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New Jersey Court  
of Errors and Appeals

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THE STATE OF NEW JERSEY,  
Defendant in Error, Appellee,  
vs.  
BERTRAM MARRINER,  
Plaintiff in Error, Appellant.

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ON ERROR  
STATE OF THE CASE

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CHARLES F. SEXTON,  
Attorney for Defendant in Error.

WARD KREMER,  
Attorney for Plaintiff in Error.

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NEW JERSEY, to wit:

(SEAL)

The State of New Jersey to the Supreme Court of New Jersey and to the Court of Oyer and Terminer and General Quarter Sessions of the Peace, in and for the County of Monmouth. Greetings:

10 Because in the record and proceedings and also in  
 the giving of judgment in a certain plaint which was  
 in our Court of Oyer and Terminer holden at Freehold  
 in the said County of Monmouth between the State of  
 New Jersey and Bertram Marriner, defendant in a cer-  
 tain indictment whereof he was convicted of atrocious  
 assault and battery contrary to law in the Township of  
 Neptune in said County, and in the review of the said  
 judgment and indictment in the said New Jersey Su-  
 preme Court, as it is said, manifest error hath inter-  
 20 vened to the great damage of the said Bertram Marri-  
 ner as by his complaint we have received information,  
 we being willing, in his behalf, to correct the error in  
 due manner, if any there shall be, and that speedy jus-  
 tice be done to him, the said Bertram Marriner, com-  
 mand you if judgment be thereon given and affirmed  
 in the said Supreme Court, then that you distinctly  
 and openly send under your seal the record and pro-  
 ceedings aforesaid with all things touching the same,  
 to our Court of Errors and Appeals in the last resort  
 in all causes of the State of New Jersey, on the second  
 day of December, 1919, and this Writ, with the record  
 30 and proceedings aforesaid being inspected we may fur-  
 ther cause to be done thereupon, for correcting that  
 error what of right and according to the laws of New  
 Jersey ought to be done.

WITNESS HIS HONOR, EDWIN ROBERT WALKER, Esquire, Our Chancellor and President Judge of our said Court of Errors and Appeals, at Trenton, this 12th day of November, 1919.

THOMAS F. MARTIN, Clerk.

WARD KREMER, Attorney

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## NEW JERSEY COURT OF ERRORS AND APPEALS.

THE STATE OF NEW JERSEY,  
 Defendant in Error.

vs.

BERTRAM MARRINER,  
 Plaintiff in Error.

Joinder in Error.

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The State of New Jersey, Defendant in Error, joins issue in this case and says that no error was committed by the Supreme Court of the State of New Jersey in affirming the judgment of the Monmouth County Court of Oyer and Terminer and General Quarter Sessions, particularly for the reasons as set forth in the reasons for reversal filed in this cause, and that the judgment of the Supreme Court should therefore be

20 affirmed with costs of prosecution thereof.

Counsel for State of New Jersey,  
 Defendant in Error.

30

## NEW JERSEY COURT OF ERRORS AND APPEALS.

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THE STATE OF NEW JERSEY,  
 Defendant in Error.  
 vs.  
 BERTRAM MARRINER,  
 Plaintiff in Error.

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On Error.  
 Reasons For  
 Reversal.

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And now comes the said Bertram Marriner, by Ward Kremer, his attorney, and says that in the judgment of the Supreme Court of New Jersey confirming the judgment of the Monmouth County Court of Oyer & Terminer and General Quarter Sessions, there is manifest error and that the judgment of the Supreme Court should be reversed, assigns the following reasons:

1. Because the testimony of Anna Marriner, the wife of the Plaintiff in Error, was admitted over the objection of counsel for the Plaintiff in Error on subjects other than the fact of marriage, although the said Anna Marriner was not the complainant in the case; and because the Supreme Court erred in ruling that the said testimony of the said Anna Marriner was admissible. 20

2. Because the Supreme Court erred in its finding that the trial court was correct in refusing upon the request of the Plaintiff in Error to charge the Jury as follows: 30

“If you believe from the evidence that at the time of the commission of the crime, the Defend-

ant was suffering from delirium tremens, and was under the influence of that disease, you must return a verdict of not guilty."

"If you believe that the Defendant, by reason of excessive drinking or from any other cause, was mentally unsound, and had lost the government of his reason at the time of the commission of the act alleged, you must return a verdict of not guilty."

10

"If you believe from the evidence that the Defendant by reason of excessive drinking was in a mentally unsound condition at the time of the commission of the assault alleged, in which condition he was unable to form the guilty intent, you must return a verdict of not guilty."

3. Because there was harmful error and prejudice to the Plaintiff in Error in the following comment of the trial court:

20

"Now, gentlemen of the Jury, the case seems to have been tried altogether on the theory that under the criminal law, drunkenness is a defense."

As a matter of fact, the case was tried entirely upon the theory that insanity, either temporary or otherwise, is a defense under the criminal law, and that if insanity existed in the Plaintiff in Error at the time of the commission of the crime, even though that insanity had been super-induced by continued drunkenness which had caused a mental derangement of the Plaintiff in Error, nevertheless, if he were believed by the Jury to have been insane at the time of the commission of the act, he should have been found not guilty. This was the theory upon which the defense was based

30

before the trial court. The trial court, however, refused to accept this theory and instead instructed the Jury as above quoted that the case had been tried on the theory that drunkenness was a defense. This comment and instruction was harmful and prejudicial to the defense of the Plaintiff in Error and was also erroneous and the trial court erred in making such charge and the Supreme Court erred in not reversing the conviction on account of this error.

WARD KREMER, 10  
Counsel for Plaintiff in Error.

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## NEW JERSEY COURT OF ERRORS AND APPEALS.

THE STATE OF NEW JERSEY,  
Plaintiff in Error.

vs.

BERTRAM MARRINER,  
Defendant Appellant.

On Error.  
Notice of Argument.

10

TO CHARLES F. SEXTON, Attorney for Plaintiff in Error:

Please to take notice that the argument of the appeal in the above entitled cause will be brought on at the March Term of the Court of Errors & Appeals to be held at the State House in the City of Trenton on Tuesday, the Second day of March, 1920, at 11 o'clock in the forenoon or as soon thereafter as counsel can be heard.

20

WARD KREMER,  
Attorney for Def. Appellant.

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(SEAL)

The State of New Jersey to the Court of Oyer and Terminer and General Quarter Sessions of the Peace, in and for the County of Monmouth . . . . GREETING

Because in the record and proceedings and also in the giving of judgment in a certain **10**   
plaint which was in our Court of Oyer and Terminer holden at Freehold in the said County of Monmouth between the State of New Jersey and Bertram Marriner, defendant in a certain indictment whereof he was convicted of atrocious assault and battery contrary to law in the Township of Neptune in said County, manifest error hath intervened to the great damage of the said Bertram Marriner as by his complaint we are informed, we being willing that speedy justice should be done to the party **20**   
aforesaid in this behalf, we do command you that you distinctly and openly send under your seal the record and proceedings aforesaid with all things touching and concerning the same, to our Justices of the Supreme Court of the State of New Jersey on the 7th day of January, 1918, together with this writ that the record and proceedings aforesaid being inspected, we may further cause to be done thereupon what of right and according to law ought to be done.

**30**   
WITNESS, WILLIAM S. GUMMERE, Esquire, Chief Justice at Trenton aforesaid, the 18th day of December in the year of Our Lord, one thousand nine hundred and seventeen.

WM. C. GEBHARDT, Clerk.

WARD KREMER, Attorney.

## RETURN

The answer of Rulif V. Lawrence, Judge of the court of Common Pleas constituting the Court of General Quarter Sessions in and for the County of Monmouth, the record and proceedings whereof mention is made and all things touching and concerning the same, to the Supreme Court of New Jersey, at the day and place within named, I certify and send in the schedule annexed to this writ, as I am within commanded.

RULIF V. LAWRENCE,  
Judge.

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30

STATE OF NEW JERSEY  
 COUNTY OF MONMOUTH ss:

Be it remembered that at a Court of Oyer and Terminer held at Freehold in and for the said County of Monmouth on the first Tuesday in May, one thousand nine hundred and seventeen, before Samuel Kalisch, Esquire, one of the Associated Justices of the Supreme Court of Judicature of the State of New Jersey, and Rulif V. Lawrence, Esquire, Presiding Judge of the Court of Common Pleas and of the General Quarter sessions in and for the said County of Monmouth according to the form of the statute in such case made and provided for by the oaths of

- |                        |                           |    |
|------------------------|---------------------------|----|
| 1. Benjamin B. Bobbitt | 13. John A. McGuire       |    |
| 2. Albert Ackerman     | 14. Martin McGowan        |    |
| 3. John V. Burtis      | 15. William R. Moore      |    |
| 4. Eugene M. Berge     | 16. William Orth          | 20 |
| 5. Charles W. Billings | 17. Joel Parker           |    |
| 6. Harry Bolte         | 18. Charles Rugarber, Sr. |    |
| 7. Albert S. Craig     | 19. Irving L. Slocum      |    |
| 8. Charles Drake       | 20. Isaac T. Straus       |    |
| 9. Robert E. Drummond  | 21. Williams Thompson     |    |
| 10. George B. Goodrich | 22. Rev. Thomas R. Taylor |    |
| 11. George F. Holmes   | 23. Charles M. Wyckoff    |    |
| 12. Charles J. Lehn    |                           |    |

good and lawful men of the said County of Monmouth then and there duly summoned according to the form of the statute in such case made and provided and then and there duly sworn and charged by the said Samuel Kalisch, Judge as aforesaid, Presiding in said

Court of Oyer and Terminer in and for the said County of Monmouth to inquire in behalf of the State of New Jersey in and for the said County of Monmouth.

It is presented in the manner and form following to wit:

10 In the Court of Oyer and Terminer of Monmouth County, May Term, in the year of our Lord one thousand nine hundred and seventeen.

MONMOUTH COUNTY, TO WIT:

THE GRAND INQUEST of the State of New Jersey in and for the body of the County of Monmouth upon their respective oaths

20 PRESENT that Bertram Marriner

late of the Township of Neptune in the said County of Monmouth, on the twenty-third day of July in the year of our Lord One Thousand Nine Hundred and Seventeen with force and arms, at the Township of Neptune aforesaid, in the County of Monmouth, and within the jurisdiction of this Court, in and upon one Hannah Marriner, in the peace of God and of this State, then and there being, an assault did make, and her, the said  
 30 Hannah Marriner, then and there did beat, wound and ill-treat, and other wrongs to the said Hannah Marriner then and there did, to the great damage of the said Hannah Marriner, 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 Inquest aforesaid, upon their respective oaths aforesaid, do further present that Bertram Marriner, on the twenty-third day of July in the year of our Lord One Thousand Nine Hundred and Seventeen at the Township of Neptune aforesaid, in the County of Monmouth aforesaid, and within the jurisdiction of this Court, in and upon one Hannah Marriner in the peace of God and of this State then and there being, an atrocious assault did make, and her the said Hannah Marriner then and there did beat, wound and ill-treat, and other wrongs to the said Hannah Marriner then and there did, and did then and there by striking his wife seven times in the head with a hammer to the great damage of the said Hannah Marriner 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.

