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COURT OF GENERAL SESSIONS OF THE PEACE,  
CITY AND COUNTY OF NEW YORK.

-----X  
THE PEOPLE  
-against-  
GEORGE GLUCKSMAN.  
-----X

Indictment filed the 2nd of September, 1908.  
Indicted for Attempted Abortion.

A P P E A R A N C E S.

For the People

ASSISTANT DISTRICT ATTORNEY SMYTH.

For the Defendant

SIDNEY L. TEVBN, ESQ.

Tried before HON. OTTO A. ROSALSKY, Judge, and a  
Jury, on the 14th day of October, 1909.

Thomas W. Osborne,

Official Stenographer.



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FRANCES BENZECRY, called as a witness in behalf of the People, being duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. SMYTH:

Q Miss or Mrs.? A Mrs.

Q Where do you live? A 209 West 115th street.

Q On the 24th day of July of the year 1908 were you in the employ of the County Medical Society of this county?

A Yes.

Q How long had you been in their employ at that time?

A Oh, about three and a half years I guess.

Q You are still in their employ? A Yes.

Q What was the general nature of your duty? A Investigating.

Q Investigating violations of the law concerning doctors and medical laws in general? A Yes, sir.

Q On the 24th of July, 1908, did you go to the premises 862 Caldwell avenue, Borough of the Bronx, County of New York? A Yes.

Q Did you go there under instructions from some superior officer? A Yes.

Q Did you see this defendant? A Yes.

Q Did he have an office there? A Yes.

Q Was there a sign on the office? A Sign in the window.

Q Reading Doctor? A Dr. Glucksman.

Q Had you ever seen him before? A I was there the day before, the 23rd of July.

Q The 23rd was the day you went there first? A Yes.

Q I meant to refer to the first day you went there -- what time in the day was it the first day you went there?

A I just don't remember now, but I think it was about 12 o'clock.

Q That first day, did you go under instruction from a superior officer also? A Yes, sir.

Q You went alone on the first day? A Yes.

Q Describe what you did after you entered the premises -- was the defendant there when you entered? A On the 23rd day of July, yes.

Q Describe all that occurred between you and the defendant from the time you went in? A On the 23rd?

Q On the first day you were there? A I went to this defendant's house, rang the bell and he came to the door. I asked him if he was Dr. Gluckman. He said yes. Then I told him I had been vomiting for four mornings and felt very much distressed. He wanted to know if I was married. I said yes. He said I had every indication of being pregnant. I said I don't know. Then he said he would have to examine me. I said that was not necessary. Then he said he would have to examine me to find out, to make sure. So then I had to be examined.



Q Did he examine you at that time? A Yes.

Q After he had examined you, what conversation did he have with you? A He said I was pregnant 12 days.

Q As matter of fact, were you pregnant? A No.

Q After he had stated you were pregnant 12 days, what was said then? A "That is not anything, that won't hurt".

Q What? A Being pregnant 12 days, because we had spoken about an operation and treatment.

Q What was said about that? A He said he had to operate.

Q Who first suggested an operation? A I don't know whether it was him or myself, because it led into that conversation. If I remember right I think it was myself that said it.

Q Do you remember what you said and he said? A About the operation?

Q Yes, when you first suggested it, before he examined you? A I said something about operation and then the conversation went off into something about the weather, or something of that kind.

Q This was before he examined you? A Yes.

Q Then he examined you and said you were 12 days pregnant? A Yes.

Q Did you have any further conversation concerning an operation? A Yes.

Q State what that was? A He said he could open me up.

Q What -- he said he could open you up? A Yes, he could open me up. That was all he said.

Q How long did that conversation last? A At the most ten minutes.

Q Can you state more fully what you said about the operation and what he said about it? A We did not say very much about an operation. He wanted to know who sent me and I said my mother-in-law spoke about him.

Q Give anything further you recollect of that conversation that first day? A This defendant wanted to know who sent me and I told him my mother-in-law sent me there and then he said he would have to give me treatment, that he had treated some women in that neighborhood -- he mentioned two names; Mrs. Moran and Mrs. Ring; that he had operated upon those two women.

