>Defendant-in-Error,</i> <i>vs.</i> ANNA GRUICH, <i>Plaintiff-in-Error.</i>	}	<i>On Writ of Error.</i> <i>Specification of Causes.</i>
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Anna Gruich, by her attorneys, Howard MacSherry, and McDermit & McDermit, hereby specifies the causes in the foregoing record, relied upon for relief or reversal:

30 1. In that the Court refused to permit the State's witness, Richard Hunter, to be cross examined as to whether or not he had lived with his wife for seven months and if whether he had had intercourse with her during that time.

2. In that the Court, after the defendant had finished the cross examination of the State's witness, Richard Hunter, permitted said witness to be recalled and testify to acts and conversations he had had with a third person during the recess hour of the adjournment of the court, and testify as to whether or not he had had intercourse with his wife during the time he was not living with her, to the prejudice of the defendant.

40 3. In that the jury were coerced in finding the defendant guilty when the said jury had informed the Court that it could not agree upon a verdict.

HOWARD MACSHERRY,
McDERMIT & McDERMIT,
Attorneys for Plaintiff-in-Error.

New Jersey Court of Errors and Appeals

STATE OF NEW JERSEY,

Defendant-in-Error,

vs.

ANNA GRUICH,

Plaintiff-in-Error.

On Writ of Error

BRIEF OF PLAINTIFF-IN-ERROR.

The two errors assigned in this case relate to:

1. The exclusion of the evidence of Richard Hunter on cross examination, as to whether or not he had ever had intercourse with his wife, the complainant, inasmuch as he had not been living with his wife during the period of alleged pregnancy of the complainant.

2. The charge of the Court: "I see no reason why you should not agree upon a verdict. You will therefore retire and continue your deliberations. I cannot discharge you after such a short consideration of the case. I see no reason why you should not reconcile the testimony and reach a verdict. You will retire."

BRIEF OF ARGUMENT.

1. In the state of the case, page 12, line 40, the subject matter under this assignment appears as follows:

"Q You haven't lived with your wife in seven months. Have you had intercourse with her during that time?"

Mr. Blake. I object. You don't have to answer that question.

The Court. What is the purpose of that question?

Mr. MacSherry. Just as I said before, this apparent lapping over was close to the pregnancy. Now, that then becomes an incident.

The Court. The reason the testimony was admitted before, was for the purpose of ascertaining whether there was an overlapping of pregnancy which might have some bearing upon this question at issue. If she

is pregnant, it is quite apparent that somebody must have had intercourse with her. It is not necessary, for the purpose of your inquiry, to determine whether it was her husband or somebody else. I do not think this question is material.

Mr. MacSherry. I have always understood, in these cases, that the character of the complaining witness is a matter of investigation, particularly when it is so closely associated with the charge.

The Court. Even if that was so, this would not be the way to prove it. It is not the way to prove character. The character of the complaining witness has nothing to do with the matter. In the second place, it is not one of the elements of the crime.

Defendant's counsel prays an exception to this ruling of the Court, and the same is allowed and signed and sealed accordingly.

H. V. OSBORNE,
Judge."

This line of examination was relevant, and proper to bring out the fact of an absence of pregnancy. It was material if whether or not there was an overlapping of pregnancy.

The witness Hunter had not been cohabitating with his wife, the complainant, for some period of time, her claim of pregnancy was a proper line of cross examination, if whether or not the husband, this witness, had had intercourse with her, as the natural conclusion and presumption being that she being married, pregnancy would result through the acts of her husband if they are cohabitating together, because of the maxim of law, that every person shall be presumed innocent of a crime until proven guilty thereof. If this witness was not cohabitating with his wife, the complainant, then this presumption would prevail, and complainant would not be guilty of the crime of adultery, and thereby negatives the claim of pregnancy.

It is respectfully submitted that this line of cross examination was proper and material, and that the ruling of the Court was prejudicial error.

It is true that the witness Hunter was later again recalled by the prosecutor and questioned by him as to his having had sexual intercourse with his wife, the complainant, not for the purpose of proving the probability of the existence of pregnancy,

but to prove the chastity of the complainant. His testimony shows (case, p. 14, l. 40, and p. 15) that he testified he always had intercourse with his wife, withal he had not been living with her.

The situation presented here is a most significant one and injurious to the defendant. The Court ruled that the excluded testimony complained of was immaterial (p. 13, l. 15). After an adjournment of the Court, this witness is approached and talked to by Mr. Mason, a prosecutor's detective, and this witness for the first time then states that he had had intercourse with his wife, the complainant (p. 15, l. 15) and the witness then states that Mr. Mason told him during said adjournment of Court that the defense was trying to show his, witness' wife, to be a prostitute and that he, Mason, "wanted to make out I had intercourse with her" (p. 15, l. 35).

When the Court had previously excluded this testimony on cross examination, but after recess the Court permitted the witness to be recalled for the purpose of proving that witness had had intercourse with his wife, the complainant, so as to offset the alleged created presumption that she was a prostitute in the face of all the testimony as testified to by this witness (p. 13, l. 30, *et seq.*):

"Q Have you seen your wife in the last seven months?

A Yes.

Q Where? A I met her in Olympic Park.

Q Casually? A Yes.

Q Have you been in the same house with her?

Objected to.

The Court. I do not know the purpose of this inquiry. I will permit the question until we find out what the purpose is.