10

20

CHARLES F. SEXTON,  
Prosecutor of the Pleas.

And afterwards, to wit on the twenty-seventh day of September, in the year of our Lord One Thousand Nine Hundred and Seventeen at a session of the Court of Quarter Sessions aforesaid being as yet of the term of May aforesaid, before the Honorable Rulif V. Lawrence, Esquire, Judge at Freehold aforesaid.

30

It is ordered that all the indictments be filed and retained in this court for trial or other disposition.

Whereupon on the Third day of October, in the year of our Lord One Thousand Nine Hundred and Seventeen at a court of general Quarter Sessions at Freehold

aforesaid, in the County of Monmouth aforesaid, as yet of the term of October aforesaid, before Rulif V. Lawrence, Presiding Judge of the Court of Common Pleas, here cometh the said Bertram Marriner who, being brought to the bar here in his proper person by Cornelius B. Barkalow, Esq., Sheriff of the County of Monmouth, to whom also he is here committed, and having heard the indictment read and being commanded of and concerning the premises in the said indictment above specified and charged how he will acquit himself thereof, says he is not guilty thereof and thereupon for good and evil he puts himself upon the county and Charles F. Sexton, Prosecutor of the Pleas for said County, who prosecutes for the State of New Jersey, doth the like, and later, upon the twenty-second day of November, Nineteen Hundred and Seventeen, defendant retracts his former plea of not guilty and pleads non vult, whereupon it is ordered that the plea be entered and recorded and that sentence be set down for 10 November 23, 1917; and later upon the twenty-third day of November, Nineteen Hundred and Seventeen, the defendant being set to the bar retracted his former plea of non vult and pleads not guilty. 20

Therefore let the said indictment be continued until the fourth day of December, Nineteen Hundred and Seventeen, and from thence to the thirteenth day of December, Nineteen Hundred and Seventeen, and the jury thereupon here come before the judge aforesaid at Freehold aforesaid in the County of Monmouth 30 aforesaid on the thirteenth day of December, in the year of our Lord One Thousand Nine Hundred and Seventeen, as yet of the term of October aforesaid, twelve good and lawful men each of whom

shall be a citizen of the State and resident within the County and State aforesaid, above the age of twenty-one years and under the age of sixty-five years and by whom the truth of the matter may be better known and who are not of kin of the said Bertram Marriner, to recognize upon their oaths whether the said Bertram Marriner be guilty of Atrocious Assault and Battery in the indictment above specified or not guilty because as well the said Charles F. Sexton, Prosecutor of the Pleas for the said County of Monmouth aforesaid who prosecutes for the said State of New Jersey in that behalf, as the said Bertram Marriner has put himself upon the said jury and the same day is given to the parties aforesaid and the same place, at which time, that is to say on the thirteenth day of December in the year of our Lord One Thousand Nine Hundred and Seventeen being as yet of the term of October, aforesaid, before the judge aforesaid here cometh as well the said Charles F. Sexton, Prosecutor of the Pleas, who prosecutes as aforesaid as the said Bertram Marriner being brought to the bar here in his proper person by Elmer H. Geran, Sheriff of the County aforesaid and the jurors of said jury by the Sheriff of the county aforesaid for this purpose are impanelled and returned, that is to say:

- |                          |                        |    |
|--------------------------|------------------------|----|
| 1. George M. Quackenbush | 7. Wesley A. Palmateer |    |
| 2. Roy C. James          | 8. William T. McBride  |    |
| 3. Thomas O'Hara         | 9. Philip Cohen        | 30 |
| 4. George W. Doty        | 10. Thomas Dowd        |    |
| 5. John Murphy           | 11. J. Elvin Green     |    |
| 6. Warren Dalbo          | 12. William C. Casler  |    |

being called come who being chosen, tried and sworn to speak the truth of and concerning the premises and thereupon the trial of said issue commenced before the said Court and jury and the evidence being closed and counsel heard the said issue under a charge of the said Court was submitted to the said jury, and the said jury in charge of the said officers in Court duly sworn for  
10 that purpose were taken to a private room to consider of their verdict, and afterwards at Freehold aforesaid the jury returned into and before said Court in charge of said officers sworn as aforesaid to keep them in charge, and then and there in the presence of said Charles F. Sexton, Prosecutor of the Pleas and of the said Bertram Marriner, do say upon being asked in due form that they have agreed upon their verdict and by their foreman further say that they find the defendant,  
20 Bertram Marriner, guilty of Atrocious Assault and Battery as he stands charged in the indictment.

Whereupon it is ordered that the verdict and proceedings be entered and recorded and the defendant be remanded and thereupon the said Bertram Marriner on the twentieth day of December, in the year of our Lord One Thousand Nine Hundred and Seventeen being produced in and before the Court at Freehold aforesaid, it is ordered and adjudged by the Court that the  
30 defendant be committed to the New Jersey State Prison for a maximum term of seven years or a minimum term of two years at hard labor.

Judgment signed this twentieth day of December, A. D. 1917.

RULIF V. LAWRENCE, P. J.

Certification

17

STATE OF NEW JERSEY }  
COUNTY OF MONMOUTH } ss:

I, JOSEPH McDERMOTT, Clerk of said County and also Clerk of the Court of Common Pleas constituting the general quarter sessions, do hereby certify that the foregoing copy of record and proceedings in the case of State vs. Bertram Marriner is a true and correct copy thereof as the same remains on file in my office. 10

(SEAL) IN WITNESS WHEREOF I have hereunto set my hand and affixed the official seal of said County this twenty-first day of December, A. D. 1917.

JOSEPH McDERMOTT, Clerk. 20

30

## NEW JERSEY SUPREME COURT

THE STATE OF NEW JERSEY,  
Defendant in Error.

vs.

BERTRAM MARRINER,  
Plaintiff in Error.

In Error  
Reasons

10

And now comes the said Bertram Marriner by Ward Kremer, his attorney, and says that in the record and proceedings aforesaid and also in giving the judgment aforesaid, there is manifest error, and said Bertram Marriner says that the judgment should be reversed, and assigns the following reasons:

- 20 1. Because the said trial court refused to quash the indictment upon the motion of counsel for the Plaintiff in Error.
2. Because the testimony of Anna Marriner, the wife of the Plaintiff in Error, was admitted over the objection of counsel for the Plaintiff in Error on subjects other than the fact of marriage; although the said Anna Marriner was not the complaining witness in the case.
- 30 3. Because one Robert Cecil, a witness sworn on behalf of the State, was permitted over the objection of counsel for the Plaintiff in Error, to testify to what the Plaintiff in Error said one year after the assault for which the Plaintiff in Error was on trial.

4. Because the trial court charged the Jury as follows: "Drunkenness may be insanity but it is voluntary. It is no excuse for the consequences of crime."

"Now, Gentlemen of the Jury, the case seems to have been tried, altogether on the theory that under the criminal law drunkenness is a defense."

5. Because the trial court refused upon the request of the Plaintiff in Error, to charge the Jury as follows:

"If you believe from the evidence that at the time of the commission of the crime, the defendant was suffering from delirium tremens and was under the influence of that disease, you must return a verdict of not guilty. 10

"If you believe that the defendant by reason of excessive drinking or from any other cause was mentally unsound and had lost the government of his reason at the time of the commission of the act alleged, you must return a verdict of not guilty.

"If you believe from the evidence, that the defendant by reason of excessive drinking was in a mentally 20  
unsound condition at the time of the commission of the assault alleged in which condition he was unable to form the guilty intent, you must return a verdict of not guilty."

6. Because the charge of the trial court was in other respects erroneous.

WARD KREMER,  
Att'y for Plaintiff in Error. 30

CHARLES E. COOK,  
Of Counsel.

MONMOUTH COUNTY COURT OF OYER  
AND TERMINER.

THE STATE

vs.

BERTRAM MARRINER.

10

Monmouth County Court House,  
Freehold, N. J., Thursday, December 13, 1914.

Before HONORABLE RULIF V. LAWRENCE,  
Judge, and a Jury.

MR. JOHN J. QUINN, Assistant Prosecutor of the  
Pleas for the State.

20

MR. WARD KREMER, for the Defendant.

Mr. Kremer: I withdraw my plea for the purpose of  
making a motion to quash. The intention of the indict-  
ment is to charge atrocious assault and battery and the  
words "and battery" have been omitted.

The Court: Your motion is denied, you may have an  
exception.

30

ANNA MARRINER, sworn for the State.

Direct Examination by Mr. Quinn:

Q. You are the wife of Bertram Marriner?

A. Yes, sir.

Q. On July 23rd was an assault committed on you?

A. Yes, sir.

Q. Explain to the court and jury what took place.

Mr. Kremer: I object to this witness' testimony on the ground that she being the wife of the defendant is incompetent to testify in a criminal proceeding excepting to the fact of marriage.

The Court: Where the assault is committed upon herself she may testify.

10

(Your objection will be overruled.)

Mr. Kremer: I pray an exception.

Q. Now, what happened Mrs. Marriner?

A. He came home and started and asked me about my daughter, if she was home and I said "You have not been home in three days—two or three days, it doesn't seem to matter to you whether she is or not—you don't seem to care whether she is or not" and he started to back out of the room and into another room.

20

Q. Where were you?

A. In the front room.

Q. When he first came in the room, where were you?

A. The front bed room.

Q. Were you in bed?

A. No, on the side of the bed.

Q. Go on and tell what happened.

A. He came in there and stayed about five minutes and went down stairs and went out and over to his brother's barn. I thought he was going out in the automobile, but soon he came back again and came up-

30

stairs and back in the bed room again and he took hold of me and I pushed him away from me and I slapped him with my hands and he said "If you strike me in the face again" — and went out of the room and came back and that is when he struck me.

The Court: With what did he strike you?