BY THE COURT:

Q Did he say operated? A Treatment, your Honor, given treatment to them and one woman had paid him \$40 and another woman had paid him \$75. Then he told me about another woman out in Cape May -- that he had procured I don't know how many abortions on this woman in three years.

BY THE COURT:

Q Did he use the word abortions? A Yes, in this case.

BY MR. SMYTH:

Q Proceed with anything further? A I wanted to know



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what the charge would be, and he said \$25. He said his general fee was \$50. I asked him when would I come and he said come to-morrow. He wanted to know if I would leave a deposit and I said I didn't have enough money with me.

Q Was there anything further said -- state all that you recollect that he said or you said as to the nature of what he was going to do to you? A Mr. Smyth, he did not say anything more, because I had on so many of these cases and I understood an operation was going to be performed.

THE COURT: Strike that out.

BY THE COURT:

Q We want you to give the conversation that occurred and if you don't recall it say so; it is important to this defendant for you to tell what occurred between you and him?

A That was all that was said.

BY MR. SMYTH:

Q I want it repeated -- you said something about cutting you open? A He said he could open me up -- that was all he said at that time.

Q He said something about it being nothing or not hurting? A He said it would not hurt.

Objected to as leading.

MR. SMYTH: She testified to that, that it would not hurt; that he could open her.

(By direction of the Court the stenographer reads

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the testimony on that point).

BY MR. SMYTH:

Q You left at the end of about ten minutes? A Yes, sir.

Q Did you make any appointment as to a definite hour?

A I was to call the next day between 12 and 1 o'clock.

Q Was \$25 the sum agreed upon and left? A I did not leave him any money.

Q I mean was that the agreement? A Yes.

Q Then I understand you left there? A Yes.

Q On the 24th of July did you again go to his office in the Borough of the Bronx, County of New York? A Yes, sir.

Q What time did you arrive there? A About quarter after twelve I should judge or half past twelve.

Q Did you see the defendant there that time? A Yes.

Q State what occurred that time, starting at the beginning and give ~~in~~ as much detail as you can recollect from the start, and state it to the jury? A I went there the next day July 24th and a young lady let me in and I asked if Dr. Gluckman was in, and she said yes. So I went into his office and in a few minutes the defendant here came in and said "Hello." I said "How do you do, Doctor", I said, "did you think I was not coming?" He said "No, he thought I would come, because it was very warm he thought it kept me late. So he said "I have the instruments boiled since 12 o'clock." I am



not quite sure whether he said 12 or half past 12, but he said either one and he said might as well get ready; take off your hat. So I took off my hat and put it on the desk. He said "Get up here", pointing to a table. So I got up on that table and wanted a drink of water. He said "You seem so nervous". I said "I wish I had brought my sister with ~~her~~ me" and he said he wouldn't let anybody in with me, I would have to come alone. So he then went over to a closet in the corner like a china closet and took out a red looking thing, a piece of long rubber, it looked like a catheter. He said this is what the midwives use but he said I am not going to use that. Then he took up an instrument. He said he would have to use a curved sound, because a straight sound would not do; it is very dangerous.

Q Did he have the instrument to which he was referring in his hand at that time? A Yes, sir, and a speculum he had at that time.

Q Did he say anything about that speculum? A He wanted to know if I knew what that was and I said yes.

Q Did you say what it was or did he? A He wanted to know if I knew what that was, and I said yes, because I knew what it was.

Q Describe the table you were on? A It had a leather cover on it, high table.

Q Narrow table? A Narrow table.

Q After showing you the sound and the speculum, what did he say? A He said come on and let us get ready. So he started to elevate my feet and I could not stand it any longer and I just jumped up.

Q Did he have any instrument in his hand at that time? A He had the sound and speculum in his hand.

Q You jumped up? A Yes.

Q What did you say? A I told him I was from the Medical Society.

Q What did he do? A He ran away -- he went down the hallway.

THE COURT: Just what was done on the table if anything?