Q (Question read.) A Yes.

Q When? A Several times.

Q Where? A Her house, where she is boarding.

Q Just calling? A Yes.

Q Anything beyond that?

Objected to."

It is respectfully submitted that the Court erred in every respect to the prejudice of the defendant in excluding proper and relevant testimony which was material on cross examination, and in permitting the witness to be recalled after recess of court to testify and give testimony after having been approached and

coached by a prosecutor's detective, to show that complainant was not a prostitute, to the injury of defendant when the Court had excluded the said relevant testimony on cross examination and prevented her counsel to properly pursue the cross examination of the witness.

2. This error relates to the charge of the Court to the jury on its return to the court, case 16, fol. 20-35.

This statement by the learned Trial Court is different from the one made in the *State v. Liberman*, 79 Atl. 331. In that case the Judge asked them to come to a conclusion one way or the other.

In the matter *sub judice*, by the language of the Court his own views were conveyed to the jury. His language "I see no reason why you should not reconcile the testimony and reach a verdict"; is the paramount to saying, agree on the facts and bring in a verdict of guilty. The learned Trial Court did not counsel argument and deliberation alone, but emphasized his feeling and attitude by practically saying to the jury: "Bring in a verdict of guilty." Certainly he did not nor would he in express words make that statement, still the jurors could draw no other inference. Because the jury well knew if the Court felt she were innocent and entitled to an acquittal at their hands he would have directed a verdict for her. With this in mind, the Court's statement, that there was no reason why a verdict could not be reached had the opposite effect and coerced them in finding the defendant guilty, for the Trial Judge went further than necessary to have the jury understand that they had to arrive at some conclusion. The Court pointedly charges the jury "I see no reason why you should not reconcile the testimony and reach a verdict," when the Court should have charged "I see no reason why you should not reconcile the testimony and reach some conclusion one way or the other," which would have been proper and not coercive because the matter would have been left to them free for deliberation and decision, or should have added to his charge the words, after "verdict," "one way or the other."

Respectfully submitted,

HOWARD MACSHERRY,
Attorney for Plaintiff-in-Error.

FRANK M. McDERMIT,
Of Counsel for Plaintiff-in-Error.

New Jersey Court of Errors and Appeals

THE STATE OF NEW JERSEY,

Defendant-in-Error,

vs.

ANNA GRUICH,

Plaintiff-in-Error.

*On Indictment
for Abortion.*

BRIEF FOR STATE OF NEW JERSEY.

The crime alleged in the indictment is that the defendant upon the 14th day of June, 1918, committed an abortion on Helen Hunter. An indictment was found at the September Term, 1918, and the case was tried on the 6th day of February, 1919.

The first error argued in the brief for the plaintiff-in-error relates to a statement made to the jury, when it returned into court to report that it could not agree upon a verdict. The Court said: "I see no reason you should not agree upon a verdict. You will, therefore, retire and continue your deliberations. I cannot discharge you after such a short consideration of the case. I see no reason why you should not reconcile the testimony and reach a verdict. You will retire." Thereupon the jury did retire and later returned a verdict of guilty. It is now contended that the remarks of the Trial Judge amounted to an attempt to coerce the jury into an agreement, which resulted in the conviction of the defendant. This statement was certainly no stronger than that used by the Trial Judge in *State v. Lieberman*, 79 Atl. 331. There the Court said, *inter alia*: "These defendants are charged with a serious crime, and I request you, gentlemen of the jury, to come to a conclusion one way or the other." If any inference can be drawn from what the Court there said, that inference might carry with it an intimation of the defendant's guilt, but no such intimation could have been conveyed by what Judge Osborne said in requesting the jury to "retire and continue your deliberations." It was the duty of the jury to reconcile the testimony and reach a verdict, and it was entirely proper for the Court to ask the jury "to retire again" in order to agree upon a verdict "in what the Court said to the jury there was no threat and no intimation at coercion," and was merely another way of requesting them to "come to a conclusion one way or the other."

The other point involved in this appeal concerns the alleged exclusion of the following question:

Q You haven't lived with your wife in seven months; have you had intercourse with her during that time? (p. 12, l. 40.)

Whether or not the objection was sound is of no moment because on p. 14, l. 40, the witness was questioned about the same subject by Mr. Blake, who tried the case for the State, and by the Court is apparent from the following examination:

Q You say you have not lived with your wife since last July? A Yes, sir.

Q Have you visited her? A Yes, sir.

Q Have you had intercourse with her? A Yes, sir.

Q How often? A I took her out nights, all night.

By the Court.

Q Then when you say you have not lived with her, you mean to say that you have not lived in the same apartment, rooms or house? A Yes, sir.

By Mr. Blake.

Q When were you out with her at night, do you remember? A Oh, lots of times.

The subject, therefore, having been re-opened the counsel for the defendant inquired:

Q When? A The last time was about two months ago—a month and a half ago.

It seems clear beyond argument that the admission of this latter testimony covered entirely the subject referred to in the question which was excluded.

In conclusion, we desire to call the attention of the Court to that portion of the examination quoted by the defendant in his brief, and to note that it is to the same force and effect as the evidence to which we have just referred.

It is respectfully submitted that the judgment should be affirmed.

June Term, 1920.

J. H. HARRISON,
Prosecutor of the Pleas.

JOHN A. BERNHARD,
Assistant Prosecutor.

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