10 Witness: Something hard.

By the Court:

Q. Where?

A. On the head.

Q. Were you hurt?

A. I was knocked unconscious, I don't remember any more.

Q. You don't remember what happened after that?

20 A. No, I don't remember what happened after that.

Q. You are sure he had something in his hand?

A. It felt like there was, I didn't see.

Q. When you regained consciousness, did you have a wound on your head?

A. Yes, I was bleeding.

Q. You were bleeding?

A. Yes, sir.

Q. Where was the wound on your head?

A. Back of my head.

30 Q. Where?

A. Back of my head.

By Mr. Quinn:

Q. Is the mark there yet?

A. Yes, and one of my fingers was broken.

Q. Show that to the jury.

A. Come right down here.

By the Court:

Q. You are showing the mark on your hand? 10

A. Yes, sir.

Q. The question, however, was as to the mark on the head. Mrs. Marriner, what are you now showing the jurors, the mark in your hand?

A. Yes, sir.

Q. Did you receive that at the time?

A. Yes, I must have put my hand up there.

Mr. Kremer: Objected to.

20

Q. Your hand was hurt at that time?

A. Yes, sir.

Q. Show the marks on your head to the jury, just indicate where it was.

A. The back of my head.

Q. After you regained consciousness, Mrs. Marriner, did you see your husband again?

A. No, I did not.

Q. Didn't you see him after that?

A. No, I did not.

30

Q. Who did come to you?

A. Mr. George Reynolds.

Mr. Kremer: I object to that.

Q. How long after did anyone, if anyone did come in, Mrs. Marriner, how long after you were struck?

Mr. Kremer: I object.

Q. As far as you can recall?

A. I don't remember.

10

By the Court:

Q. When did this happen?

A. Ten or eleven o'clock.

By Mr. Quinn:

Q. Did anyone come with him?

A. No sir, he came alone.

20

By the Court:

Q. What was the condition of your husband?

A. Well, he had been drinking, I don't think that night, though, he seemed to talk very plain, what he did say.

By Mr. Quinn:

30

Q. At the time you were struck was anyone in the room?

A. My two small children.

Cross Examination by Mr. Kremer:

Q. You didn't see Mr. Reynolds in the room?

A. No, I met him in the hall.

Q. What time was that?

A. I don't remember.

Q. Were you conscious?

A. Yes, sir.

Q. Where did you go?

A. Over to his house.

10

Q. Where was your husband at that time?

A. I don't know.

Q. Had your husband been back during the afternoon?

A. Yes, sir.

Q. What time did he come home in the afternoon?

A. At the noon hour.

Q. Pardon me?

A. Twelve o'clock.

Q. Was he drunk then?

20

A. Yes, sir.

Q. Did you see him again during the afternoon?

A. No, sir.

Q. As a matter of fact, he didn't come home after twelve o'clock until the time he assaulted you?

A. I do not know; I went away.

Q. How long had he been drinking prior to that occurrence, Mrs. Marriner?

A. He left home Saturday night and I did not see him until Monday at noon.

30

Q. During the month of July previous, had he been drinking a great deal or not?

A. Yes, sir.

- Q. All the time?
- A. Yes, sir.
- Q. How often did he come home during that time?
- A. Well, he would come home most of the time, but on several occasions he stayed away two or three days.
- Q. Was he drinking all the time?
- A. I don't know, he would come home in this condition.
- Q. Always be drunk when he came home?
- 10 A. Yes, sir.
- Q. How about the month of June previous to this occurrence, was he drinking heavily then?
- A. I don't remember, he would go on spells of drinking like that—I think July was the first.
- Q. You say he would go on spells drinking—how often?
- A. Saturday night and Sunday.
- Q. Sometime wouldn't these sprees last longer than two or three days?
- 20 A. No, I do not think so.
- Q. Didn't you say he was drinking all during the month of July?
- A. Off and on.
- Q. Referring to the night when he came back, what time of night did he come into the house?
- A. Between ten and eleven o'clock, around eleven o'clock.
- Q. Did he come first to your room?
- 30 A. Yes, he was downstairs a few minutes and came upstairs.
- Q. Had you retired?
- A. Yes, sir, was just going to retire.
- Q. Had you disrobed or were you going to disrobe?

- A. I was disrobed.
- Q. You say he came upstairs?
- A. Yes, sir.
- Q. What happened?
- A. He spoke to me about my oldest daughter.
- Q. Then he went downstairs?
- A. Afterwards.
- Q. Did he stay in your room?
- A. Yes, sir.
- Q. What side of the house is your room on? 10
- A. The East side.
- Q. What happened then?
- A. He went downstairs and out of the house.
- Q. Did you look out of the window to see where he went?
- A. No.
- Q. You don't know?
- A. I only heard the noise, the window was up.
- Q. Was there any light in your room? 20
- A. No, sir.
- Q. There was not?
- A. No, sir.
- Q. And how soon did he come back?
- A. I imagine in about five minutes.
- Q. He at that time came into your room?
- A. He came right upstairs, yes, but not right into my room.
- Q. He went into another room?
- A. Yes, sir. 30
- Q. Did he undress then and come into your room?
- A. Yes, sir.
- Q. What happened?

A. He went out of the room again and came back and struck me.

Q. You didn't know what struck you did you?

A. No.

Q. It might have been an implement or it might not have been?

A. It felt too hard for his open hand.

Q. How many blows did you feel?

A. I don't remember.

10 Q. You don't remember?

A. No.

Q. You don't remember anything after that?

A. No.

Q. Do you remember being struck on the hand?

A. No, I don't.

Q. Do you remember being struck on the head?

A. Just the first, that is all I remember.

Q. You say there is a mark on your head?

A. Yes, sir, there is wound prints there now.

20 Q. What is the next thing you remember?

A. I remember creeping from under the bed and getting my clothes, going to the bureau to get my clothes.

Q. You crept from under the bed?

A. Yes, sir.

Q. Where were you in relation to the bed when you were struck?

A. I stood on one side of the bed.

30 Q. On one side of the bed?

A. Yes, sir.

Q. He on the other?

A. No, he grabbed across the bed.

Q. Where was the bed?

A. Close to the wall.

Q. You were between the bed and the wall?

A. Yes, sir.

Q. When you fell, you fell between the bed and the wall?

A. Yes, sir.

Q. The next thing you recall was you were crawling out from under the bed?

A. Yes, sir.

Q. Where did you go then?

A. I went to the bureau and got my clothes on. 10

Q. Were your children there then?

A. No.

Q. You don't know where they were?

A. No.

Q. After you got your clothes on, where did you go?

A. Downstairs and I met Mr. Reynolds in the hall.

Q. Was he downstairs when you got there?

A. Yes, sir.

Q. Were your children there?

A. One was with him. 20

Q. At the time you say you were struck, did you say your children were in the room?

A. Yes, sir.

Q. What did they or she do?

A. Screamed and hollered.

Q. You say you slapped him in the face before he struck you?

A. No I didn't. I pushed him and I slapped him in the face, I didn't intend to, I didn't notice where I was hitting him, I was trying to get him from me, I didn't strike him intentionally. 30

Q. Are you sure the blow on your head was not received when you fell?

A. No, he struck me and I fell that is all I remember.

Q. So far as the blow on your head is concerned you don't know where you got it?

A. I must have put my hand to my head.

By the Court:

Q. Do you recall if you raised your hand or not?

A. Yes, and I said as I did it, "He has killed me."

10 Q. What?

A. He has killed me.

By Mr. Kremer:

Q. Did you think you were killed?

A. Yes, I thought I was killed.

Q. You don't know where he went when he went out?

20 A. No.

Q. You only remember he came back?

A. Yes.

Q. Or rather you know it?

A. Yes, sir. My children saw him, I didn't see him.

---

MYRTLE MARRINER, sworn for the State.

30 Direct Examination by Mr. Quinn:

Q. Bertram Marriner is your father?

A. Yes sir.

Q. Were you in the room the night your mother was struck?

A. Yes sir.

Q. Did you see anyone strike her?

A. Yes sir.

Q. Who was it?

A. He did it.

Q. What do you mean when you say "He did it?"

A. My father.

Q. Tell the jury what happened.

10.

A. Well he came in the room and fell across the bed and raised a hammer and when I saw the hammer I hollered.

Q. Did you see the hammer?

A. Yes, I did.

Q. Would you recognize it again if you saw it?

A. Yes sir.

Q. Would you say this is the hammer?

A. Yes, I think it is.

Q. Do you know what became of the hammer?

20

A. Well, no I don't, I went out of the room after that.

Q. Did you see your father leave the room?

A. No, I did not.

Q. What did your mother say when he struck her?

A. Oh, he has killed me, he has killed me.

Q. What condition was your father in that afternoon?

A. Well, he had been drinking in the afternoon, but he seemed to be all right that night.

30

## Cross Examination by Mr. Kremer:

Q. Just how do you identify that hammer, Myrtle from any other hammer, why did you say you knew this hammer?

A. Because I remember the marks on it.

Q. What marks?

A. Scratches around there.

Q. Had you seen that hammer before that time?

10 A. Yes sir.

Q. Where did you see it?

A. Over at my Uncle's barn when he was building jitney bodies.

Q. Did he have a lot?

A. A few, not so many.

Q. Did you go over there often?

A. Yes, I did.

Q. Had you seen this hammer before?

A. Yes, I did.

20 Q. Did you have hold of it?

A. Yes, I handed it to my uncle lots of times.

Q. You took occasion at that time to look at the marks in the hammer—did any of the other hammers have marks?

A. I don't know.

Q. You say you specifically remember these little scratches?

A. Yes, sir.

30 Q. Was the light out in the room when your father struck your mother?

A. Yes, it was.

Q. How could you see what he had in his hands?

A. I saw it from the light of the corner that shines

in there, in the window, I saw when he raised it, it showed in the light, I saw it then.

Q. Where were you?

A. In the room.

Q. Where in the room?

A. I was standing opposite to him.

Q. Was he near the window?

A. No, he was by the bed and the window is right by the bed.

Q. I thought the bed was against the wall? 10

A. It is, but the window is at the head of the bed.

Q. Against which wall is the bed, the South wall or the East wall?

A. The east.

Q. Is there a window on the east side?

A. Yes, there was.

Q. Was your mother between the bed and the wall on the east side?

A. Yes.

Q. Was the window behind her or to the side? 20

A. To that side, down towards the east.

Q. Where were you, Myrtle, in which corner?

A. I was in the middle of the room, that is when I saw him hit her, and then I ran back.

Q. When your father came in the room you could not see the hammer?

A. No, not until he had turned around and raised it.

Q. You saw him raise something up?

A. Yes, sir.

Q. It looked like a hammer? 30

A. I saw it.

Q. But you could not tell it was this hammer?

A. No, but it looked like it.

Q. It was not light enough to see these marks?

A. No, but I can tell it because I remember the marks.

Q. You know then he had a hammer in his hands?

A. No, I saw the hammer.

Q. I say you knew he had a hammer in his hands?

A. Yes, sir.

Q. You are sure it was not some other implement?

10 A. No, because the mark when he hit me was on the shoulder.

Q. Where did you go then?

A. I went next door.

By the Court:

Q. Did he hit you?

A. Yes, sir.

Q. When was that?

20 A. That night.

Q. With respect to striking your mother, when was it?

A. Before he struck me or my mother?

Q. When was it with respect to striking your mother?

A. That night.

Q. Before he struck your mother?

A. Before he hit me.

Q. He struck you first?

30 A. He struck my mother first.

Q. Then he struck you?

A. Yes, sir.

Q. I thought you said you went downstairs?

A. I ran towards the clothes closet when he struck me.

Q. What did he hit you with?

A. With that and the marks were on my shoulder.

Q. Did you run downstairs?

A. I stayed there until he hit me and then I ran downstairs.

Q. When did you next see this hammer after that?

A. The next morning.

Q. Who showed it to you then?

10

A. The next morning we went upstairs and the hammer was on the bed.

Q. Lying on the bed?

A. Yes, sir.

By Mr. Quinn:

Q. Did anyone go in after that?

A. No.

Q. Do you remember anybody going in the house, that is, did anyone go in the house that you remember that night after your mother was struck?