BY MR. SMYTH:

Q What position were you in on the table? A I was lying down.

Q On your back? A Yes -- I did not have my head flat on the table because I had to see what was going on. I did not have my head down.

Q You were lying on your back with your head up?

A Yes.

Q Then you say he took the speculum and sound in his hand? A Yes.

Q In which hand? A Had the speculum in this left hand and the sound in the right hand.



Q Describe in detail exactly what he did so far as your knees and skirts were concerned? A He wanted to insert that instrument in me --

THE COURT: That is a conclusion. Strike it out.

BY MR. SMYTH:

Q We have to have just exactly what he did, what motions he made before you jumped off the table? A He had elevated my feet.

Q He did elevate your feet? A Yes.

Q Did he put you in such a position that the instrument could be inserted?

Objected to.

Q Did he draw up your clothes so the instrument could be inserted? A Yes.

Q And had he touched you with the instrument before you jumped?

Objected to.

Q I am indicating to you the kind of detail I want you to go into, as to just exactly what he did. A That was what he did. I was lying on this table and the doctor here had this speculum and this sound, and my feet were elevated and he was just going to insert that speculum.

THE COURT: Strike out the words "he was just going to insert that speculum."

BY MR. SMYTH:

Q He had it in his hand? A Yes.

Q In what position was his hand at the time you jumped up, how near to you? A Right close to me, touching me.

Q Was the instrument touching you? A No, that I cannot say that the instrument was touching me. He had the instrument right between his fingers, and the instrument itself, that is the sound, was not touching me.

Q What portion of your body did his hand touch?

Objected to. Objection overruled.

Q You said his hand touched you here? A (Indicating) Here, by my knee.

Q Then you jumped up from the table? A Yes.

Q Told him you were from the County Medical Society?  
A Yes.

Q Did the defendant say anything when you said that?  
A No, he did not.

Q What did he do after you said that you were from the County Medical Society? A He run down the hallway and did not say anything to me.

Q He ran down the hallway?

A Through his house, out through the back.

Q Out where? A Out through the back window.

Q Did you see him go out the window? A No, that I did not see.



THE COURT: Strike it out. Do not draw conclusions.

THE WITNESS: He asked me if I saw him and I did not.

BY THE COURT:

Q You do not know how he left the house? A No, I don't know, there was only a window there to get out of.

THE FOURTH JUROR: If your Honor please why did this lady go through to this doctor's and try this. I would like to learn why she went to the doctor.

THE COURT: The danger in propounding such a question to the witness lies in the fact that the witness might give some answer which might be incompetent and have to be stricken out. The witness says she is an employe of the County Medical Society, employed as a detective, is that right?

THE WITNESS: Investigating detective.

THE COURT: There is no dispute that this witness went there for the purpose of entrapping the doctor, is there, Mr. Smyth?

MR. SMYTH: Not the slightest. She testified that she went under orders, but we would have no right to put in evidence information that the County Medical Society had received.

THE FOURTH JUROR: Thank you.

BY MR. SMYTH:

Q You say he ran down the back of his house? A Yes.

Objected to.

Q Did he run or walk? A He ran.

Q What did you do? A I went to the front of the house and called officer Gaffney and Mr. Flood.

Q They were police officers? A Yes.

Q Had they come up there with you? A Yes.

Q Did they come in? A Not with me. I went alone.

Q I mean after you called them? A Yes.

Q After they came in what did you do? A Handed to officer Gaffney the instruments I had in my hand and Mr. Flood went in and the doctor had gone away and he spoke to his mother.

Q Did you yourself go back in the house at all, after the doctor went toward the back of the house? / A I went right back into the doctor's office.

Q Where is the office, back of the room where you were lying on the table? A Like the back parlor would be.

Q You say he went back, and went back into the hall, describe just what the doctor did as far as you saw and what you did? A After I jumped from the table?

Q Yes? A The doctor disappeared. I don't know where he went.

Q Did you see in what direction he disappeared? A Went



down the back.

Q Did he go down the hall? A Down a very long hall.

Q Did you follow down that hall? A No.