20

A. Mr. Reynolds and my sister.

By Mr. Kremer:

Q. You went out just after you were struck?

A. Yes, sir.

Q. You went to Mr. Reynolds' house?

A. Yes, sir.

30

Q. You don't know what went on from the time you left until you came back the next morning?

A. No, I don't.

BELLEVILLE MARRINER, sworn for the State.

Direct Examination by Mr. Quinn:

Q. Belleville, were you home the night your mother was struck by your father?

A. Yes, sir.

Q. Did you see him strike her?

A. Yes, sir.

10 Q. Did you see what he struck her with?

A. No, sir.

Q. Where were you standing?

A. I was standing right by him, but I did not happen to be looking at him.

Q. Did he say anything to your mother?

A. Yes, he said where was Thelma.

Q. After your mother was struck did you stay in the room?

20 A. No, sir, I went downstairs and Myrtle came after me, Myrtle was right in back of me and I asked her what he had and she said a hammer and I screamed and then I ran out the door and went over next door.

No Cross Examination.

GEORGE REYNOLDS, sworn for the State.

Direct Examination by Mr. Quinn.

30 Q. Mr. Reynolds, were you at the Marriner home on this night?

A. Yes, sir.

Q. When you got there what did you find?

A. Mrs. Marriner coming from upstairs.

Q. Did you see any marks on her then?

A. Not at that time.

Q. Then when did you see marks on her?

A. As soon as I took her into my house.

Q. Do you recall how many there were?

A. I learned afterwards there were nine. The doctor showed them to me, nine.

10

By the Court:

Q. Nine marks on her head?

A. Either seven or nine. The doctor showed them to me.

Q. What was the condition of her head, was she bleeding?

A. She was covered with blood, from head to foot.

Q. Did you notice anything else?

A. Another mark—let me see, a broken finger and another finger marked.

20

By Mr. Quinn:

Q. Did you see Marriner?

A. No, sir, excepting going to the automobile.

Q. When was that?

A. An hour later I suppose.

Q. At the time you came in the Marriner home did you see Marriner there then?

30

A. No, sir, I did not.

Q. Did you see him leave his home?

A. After the police-van came the policeman took him from the door to the automobile, that is all I saw.

By the Court:

Q. Why did you go to the Marriner home?

A. The little girl came to the door screaming and calling my name.

Q. What little girl?

10 A. Belleville.

Q. The witness just on the stand?

A. Yes, sir.

Cross Examination by Mr. Kremer:

Q. What time did she come to the house?

A. About eleven o'clock.

Q. You are quite sure it was that time?

A. Yes, sir.

20 Q. You looked at the clock?

A. Yes, sir, but not when I was going. I didn't take the time to stop and look at the clock.

Q. Who else was in the house?

A. What house?

Q. Marriner's.

A. That is all, Belleville, Mrs. Marriner and Myrtle.

30

ALBERT WILLS, sworn for the State.

Direct Examination by Mr. Quinn:

Q. You are a police officer?

A. Yes, sir.

Q. When did you go to the Marriner home?

A. The next day after the thing happened.

Q. Did you see Marriner there?

A. No, sir.

10

Q. Whom did you see there?

A. Mrs. Marriner, Mrs. Reynolds, Mrs. Edward Marriner, Mrs. George Hills and Mrs. Fred Collier.

Q. What was the condition of Mrs. Marriner?

A. She was in bed in the front room.

Q. Did you make any search there?

A. I did.

Q. What did you find?

A. A hammer.

Q. Where?

20

A. On the bed.

Q. Where?

A. In the front room upstairs.

Q. In whose room, do you know?

A. In the bed where Mrs. Marriner was lying at the time.

Q. Would you recognize that hammer?

A. Yes, sir.

Q. Is that the one you found?

A. Yes, sir.

30

Q. Did you see Marriner after that?

A. Not until either the last day of July or the first of August, I received a warrant.

Q. Did he say anything to you?

A. Not a word.

Cross Examination by Mr. Kremer:

Q. What time of the day did you go there?

A. Nine o'clock.

Q. In the morning?

A. Yes, sir.

10 Q. There were five or six people in the house at that time?

A. Yes, sir.

Q. Why did you go there?

A. I was told about this case and went out to investigate it.

Q. You made a complaint before Judge ——?

A. Yes, sir.

Q. You say you found this hammer in the bed?

A. Yes, sir.

20 Q. Was anybody in that room?

A. Yes, sir.

Q. How many people?

A. Mrs. Marriner was in the bed. Do you want the names of the other people?

Q. No, how many people were there in the room?

A. Five people besides Mrs. Marriner.

Q. You didn't see who put this hammer in the bed?

A. No, sir, I did not.

30

ROBERT CECIL, sworn for the State.

Direct Examination by Mr. Quinn:

Q. On July 23rd, were you called to the Marriner home?

A. No, sir, I was up there, but I was not called.

Q. You were there on that day?

Q. Did you see Marriner?

A. I did.

10

Q. Did you speak to him about this assault?

A. I did not.

Q. Did you hear him say anything?

A. Yes, he was talking pretty near all the time.

Q. When was this?

A. The same night, about an hour after the thing happened.

Q. What did he say?

Mr. Kremer: I object to that.

20

The Court: I think anything he said is admissable?

Mr. Kremer: I pray an exception.

The Court: Take it.

A. I don't just remember what he said, I know he was told to shut up and let us get him to the hospital.

Q. Why was it necessary to take him to the hospital?

30

A. His wrist was cut.

Q. The question asked you originally was did he say anything about this assault to his wife?

A. No, all I remember his saying was about his cut wrist.

Q. What was said was with respect to this cut wrist, is that right?

A. He admitted cutting his wrist.

Q. Did he say anything else?

A. Well, he was talking pretty near all the time, but I don't remember what he said?

10 Q. Did he say anything else with reference to the assault to his wife?

A. He asked where she was two or three times.

Q. Anything else you can remember?

A. He asked where his daughter was, I think, he wanted to know where she was.

Q. Did he make any reference to the assault which had been committed on his wife?

Mr. Kremer: Objected to as leading.

20 Q. How did you happen to be there?

A. I went there with the officer.

No Cross Examination.

THE STATE RESTS.

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30 EDWARD MARRINER, sworn for the Defense.

Direct Examination by Mr. Kremer:

Q. Where do you live?

A. Curlies Avenue.

Q. Are you the brother of the defendant in this action?

A. Yes, sir.

Q. Do you recall the month of July of this year?

A. Yes, sir.

Q. Were you with your brother very much during this month?

A. Almost constantly.

Q. What was it brought you together? 10

A. We were a great deal together, and he was building bodies.

Q. Car bodies?

A. Yes, sir.

Q. How often would you say you saw him during the month of July?

A. Practically all the time.

Q. Did you ever see him sober from the 15th of June up to the time of this assault when he was sober?

A. Never. 20

Q. You saw him you say practically every day?

A. Yes, sir.

Q. He was drinking all the time?

A. Yes, sir.

Q. Do you recall the morning in the month of July, the 23rd?

A. I know about the date when the assault was committed.

Q. Do you recall the day, the morning of the day, when the trouble occurred? 30

A. Yes, sir.

Q. Did you see your brother that morning?

A. Yes, sir.

Q. What condition was he in?

A. I saw him on the street, and I went to him and tried to talk to him and tried to persuade him to go home, and finally he said he would.

Q. Did he have his auto with him?

A. Yes.

Q. Did you observe anything as to his condition of sobriety?

A. Well, he was drunk.

10 Q. What happened then?

A. He went around on Springwood Avenue, and then a few minutes after I noticed he came into the depot and backed a way up on the platform, and the officer went up to him——

Q. Did you go to him?

A. Yes.

Q. What was his condition then?

A. He seemed to be bewildered.

20 By the Court:

Q. What was he in?

A. His automobile.

Q. Was he driving the car?

A. Yes.

Q. What did you say to him?

A. I tried to talk to him and get him to go home.

Q. What did he say?

30 A. Nothing, he would just push you away.

Q. Did you get the officer?

A. Yes.

Q. What officer was that?

A. Mr. Alders.

Q. What did you do?

A. I asked him if he would arrange it so I could get him away before he got in trouble.

Q. What happened next?

A. He walked down to him and asked him what he was doing, backing up on the platform, and he said something about the horses, something about a little Mare backing harder than the other one, and Mr. Alders said, "Don't you know that you are not driving horses?" 10  
and he said "Yes." Then he talked on and tried to persuade him to go home, and Mr. Alders said to him "You are not driving horses, you are driving an automobile, and he talked on a little while and then we got him started up Springwood Avenue and I thought I would go on right behind him in case he could not drive the car I would, and I found that he had gone about half a block and left the car running and went away.

Q. Do you know where he went?

A. In some alley. 20

Q. What was the next you saw of him that day?

A. Between eleven—oh, between ten and eleven o'clock at the depot.

Q. What was his condition then?

A. About the same.

Q. Where was he in the depot?

A. He came in and sat down on a bench and hung his head.

Q. Did he speak to you?

A. No sir. 30

Q. Did you speak to him?

A. No sir.

Q. You worked at the depot?

A. Yes, sir.

Q. Didn't you go near him?

A. No, sir.

Q. How long did he stay there?

A. I think probably about half an hour, he seemed to be asleep and I didn't go near him.

Q. When did you see him again?

A. Between ten and eleven o'clock that night.

10 Q. Where was he?

A. Going in a southerly direction.

Q. Towards Springwood Avenue?

A. Yes, sir.

Q. Did you watch him on Springwood Avenue?

A. Yes, sir.

Q. When did you next see him?

A. When we took him to the hospital. It was after I met the 11.06 train and then I went to a restaurant and got some lunch, and when I got home this assault had occurred.

20 Q. They came and took him to the hospital?

A. Yes, sir.

Q. You say he had been drunk every day from the 15th of June until the day of this assault?

A. Practically, yes, sir.

Q. What was your observation as to his mental condition?

A. I do not think he has been right in ten years.

30 Q. What did he do during this time from the 15th of June to the day of this assault that made you think that?

A. Well, he would get started on building these bodies and I could not get him to finish them.

Q. During the period of time from the 15th of June to the day of this assault when he was not drunk, what was his behaviour?

A. When he was not drunk he was all right.

Q. Did his condition get worse?

A. Yes, he grew worse and worse all the time.

By the Court:

Q. When he was not drunk he was apparently all right? 10

A. Yes, sir.

Cross Examination by Mr. Quinn:

Q. You saw Mr. Marriner drive this car up Springwood Avenue and then you saw him again about ten o'clock that evening?

A. Somewhere around ten o'clock.

Q. He was about the same on both occasions? 20

A. Well, he might have been not quite so bad in the evening.

By the Court:

Q. In the evening?

A. I could not say, but he was very drunk, even then.

By the Prosecutor:

30

Q. He was not so drunk he could not drive the car?

A. Oh, in the morning, yes.

Q. You also said he drove in up Springwood Avenue and then left the car standing, running?

Q. Did he have any trouble putting the car into neutral?

A. No, I was right behind him.

Q. Did you see him?

A. I saw the car stop.

Q. And the car was still running?

A. Yes, sir.

10 Q. Did you stop the car from running?

A. No, I got right in it and drove it away.

Q. That was in the morning?

A. Somewhere around eleven o'clock.

Q. Did he know where he was?

A. I don't think so.

Q. Did he say he would go with you?

A. No.

Q. Was he able to walk?

A. No.

20 Q. When he came to the depot was he able to drive his car?

A. I did not see him come to the depot.

Q. When he came there again did he wait for the trains to come in?

A. No.

Q. Did he seem to be asleep?

A. I was not close to him.

Q. Do you know how he got away that time?

A. He walked away.

30 Q. Then he was not asleep?

A. Not when he started.

Q. He was not walking in his sleep?

A. I would not say so.

Q. When he started away did he stagger?

A. Yes, sir.

Q. Sleepily?

A. I did not notice, he went towards the car.

Q. What did you see?

A. I let him go a little ways and then I watched him.

Q. He started for his home?

A. His home was in a southwesterly direction.

Q. That would be an ordinary way for him to go? 10

A. Well, you could go that way.

Q. How long before July 23rd was he working for you building these bodies?

A. He started working for me somewhere around the holidays.

Q. How long before July 23rd did he stop working on these bodies?

A. Oh, somewhere around the first of July. He had not worked for a couple of weeks.

Q. Isn't it true that you saw him sometimes in a sober condition. 20

A. No, sir.

Q. Did he help you build cars?

A. Yes, sir.

Q. Did you have a hammer around there?

A. Yes, half dozen of them.

Q. Would you recognize any one of them?

A. No.

Q. Did they belong to you?

A. Yes, sir. 30

Q. Do you recall any time when you were working, the little girl testified she handed you the hammer?

A. She was never allowed to come in there and certainly never stayed in there and handed me any hammer.

Q. You say she never handed you the hammer?

A. No, sir.

(At this point a recess was taken until 1.20 o'clock in the afternoon).

10

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AFTER RECESS

WILLIAM SCHENCK, sworn for the Defendant.

Direct Examination by Mr. Kremer:

Q. Do you know Mr. Bertram Marriner?

A. Yes, sir.

20

Q. How long have you known him?

A. Several years.

Q. From the first of July, or rather I should say from the first of June until the end of July how often in the week would you see Bert Marriner?

A. Pretty near every night, Sundays included.

Q. What did you observe as to his condition, I mean as to sobriety?

A. He was drunk, crazy drunk all the time.

30

Q. What did you notice at that time that you had not noticed before?

A. I paid particular attention to it about the middle of May and he would talk queer and act queer. Mr. Edward Marriner told me if he didn't go ahead and finish

the cars, that is the bodies, he didn't know what he would do, he would have to get someone else. He told him the same thing.

Q. You say he acted queer and talked queer?

A. Yes, sir.

Q. What did he do that seemed queer?

A. Well, sometimes he would tell you how much money he made and it would not be ten minutes after that he borrowed money off me.

Q. Anything else? 10

A. That is about all I know of in that case.

Q. Anything on any other occasion?

A. Well, in between times I would see him at the station and he said he wished I would get him something to do and then he started in to tell me something about his wife.

Cross Examination by Mr. Quinn:

Q. He carried on a jitney business didn't he? 20

A. He was supposed to.

Q. He didn't prior to this time?

A. He tried to.

Q. Do you know whether he carried any passengers or not?

A. I do.

Q. Did he?

A. Yes, one passenger, I seen that one and that is all I ever seen. 30

Q. That is all you know about?

A. Yes, sir.

- Q. He told you about his family troubles?  
A. Yes, sir.  
Q. He didn't appear crazy?  
A. He was drunk and he was crazy.  
Q. He was not so crazy he didn't know about it?  
A. He appeared to know about it.  
Q. Certainly. He told you he was discouraged?  
A. Yes, and that his wife would not have anything to do with him.
- 10 Q. On the 23rd day of June you don't know what his condition was?  
A. No, sir, I do not.  
Q. For all you know he might have been perfectly sober?  
A. I didn't see him.
- 

20 JOHN ALDERS, sworn for the Defense.

Direct Examination by Ward Kremer:

- Q. You are a police officer in Asbury Park?  
A. Yes, sir.  
Q. You were at the railroad station last summer?  
A. Yes, sir.  
Q. Do you know Bert Marriner?  
A. Yes, sir.
- 30 Q. Do you recall seeing him on the 23rd of July?  
A. Yes, sir.  
Q. Between ten and eleven o'clock in the morning?  
A. Yes, sir.

Q. Tell the court and jury what he did.

A. I noticed him backing on the station there and I went up and asked him if he wanted to tear the platform there and then he said "this little mare backs harder than the red one there, and I can't seem to get her in place there." I said "Do you realize you are driving an automobile and not a team of horses?" and he said "No I am driving a pair of horses" and I told him to back his machine off the platform or I would have to lock him up. Then his brother came up to him, but he didn't seem to know what was being said or who was talking to him. 10

Q. Did his brother take him away?

A. Yes, in the car.

Q. Did he seem to be mentally sound at that time?

A. No, he didn't seem to be so drunk but he seemed to be dazed and did not know what he was doing.

Cross Examination by Mr. Quinn:

20

Q. Have you ever seen him when he was sober?

A. Yes.

Q. This was eleven o'clock in the morning?

A. Between ten and eleven o'clock.

Q. Was he able to walk?

A. I did not see him walk.

Q. He was sitting in the car?

A. Yes, sir.

Q. Would you say he was under the influence of liquor? 30

A. Oh, yes.

Q. You have seen other men under the influence of liquor?

A. Yes, sir.

Q. And they didn't seem as rational as other men not under the influence?

A. No.

Q. Some of his statements were rational and some of them were irrational?

A. Yes, sir.

By Mr. Kremer:

10

Q. Putting his whole talk or conversation together it was highly irrational was it not?

A. I would say so.

Q. He talked about horses when he was in an automobile?

A. Yes, sir.

Q. He was quite serious about it?

A. Yes, sir.

Q. You have seen other drunken men?

20

A. Yes, sir.

Q. And they did not think they were driving horses when they were in an automobile?

A. No, sir.

---

DR. JOSEPH SAVANNAH, sworn for the Defense.

30

Q. Doctor, you are an interne at the Hospital?

A. Yes, sir.

Q. How long have you been there?

A. Since July.

Q. You are a practitioner of medicine are you?

A. I graduated in June.

A. Of this year?

A. Yes, sir.

Q. Where from?

A. Medical College, Philadelphia.

Q. In 1917?

A. Yes, sir.

Q. You are an interne?

A. Yes, sir. A resident physician.

10

Q. Pardon me?

A. Resident physician.

Q. Do you know the defendant in this case, Bert Marriner?

A. I do.

Q. Do you recall the occasion of his being brought to the hospital?

A. Yes, sir, he came on the 24th of July for a laceration of the left wrist.

Q. Did you attend him?

20

A. I did.

Q. For what?

A. The laceration——.

Q. For how long?

A. Until the first of August.

Q. Until the first of August?

A. Yes, sir.

Q. He was released then?

A. Discharged from the hospital.

30

Q. In your opinion, doctor, would you say that continual drunkenness for a period of five or six weeks would cause unsoundness of mind?

A. It would.

Q. Did you make any special observation of this man to determine whether he was mentally unsound?

A. I did not.

Cross Examination by Mr. Quinn:

10 Q. And doctor, assuming that the condition of five or six weeks' drunkenness might produce mental unsoundness, there would be many lucid intervals would there not?

A. Yes, sir.

Q. He would not be in that unsound condition all the time?

A. No, sir.

Q. You made no special observation of his mental unsoundness did you?

A. I did not.

20 Q. You are not able to tell the court and jury whether he was in that condition at all times or not?

A. No.

Re-direct Examination by Mr. Kremer:

Q. Did you say you made no special examination as to his mental condition?

A. No, sir, I did not.

30 By the Court:

Q. There was nothing he did which caused you to make any such examination?

- A. No, sir.
- Q. Did you talk to him?
- A. Yes, sir.
- Q. Did he respond when you talked to him?
- A. Yes, sir.
- Q. Coherently?
- A. Yes, sir.
- Q. What questions did you ask him do you remember?
- A. No, I do not remember. 10
- Q. When did you dress the wound?
- A. It was dressed every day.
- Q. Did you talk to him when he was brought in?
- A. I do not remember. It seems to me I told him to keep still while I sutured him.
- Q. What did he say?
- A. It seems to me he swore a little.
- Q. Are you able to say in your opinion whether he could distinguish between right and wrong?
- A. I think so. 20

Mr. Kremer: I object, that is only a conclusion.

- Q. When was he brought in?
- A. One o'clock, I think, on the morning of July 24th.
- Q. One o'clock in the morning?
- A. I think so.

BERTRAM MARRINER, sworn in his own behalf.