Q At any time? A No, sir.

Q Did you after the officers come in go down that hall?

A No.

Q Did the doctor occupy apparently the whole house there?

A No, apartment house on the ground floor.

Q He had an apartment on the ground floor? A Yes, sir.

Q Until the officers arrived did the doctor come forward again? A No.

Q Did you see the doctor again that day? A No.

Q Did you do anything so far as the instrument were concerned which the doctor was using? A I did not understand your question.

Q What happened to the instruments the doctor had in his hand? A I gave them to Officer Gaffney.

Q What did he do before he ran away, did he take them with him -- did the doctor take them with him or leave them?

A No, he left them. He had a drawer in this operating table, the table I was on, and he pulled this instrument drawer out and picked up this curved sound and speculum, and he said this is what I am going to use, and, what I wanted, was those two instruments.

Q What happened to the sound or the speculum? A I gave

them to Officer Gaffney.

Q Where did the doctor put them? A I took them out of his hand.

Q Then you gave them to Officer Gaffney? A Yes.

Q Were there any other instruments taken from there in your presences? A Yes, sir, quite a number of instruments in this drawer.

Q Were all the instruments in that drawer taken from there? A Yes, sir.

Q Did you see any mark made upon those instruments so you can identify them? A I put two tags on them.

Q I show you this instrument, is that one of the instruments you took from the doctor's hand that day? A No.

Q Is it one of the instruments you saw there that day?  
A One I saw there,

Q Where was that taken from?

Objected to.

THE COURT: It is not being offered in evidence.

BY MR. SMYTH:

Q Where was that taken from? A Out of the drawer.

The drawer was open.

The instrument referred to is marked People's Exhibit 1 for identification.

THE WITNESS: That tag don't belong on that instrument -- I did not put it there.



BY MR. SMYTH:

Q Is that instrument one that was there? A Yes, sir.

THE COURT: How do you recognize the instrument?

THE WITNESS: All these instruments were together.

BY MR. SMYTH:

Q You cannot identify that except after its history has been traced? A No, I cannot.

Q You turned over all the instruments -- Officer Gaffney took them all? A Yes.

Q I show you this instrument and I ask you if you saw that instrument there that day? A I cannot swear this same one, but it was an instrument like it.

Q Was that in his hand that day? A Yes.

Q Which instrument was that? A This is the speculum.

The instrument referred to is marked for identification People's Exhibit 2.

Q I show you another instrument and ask you if that instrument was there that day?

MR. TEVLEN: If your Honor please, I think the exhibition of these instruments is entirely improper.

They have not been connected and will not except that they were taken from his office.

THE COURT: The objection is overruled for the present and the jury will understand that the mere fact that the District Attorney exhibits these instruments to

the witness before being admitted in evidence should not be considered by you. It is only when the instrument is offered in evidence and the Court admits it in evidence that you may consider such testimony,-- otherwise not.

BY MR. SMYTH:

Q Can you identify that instrument or state whether it was there that day? A I want to say something about this -- the one I remember of, if I remember rightly, did not have this extra dent in here -- just simply curved.

Q Was there an instrument there similar to that without that dent? A Simply curved like that (indicating).

Q Did you attach your name to a tag on it, to the instrument you saw there on that day? A Yes, sir.

Q Was the instrument you saw there that day taken by Officer Gaffney? A Yes, sir.

The instrument referred to is marked People's Exhibit 3 for identification.

Q Was it an instrument like that which he stated was a sound? A Yes, sir, curved.

Q Exactly like this, except for this dent? A Yes -- I don't remember that dent.

Q There was a complete curve there as far as you observed it? A Yes.

Q There were some other instruments taken from a drawer?



A Yes.

Q Officer Gaffney took them? A I handed those to Officer Gaffney.

Q Are you able to identify any of those instruments by any mark? A No.

Q Was there an instrument there similar to this I now show you? A I don't remember this at all. I remember just this (indicating).

Q I will withdraw that for the present -- when did you next see the defendant? A I saw the defendant only on the 23rd and 24th days of July, those two days.