Direct Examination by Mr. Kremer:

Q. Where do you live?

A. 238 Curliss Avenue.

Q. Do you remember the occasion of the assault upon your wife?

A. No, sir, I do not.

10 Q. Do you remember going to the house and having an altercation with her?

A. No, sir, I do not remember.

Q. Do you remember anything that went on the day of that assault?

A. No, sir.

Q. What day nearest to the day of the assault can you remember what you did and where you went?

A. The last two weeks of June I started in to drink, and the month of July I drank nearly all the time.

20 Q. What were you doing when you worked?

A. Painting jitney bodies.

Q. Do you recall the early part of July?

A. Yes, sir.

Q. Do you recall the middle of July?

A. Hardly any.

Q. Assuming this assault occurred on Monday, can you recall the Sunday prior to that?

A. That is when I was so drunk.

30 Q. Saturday?

A. I was out with the jitney and over on Springwood Avenue.

Q. Did you have anybody with you?

A. I mostly always had somebody with me.

Q. Did you have on that day?

A. No.

Q. Do you remember where you went?

A. No, sir.

Q. Did you take the car with you?

A. No, sir.

Q. Where is that car now?

A. I don't know, I left the car somewhere, I don't know what became of it.

10

Q. Do you know if somebody brought it home for you?

A. I found out afterwards my brother followed me and took the car home.

Q. That was the Saturday previous to this assault?

A. Yes, sir.

Q. Do you remember anything that happened on Sunday?

A. No, sir.

Q. Or anything that happened on Monday?

20

A. No, sir, I don't.

Q. Do you remember being at the station?

A. No, I don't remember that.

Q. Do you remember anything after that?

A. No.

Q. What is the first thing you do remember?

A. Being in the hospital. I raised up in bed and knew I was somewhere but I didn't know where, and this doctor was fixing some bandages on my wrist, that is the first recollection I had.

30

Q. Who first told you about the occurrence, if any one, at your home?

A. Nobody, I don't think.

Q. Did your brother come to visit you there?

A. Yes, sir.

Q. He was the first person that came to see you when you were in the hospital?

A. I don't know.

Q. Did your brother tell you about this trouble?

A. Yes, sir, he told me about it.

10 Q. Did you have any reason to assault your wife and children?

A. No, I love my wife and love my children.

Q. You didn't have any intention to do any such thing?

A. No, sir, I had no such idea in my mind.

Cross Examination by Mr. Quinn:

20 Q. You struck your wife a number of times before this, didn't you?

Mr. Kremer: Objected to.

The Court: Objection sustained.

Q. When was it you realized you were in the hospital?

A. I was lying on a cot.

30 Q. When you came to you knew you were in the hospital?

A. This was the next day.

Q. You knew where you were?

A. I could not seem to get right, I was all day trying to get right.

Q. Towards evening you knew where you were?

A. After it had been explained.

Q. It took about twenty-four hours to get over your five or six weeks of drunkenness?

A. I was not over it when they brought me here to the Freehold jail.

Q. You spoke that night with the doctors?

A. No, sir, I felt too ashamed.

10

Q. The next night you did?

A. No, sir.

Q. You never said a word to any of them?

A. No, sir.

Q. You were ashamed of yourself?

A. Yes, sir.

Q. Of what you had done?

A. I didn't know what had happened.

Q. Of what were you ashamed?

A. I was ashamed of being drunk.

20

Q. You were, you knew, drunk and had been drinking?

A. Of course, if you seen how I was shaking.

Q. You had your senses then with you?

A. At times I had.

Q. You remembered that you had been drinking and you felt very badly, isn't that so?

A. Why certainly I felt very sorry.

Q. Why did you say you didn't know what occurred, as soon as you awakened you knew you had been drinking?

30

A. I didn't say that.

Q. That is what you were sorry for. You were sorry because you had been drinking, now isn't that so?

A. No, for a long time I didn't remember anything.

Q. How long was it before you were sorry that you had been drinking?

A. Just before they brought me to the Freehold jail.

Q. When was that?

A. The same day they took the stitches out.

10 Q. How long after you went to the hospital?

A. Five days.

Q. Was it five days before you came to the realization that you had been drinking?

A. Oh, no.

Q. Well, when did you realize it?

A. Well, I guess it was as soon as I could get my senses back, about two days after I was in the hospital.

Q. Where did you stop your automobile on Springwood Avenue, in front of whose place?

20 A. I don't remember that, I don't even remember getting out of the car.

Q. You testified to leaving it somewhere on Springwood Avenue?

A. Oh, no, I didn't.

Q. Didn't you say that on your direct examination?

A. No, sir.

Q. How far away from Springwood Avenue is your home?

30 A. I don't know, hardly a quarter of a mile.

Q. You had to cross railroad tracks to get to your home?

- A. Yes, sir.
- Q. You had no difficulty in finding your way home?
- A. I don't remember.
- Q. How did you know you had been drunk?
- A. They told me afterwards.
- Q. Were you and your wife on good terms?
- A. Best of terms.
- Q. On July 23rd?
- A. Best of terms as far as I know. We were always on good terms. I was always on good terms with her. 10
- Q. What do you mean?
- A. I had no right to be otherwise with her.

By the Court:

- Q. You did not room together?
- A. That didn't make any difference.
- Q. You had spoken to someone about that you felt discouraged because she refused to have anything to do with you, didn't you, don't you remember telling Schenck that? 20
- A. No, I don't remember telling him anything like that.
- Q. You were discouraged?
- A. No, sir.
- Q. You never told Schenck that?
- A. No, sir.
- Q. Why did you ask for your oldest daughter that night? 30
- A. I could not say, I don't remember.

The Court: Proceed.

By Mr. Quinn:

Q. Did you have any difficulty in changing your speed?

A. No, sir.

Q. A drunken man could not run along in a car and get out and leave it going as you did on Springwood Avenue?

A. It seems as if I did it.

10 Q. Don't you know you could not have done it in one of these 'drunken fits?

A. It seems as if I did it.

The Court: Don't you think that is a jury question?

Mr. Quinn: Yes.

Q. When you came in the house on July 23rd, do you remember saying to your wife "you slapped my face"?

20 A. No, sir, I don't.

Q. You don't remember going in the other bed room?

A. No, sir.

Q. You don't remember finding your way through the dark room to your wife's bed room?

A. No, sir.

Q. You don't remember any of those things?

A. No, sir.

By Mr. Kremer:

30 Q. When you got to the latter part of July you don't remember anything that happened then?

A. No, sir.

Q. Are you willing to support your family——

Mr. Quinn: That is objected to.

The Court: It is objectionable.

Mr. Kremer: I think it is admissable.

The Court: No, I won't allow it.

10

Mr. Kremer: May I have an exception?

The Court: Yes.

---

HORATIO BENSON, sworn for the Defendant.

Direct Examination by Mr. Kremer:

20

Q. What business are you in?

A. Painting and decorating.

Q. How long have you been engaged in that business?

A. Seventeen years.

Q. Do you know the defendant in this action?

A. I do.

Q. How long have you known him?

30

A. For about fourteen years.

Q. Do you know his reputation in the community in which he resides?

Mr. Kremer: Answer yes or no, for peace and quiet.

A. Yes.

Q. What is his reputation?

A. Good.

Cross Examination by Mr. Quinn:

Q. You have heard him say he went on drunken  
sprees, do you consider that a good reputation?

10 A. He worked for me for nine years and I never had  
a better man.

Q. He was always sober?

A. Once in a while he went off on a spree.

Q. How long would it last?

A. Maybe three or four days.

Q. Would you allow him to work while in that con-  
dition?

A. No.

20

---

ROBERT McCLELLAN, sworn for the defense.

Direct Examination by Mr. Kremer:

Q. What business are you engaged in?

A. Grocery busniess.

Q. Have you retired now?

30 A. Yes, sir.

Q. How long, if you do, do you know Bert Marriner?

A. About fourteen years.

Q. Do you know his reputation for peace and quiet in the community in which he resides?

A. Yes, sir.

Q. Would you say his reputation is good or bad?

A. Good. I would say.

Cross Examination by Mr. Quinn:

Q. Did you ever hear of his being drunk?

A. I have seen him drunk.

10

Q. Did you ever hear about his being drunk?

A. Nothing directly.

Q. Prior to the commission of this crime did you ever hear anyone speak about his good reputation?

A. I don't know as I have ever heard him talked about.

---

EDWARD MARRINER, recalled.

20

Direct Examination by Mr. Kremer.

Q. Did you tell your brother in the hospital of what had happened that day?

A. Yes, sir, I did.

Q. What did you tell him?

A. I told him he struck his wife.

Q. When did you tell him?

A. The following day.

30

Q. About what time?

A. Somewhere right after lunch.

By Mr. Quinn:

Q. He talked perfectly rational then?

A. He was so nervous he didn't say hardly anything.

Q. Only nervous. Would you say that two hours after the alleged crime was committed your brother was in possession of his proper senses?

A. I would not like to say.

10

TESTIMONY CLOSED.

(Counsel summed up)

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CHARGE.

GENTLEMEN OF THE JURY:

20

The defendant is brought to trial under an indictment charging him with atrocious assault and battery, upon the person of his wife, on the 23rd day of June of the present year.

The circumstances, it appears, have been sufficiently developed, and are fresh enough in your minds from the testimony of the witnesses and the arguments of counsel to make it unnecessary for me to re-hash the evidence in the case.

30

Apparently, gentlemen, there is but a single question involved in this case. The defendant stands mute, I may say, and I use that figuratively, as to what actually occurred, and so far as he is concerned you are left

to determine what occurred on the day in question with respect to the allegations of this indictment from the evidence of the wife and the State's witnesses; for the excuses whatever may have occurred by stating that he had been on a prolonged debauch from drink and if anything occurred on the night in question in connection with the allegations of this indictment, it was while he was drunk and did not know what he was doing.

The law in this State is perfectly well settled, that with respect to the defense of alleged crime where intent is not the essential thing to determine, drunkenness is no excuse for such offence. 10

Drunkenness would be a proper inquiry by the Jury in the event that you were sitting in a case where murder was charged and it was necessary to determine the degree which was alleged to have been committed, that is to say: if it were necessary to distinguish murder in the first degree from murder in the second degree it would be a proper subject of inquiry for the jury, but if it were a case of murder in the second degree as distinguished from manslaughter, drunkenness would not be a proper subject of inquiry by the jury. In that respect, but in no other than the crime of murder in the first degree, would it be a proper subject of inquiry with respect to the prostration of the faculties of the defendant: Therefore, it is my duty to say to you that the voluntary act of the defendant, in becoming drunk, if he did, and if he did commit the crime alleged, while drunk, it is no excuse. 20 30

The authorities in this State are clear upon the subject. For example: in one of the early cases we find, this expression: "Drunkenness may be insanity but it is voluntary." A man does not have to get drunk, I

mean under ordinary circumstances. If he does it he does it voluntarily I repeat it, "Drunkenness may be insanity but it is voluntary. It is no excuse for the consequences of crime." Sound policy requires that it should not be adopted, or should not be permitted to be adopted as an excuse for crime except in the particular where it is necessary to make the inquiry as to intent.

10 Now, in this respect the Court of Appeals in this States has said: "Intoxication willfully entered upon offers no excuse for crime, and affords no defense against the consequences which the law denounces against crime. Therefore, with the single exception where, as in murder of the first degree, intent, is an essential ingredient for the purpose of distinguishing between the crime involving murder in the first degree and murder in the second degree, it is not a proper subject for the jury to inquire as to drunkenness."

20 Therefore, I am obliged to say to you in this case, even if you believe the faculties of this defendant were so prostrate as to, in your minds, amount almost to a condition of insanity, of it was the result of voluntary drunkenness it is no defense for the crime here alleged, namely: that of atrocious assault and battery.

30 I may say to you, gentlemen of the jury, and this is merely academic, because I charge you, you cannot consider it, under the circumstances that a person who is insane either temporarily or permanently is not responsible for his act, and a person insane is not responsible for crime. But where insanity is the result of voluntary intoxication I charge you that drunkenness is no defense.

Now gentlemen of the jury, the case seems to have been tried, altogether on the theory, that under the criminal law, drunkenness is a defense. As I have al-

ready charged you, it is not. And it has been suggested to you, that because a man was drunk, because he had a family with children, that you should allow this man to escape the consequences of the act complained of.

The question of his drunkenness is for the court to consider with respect to clemency, in the event of his being convicted at your hands. These matters appear, and should be considered entirely by the court, with respect to the measure of punishment, in the event he is found guilty at your hands. 10

The question whether he has a wife and family; the question whether in the event of conviction he would be sentenced to State Prison, is no concern of yours at all. It lies entirely within the province of the court.

It is your duty to consider the evidence as you find it, under the rules of law as the court presents them to you.

Therefore, gentlemen, I am obliged to say to you, that you must withdraw from your consideration the possible consequences which may be experienced by the defendant. It has no place in your deliberation. The burden of proof is upon the State. The defendant is entitled to the benefit of a reasonable doubt; that is to say, a doubt respecting his guilt arising upon the evidence, or from lack of evidence, for which you, as reasonable men can give a good and sufficient reason. 20

He is presumed to be innocent until proven guilty beyond such reasonable doubt. 30

I further charge you, gentlemen, if you should find it was not an atrocious assault and battery which involves the use of some instrument, in this case alleged to have been a hammer; if you find no such instrument

was used but an assault and battery was committed, you have a perfect right to return a verdict, assuming you find beyond reasonable doubt he is so guilty, of assault and battery and not of atrocious assault and battery. But if you are satisfied beyond a reasonable doubt that it is atrocious assault and battery you will of course return a verdict on the evidence as you find it.

10 If you have any reasonable doubt of the defendant's guilt it is your duty to acquit him. If you have no reasonable doubt of his guilt it is your duty to convict him.

There has been evidence offered of his good character and he is entitled to its consideration. If upon consideration of that evidence, you should find a reasonable doubt of his guilt, he would be entitled to the benefit of such doubt, but if you find positive evidence of guilt in the case, which satisfies you of his guilt beyond reasonable doubt, then your duty will be to convict him.

20 I repeat it, if you have any reasonable doubt, give him the benefit of it. If you have no reasonable doubt, it is your duty to convict him.

Mr. Kremer: I want to except as to the comment of the court, that the case seems to have been tried entirely upon the theory that drunkenness, is a defense. Second, to the statement of the court, that the one thing in the case is that he was too drunk to know what he was doing. Third, that "If you believe that the defendant's faculties were prostrated by drunkenness even to the condition of insanity and that condition was induced by voluntary intoxication, it is no defense."

30

I ask an exception to the refusal to charge as requested and I take a general exception to the charge.

VERDICT:—Guilty.

NEW JERSEY SUPREME COURT

THE STATE OF NEW JERSEY,  
Defendant in Error.  
vs.  
BERTRAM MARRINER,  
Plaintiff in Error.

On Error  
Notice of  
Argument

10

SIR:

Please to take notice that the argument of the Writ of Error and Appeal in the above entitled cause will be brought on before the Supreme Court of Judicature of New Jersey to be held at the State House in the City of Trenton, on Tuesday, the 18th day of February, 1919, at 11 o'clock in the forenoon or as soon thereafter as the Court can attend to the same.

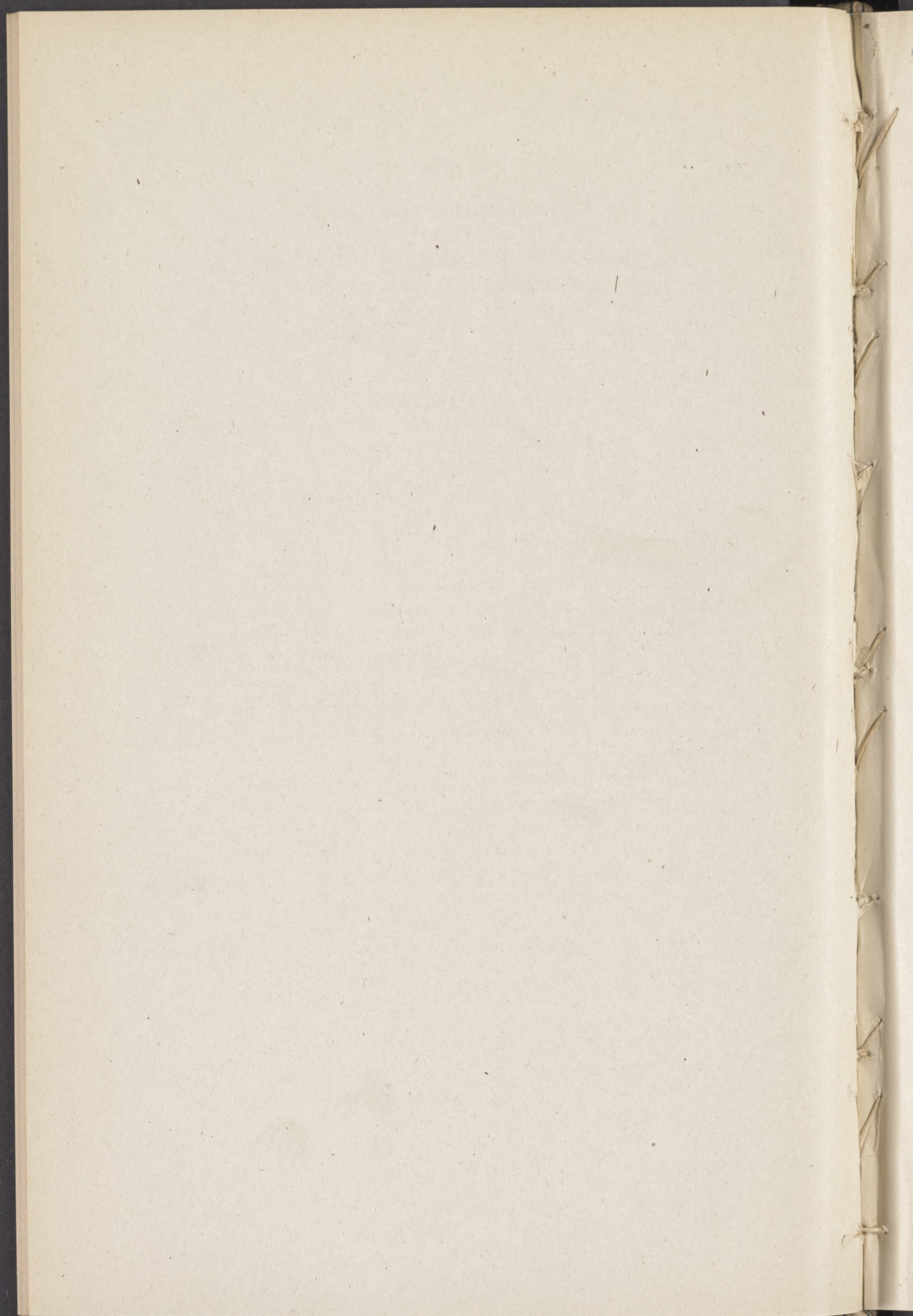
20

WARD KREMER,  
Att'y for Plaintiff in Error.

Dated Feb. 4, 1919.

To Charles F. Sexton, Esquire,  
Attorney for Defendant in Error.

30



NEW JERSEY SUPREME COURT.

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THE STATE OF NEW JERSEY,  
 Defendant in Error.  
 ADS.  
 BERTRAM MARRINER,  
 Plaintiff in Error.

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Brief for Plaintiff  
 In Error

10

The first reason assigned by the Plaintiff in Error for the reversal of the conviction in this case to be dealt with in this Brief, is the following:

“Because the testimony of Anna Marriner, the wife of the Plaintiff in Error, was admitted against the objection of Counsel for Plaintiff in Error, despite the fact that the said Anna Marriner was not the Complainant in the case.”

20

This was an indictment for atrocious assault and battery committed by the Plaintiff in Error upon his wife, Anna Marriner. According to the testimony, (page ), Anna Marriner was not the Complainant in the cause, the complaint being made by one Elbert O. Wills, a police officer. At the trial, Anna Marriner was offered as a witness by the State, and her testimony against the Plaintiff in Error, her husband, was objected to by Counsel. The objection was overruled, the court stating the following:

30

“Where the assault is committed upon her, she may testify.”

The New Jersey Evidence Act, Section 5, provides that “Any husband or wife is incompetent to give evidence against the other in any criminal proceedings except as to the fact of marriage.” (P. L. 1900, page 363.)

40

The Plaintiff in Error recognizes the fact that it is provided by the Criminal Procedure Act, Section 57, that "A married woman shall be admitted to testify against her husband when she is the complainant against him, if she shall offer herself as a witness." (P. L. 1898, page 886; 2 Compiled Statutes, page 1838.) The record in this case, however, fails to disclose the fact that the wife was the complainant, and, as a matter of fact, the police officer, as above stated, 10 was the actual complainant. Furthermore, the Complainant at one stage of the proceeding must be the Complainant throughout. The State vs. Bailey, 21 Maine, 62, 67.

In order for the State to have brought the testimony of Anna Marriner within the rule permitting this testimony, it was its duty to show that Anna Marriner was actually the Complainant; and a thorough examination of the record fails to disclose any such 20 proof. The Plaintiff in Error respectfully urges that the statement of the Court that "She may testify where the assault was committed upon her" is an erroneous conception of the law as it exists in New Jersey; that the privilege of testifying, as far as the parties to the marital relation are concerned, extends only to those who are Complainants, and does not obtain merely because the crime for which the Plaintiff in Error is on trial was committed upon the party to the relation. The Plaintiff in Error respectfully urges, 30 therefore, that the admission of the testimony of Anna Marriner was a manifest error for which the conviction should be reversed.