Q You did not see him after his arrest? A No.

CROSS EXAMINATION:

Q You say the first time you went there was on the 23rd of July last year, do you remember what day of the week that was? A No, I do not.

Q Can you recall that it was on a Wednesday? A I don't remember the day.

Q Do you recall that the second time you went to see him was on a Friday? A No, I cannot.

Q Is it not a fact there was an interval of two days between the first time you saw him and the second time you saw him? A No, it was the very next day.

Q You are perfectly positive it was the next day?

A Yes.

Q Now what was it that you said to the doctor the very first thing when you went in to see him on the first day with reference to vomiting? A I told him I had been vomiting for four days.

Q Did you give him any dates? A I did, but I don't just remember now.

Q Try and give us as nearly as you can the dates which you gave the doctor, let us have the conversation between you with reference to any dates? A Dates about what?

Q Did the doctor ask you when you had last had your menstrual flow? A Yes.

Q What day about did you give him? A I don't remember now. It is over a year and a half ago. He had a card upon which he took my name and address and all about my case and what he put on the card -- I remember seeing something but I couldn't recall just now. I gave the name of Emma Engle.

Q How do you spell that second name? A E-n-g-l-e -- a German name.

THE COURT: E-n-g-e-l is German.

BY MR. TEVEN:

Q You don't recall the dates that you gave him?

A No, I do not.

Q You did however say to him that you were past the time of your -- A Yes, I mentioned dates but at this time I don't remember.



Q Under those circumstances, as matter of fact you could yourself calculate how long you were overdue? A Yes, sir, I just said those few days.

Q How many days did you say? A Four days.

Q What did the doctor say then? A He wanted to know if I was married and I said yes.

Q As matter of fact you are? A Yes, sir, I have been married ten years.

Q Now was there any further conversation before the doctor examined you? A I don't remember now.

Q What was it you said the doctor said after he had examined you? A What did I say after the doctor examined me?

Q No, what did the doctor say to you after he examined you? A He said I was pregnant twelve days.

Q Coming back to your first conversation with the doctor, what did you say you called upon him for, what reason did you give the doctor for calling upon him? A We had complaints in the office that he had performed --

Q I ask you what reason you gave the doctor for calling?

THE COURT: Strike out the answer of the witness.

THE WITNESS: I told him my mother-in-law had spoken about him; that I came and called around to see him.

Q Did not tell him any reason for calling upon him, did you? A Only just what my mother-in-law recommended.

Q Gave no reason for calling upon him; told him simply that you had been vomiting for three or four days?

A For four days.

Q And the doctor said he would examine you, and what was it you say the doctor said after he examined you?

A He said I was pregnant twelve days.

Q You are perfectly positive he used the word pregnant?

A Yes.

Q What did you say? A After the examination?

Q Yes. A Well, the doctor said he could open me up.

Q What did you say when he said that? A I don't remember saying anything.

Q You left then? A No, I did not leave right at that time.

Q What did you speak about? A He had recited several cases then.

Q Now, you had entered into an agreement to pay the doctor \$25, you say? A Yes.

Q Were you prepared to pay him \$25 when you went the second time? A Yes, I had \$25.

Q Did you pay him? A No, sir.

Q Did you give any reason for not paying? A Well, I was to pay him after the operation was over.

Q You were not to pay in advance? A The first day he wanted some deposit and I would not give him any money.



Q And the second day? A He was to have the money when --

Q When you left? A When I left.

Q On the second day? A Yes.

Q Had that all been agreed upon? A Yes.

Q When you went there the second day you were accompanied by two officers, were you? A Yes.

Q Were any arrangements made between you and the officers with reference to what you should do? A Yes.

Q What were those arrangements? A I was to go in that house, and as I understood Mr. Flood to say, he would come right in after me. I waited so long that Mr. Flood did not come, and so the doctor could not wait any longer, and so I was to throw something in the window, open up the door or something to give them a signal on the outside.

Q Did you? A I did not.

Q How long a time were you in the office on the second visit? A I don't suppose any more than at the most twenty minutes, at the very most.