## II.

The Plaintiff in Error urges as the second reason for the reversal of the conviction that the case was tried upon the theory that insanity, whether of a temporary or a permanent nature, is a complete defense for the indictment for the commission of crime, 40 and that the cause of the insanity is not material. In

other words, although insanity might be caused by habitual drunkenness, it would nevertheless be insanity, and the fact that such habitual drunkenness caused it, would not rob it of its quality as a defense.

The Trial Court, however, did not accept this theory advanced by Counsel for the Defendant, but made the following comment to the jury in the charge: "Drunkenness may be insanity but it is voluntary. It is no excuse for the consequences of crime. 10

"Now, gentlemen of the jury, the case seems to have been tried upon the theory that under the Criminal Law, drunkenness is a defense."

The testimony showed that the Defendant had been under the influence of alcohol for five or six weeks (Case, page ), and was suffering from a pronounced form of dementia. At 11 A. M. on the day of the commission of the crime, the Defendant was seen at the Asbury Park Railroad Station. He was on the driver's seat of an auto-bus and was behaving in a very peculiar manner according to the testimony. He made the following assertion, "This little mare backs harder than the red one there, and I can't seem to get her in place." According to the testimony there were no horses attached to the automobile, nor were any near. (Testimony of John Alders, page ). It was further testified by Bertram Schenck (page ), and by Edward Marriner, that the Defendant had been continually under the influence of alcoholic liquor for several weeks before the day on which the act was committed. Dr. Joseph Savannah, a physician sworn on behalf of the defense, testified that in his opinion, continual drunkenness produces mental unsoundness. 20 30

It will readily be seen, therefore, that the charge of the Court instructing the jury that the defense was drunkenness, was erroneous and unfair, and that the refusal to make the following charges asked for by the Defendant constituted manifest error and certainly influenced the jury in its findings, depriving the De- 40

fendant of instructions to which he was legally entitled:

"If you believe from the evidence that at the time of the commission of the crime, the Defendant was suffering from Delirium Tremens, and was under the influence of that disease, you must return a verdict of not guilty.

10 "If you believe that the Defendant, by reason of excessive drinking or from any other cause, was mentally unsound, and had lost the government of his reason, at the time of the commission of the act alleged, you must return a verdict of not guilty.

"If you believe that the Defendant, by reason of excessive drinking was in a mentally unsound condition at the time of the commission of the assault alleged, in which condition he was unable to form a guilty intent, you must return a verdict of not guilty."

20 If the accused was so drunk as to be incapable of forming the statutory intent, he would be free from the statutory guilt. *People vs. Haley*, 48. Mich., 495.

30 The Plaintiff in Error respectfully urges that the capacity of the Defendant to form an intent necessary to render him culpable, being dependent upon his mental soundness, that mental soundness was a question of vital importance at the trial of the indictment. If the Defendant were mentally unsound, whether that condition were produced by drunkenness or any other practice, he would be incapable of the forming the guilty intent, and could not be guilty of the act. The Plaintiff in Error respectfully submits that the failure of the Trial Judge to allow the case to go to the jury upon the requests for instruction offered by the Plaintiff in Error, was manifest and harmful error under the facts and circumstances of the case for which the conviction should be reversed.

WARD KREMER,

Att'y for Plaintiff in Error.

NEW JERSEY SUPREME COURT

State

State of New Jersey,  
Defendant in Error,

vs.

Bertram Marriner,  
Plaintiff in Error.

In Error to Monmouth  
County Quarter  
Sessions.

Rule of Affirmance.

10

This cause having been duly argued at the June Term of this Court, by Ward Kremer, Esq., of Counsel for the Plaintiff in Error, and Charles F. Sexton, of Counsel for the Defendant in Error, and the Court having considered the same and finding no error in the record of proceedings in the Monmouth County Quarter Session ;

It is, thereupon, Ordered and Adjudged that the judgment of the Monmouth County Quarter Sessions, removed by the Writ of Error in this cause, be affirmed with costs. Entered, December 23, 1919.

20

On motion of,

Charles F. Sexton,  
Attorney for Defendant in Error.

A true copy,

Enoch L. Johnson,  
Clerk.

30

NEW JERSEY SUPREME COURT

State of New Jersey  
 Defendant in Error  
 vs.  
 Plaintiff in Error

This cause having been duly argued at the June Term of this Court by *Wm. H. ...* and *...* for the Plaintiff in Error and *...* for the Defendant in Error and the Court having considered the same and finding no error in the record or proceedings in the Municipal Court, County of *...*

It is therefore ordered and adjudged that the judgment of the Municipal Court County of *...* entered on the 17th day of *...* in this cause be affirmed with costs.

On motion of *...*  
 Charles H. *...*  
 Attorney for Defendant in Error

A true copy  
 Given in open Court  
 this 11th day of *...* 1912

*...*  
 Clerk

### New Jersey Court of Errors and Appeals

STATE of NEW JERSEY Defendant in Error  adv.  BERTRAM MARRINER Plaintiff in Error	}	BRIEF of DEFENDANT IN ERROR	10
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Bertram Marriner was indicted, tried and convicted in Monmouth County Quarter Sessions for an atrocious assault and battery upon his wife, Anna Marriner.

Defense interposed by Marriner was by reason of his intoxication he was not responsible for his acts. 20

It appears that Anna Marriner was injured by the defendant and a complaint was made against defendant, Marriner, by Elbert Wills, a police officer.

A number of assignments of error were alleged, only two of which were argued before the Supreme Court, and I take it that the same two reasons will be argued in this court; that the Supreme Court erred in giving judgment for the defendant in error, instead of the plaintiff in error, which reasons are:

FIRST: 30

Because the testimony of Anna Marriner, the wife of Bertram Marriner, was admitted against the objection of Counsel, despite the fact that the said Anna Marriner was not the complainant in the case.

Anna Marriner, the wife, was called as a witness by the State and allowed to testify against her husband.

By the common law neither a husband nor a wife 40

can testify for or against the other, an exception to this rule was in the case of personal injuries committed by the husband against the wife or the wife against the husband.

“If personal violence is inflicted on the wife by the husband, she from necessity may, or if required, must testify to it in a criminal proceeding against him for the battery.”

Bishop's New Criminal Procedure, Vo. 2, Par. 1153, p. 983.

10 Munyon vs. State, 62 N. J. L., pg. 1.

See also Wharton's Criminal Law (7th Ed.) Vol. 1, Sec. 769—Roscoe's Crim. Ev. (7th Am. Ed.) Star, page 125, Phillip on Ev. (5 Am. Ed.) Vol. 1 Star, page 94. A full collection of the cases in which this exception was recognized and enforced will be found in Am. & Eng. Ency. of Law (2nd Ed.) Vol. 30, pp. 954, 955.

20 This common law rule allowing a husband or wife to testify against each other has not been changed by statute.

By Section 5 of our evidence act (P. L. 1900, page 363), it provides:

30 “In any trial or inquiry in any such action proceeding in any court, or before any person or committee having by law or consent of parties authority to examine witnesses or hear evidence, the husband or wife of any person interested thereon as a party or otherwise shall be compellable to give evidence the same as other witnesses on behalf of any party to such suit, action or proceeding;

40 “Provided: that nothing herein shall render any husband or wife competent or compellable to give evidence for or against the other in any action for criminal conversion except to prove the fact of marriage, or to render any husband or wife competent or compellable to give evidence against the other in any criminal action or proceeding except to prove the fact of mar-

riage and except as now otherwise provided by statute. \* \* \*

This statute, it will be readily seen, does not in any way abridge the common law rule, and its purpose is as said by the Supreme Court in its decision in this case:

“Qualify as witnesses persons who were excluded by common law rules. The object of Section 5 is to modify to some extent the harsh rule which prohibited a husband or wife from being a witness in a litigation to which either was a party, or in which he or she had an interest, and the Legislature manifestly did not intend by the proviso to repudiate common law rules under which a husband or wife was a competent witness against the other in criminal proceedings.” 10

Another statute which seems to bear on the question of husband or wife as witness for or against the other is found in Criminal Procedure Act (2 Comp. Stat. p. 1838, Sec. 57), which statute permits a married woman to testify against her husband when she is the complainant against him, if she shall offer herself as a witness. 20

In the case at bar the wife did not make the complaint against the husband, upon which the warrant for her husband's arrest was founded, and the opinion of the Supreme Court is that she was not a competent witness under this statute because of that fact. 30

In reference to this statute, I was rather of the opinion that when the Legislature used the expression, “When she is the complainant,” in the above act, that this expression was used as synonymous to the expression, when “she is the party injured,” for reasoning this statute out to its logical conclusion I did not feel the Legislature intended that, for example, where a husband committed a criminal wrong, not against his wife, but against a third party, that the wife could make herself competent to testify 40

against the husband by swearing out a complaint against him.

Then again in a criminal proceeding the real complainant in the sense of being the active party in theory of law would be the State, and while a person may be as is sometimes said a complaining witness, or may sign the complaint, nevertheless this would not make him or her the complainant.

10 Reference is made to this latter statute because the Supreme Court in this case has sustained appellant's contention that the wife must actually make the complaint against the husband in order to testify under this act, and having thus actually made complaint against the husband there would appear to be no limit to her testifying against the husband, whether she were the injured party or not.

20 The second reason assigned for reversal is that the Supreme Court erred in sustaining the charge of the Trial Court when that Court said:

"Drunkenness may be insanity, but if it is voluntary, it is no excuse for the consequences of crime."

The case was tried on the theory that drunkenness was a defense, that this is not the law and the charge of the Judge was correct seems to be settled in this State, by case

30 Wilson vs. State, 69 N. J. L., pg. 71,  
and this rule prevails not only in this State but elsewhere,

Flanagan v. People, 86 N. J., p. 599.

No other assignments were urged before the Supreme Court, and having no reason to believe they will be argued in this Court, it is respectfully submitted that no error was committed by the Supreme Court in sustaining the conviction in the Monmouth Quarter Sessions.

Respectfully submitted,

CHARLES F. SEXTON,

40 Attorney and Counsel of State of New Jersey.

In reference to the observation made by me concerning the Statute found in the Criminal Procedure Act (2 Compiled Statutes, page 1838, Sec.57) I find the Supreme Court not only by this case, but also by the case of State Vs Snyder reported in (107 Atlantic Rep. page 167) carries out the language of the Statute and where the wife is the complainant allows her to testify when she offers herself against her husband in such matters as she complains of.

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