Q Once more, coming back to the first day, did the doctor say anything to you about a retroversion? A I don't know what that word is.

Q Did he speak to you of falling of the womb or anything of that sort? A No.

Q Absolutely certain of that? A Yes.

Q Have you any knowledge of these matters yourself, of the medical aspect of these matters? A Of what do you mean?

Q I mean have you any knowledge of the medical facts with reference to matters of pregnancy, and so on? A Why, yes, I have two children myself.

Q Did you know that a physician could not detect pregnancy after three or four days, or anything of that sort? A I did.

Q You told the doctor at your first visit -- did you tell him you had two children? A I don't remember now.

Q You may have mentioned it to him? A Yes, I may have. Don't just remember.

Q You nevertheless say that the doctor told you that he by an examination could say you were 12 days overdue?

A That was what he told me but I knew it was impossible for I knew the doctors could not tell.

Q You now testify that the doctor, knowing you had two children previously, told you that by an examination, after you were overdue only three or four days, he could detect pregnancy of 12 days? A He examined me and he said I was pregnant 12 days. I did not believe it because it was not so.

Q Of course you did not believe it, but do you think that he expected to make you believe any such thing, knowing that you had two children? A I don't know.



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Q Now when you got upon the table, on your second visit, did you say anything about having eaten fish that day?

A No, sir.

Q Did you ask for water? A I did -- may I correct that statement -- I do remember now saying that I had eaten salty fish.

Q Where did the doctor go to get the water -- at any rate did he leave the room in order to get that water?

A Yes, he did.

Q Up to that time nothing had happened except you had gotten up on the table, is that correct? A Yes.

Q Now he came back with the water, after you drank the water did the doctor take it away? A Yes, and put it on his desk.

Q How far away is the desk? A He could just touch the desk with his hands.

Q Would not have to move, just a short distance away? A Yes.

Q After that did you ask for water again? A Yes, I did.

Q In other words you were trying to gain time? A Yes, I understood Mr. Flood was coming in.

Q To have Mr. Flood get in there -- up to that time had the doctor touched any instruments? A No.

Q Where was the doctor when you sprang from the table?

A Right touching me -- right beside me.

Q At your side, was he? A Yes.

Q Which side, right or left side? A Right side.

Q Now how long an interval was there between his putting the glass down the second time and his standing at your side when you sprang from the table? A Couldn't be any more than a minute.

Q What? A Couldn't be no more than a minute.

Q Now up to the second time that he helped you to water, he had not touched any instruments, had he? A He just touched the catheter -- took the catheter from the closet.

Q What did he do with it? A He was just showing me that -- he said that was what midwives used.

Q He just exhibited it to you and put it back again?

A Yes.

Q Then he helped you to water again and you say that not more than a minute after that, after he had given you the water the second time, you sprang from the table? A He just took the instruments out and was going to use it then right away.

MR. TEVEN: I object to the words "going to use it".

THE COURT: Strike them out.

BY MR. TEVEN:

Q Just tell us what he actually did and not what he was going to do -- after he put this glass of water down, you say



he did what? A He took these instruments from the drawer that was in this table.

Q And he stood at your right side, did he? A Yes.

Q Then you sprang from the table?

THE COURT: We will take a recess at this time.

The Court admonishes the jury in accordance with Section 415 of the Code of Criminal Procedure, and takes a recess until 2 o'clock.

After recess.

FRANCES BENZECRY, resumes the stand:

CROSS EXAMINATION CONTINUED:

Q I think we left off this morning at a point where you said that from the time he placed the glass upon the table or upon his desk to the time you sprang from the table, about a minute had elapsed and not more than a minute, is that correct? A Yes, it was about a minute.

Q Was he facing you or was his back turned when you sprang from the table? A He was facing me.

Q And what did you do -- not what you said -- what did you do when you sprang from the table? A I grabbed his hand.

Q What did he do? A Well he -- he had the instruments in his hand and I just grabbed them like this from him and told

him I was from the Medical Society.

MR. TEVEN: I ask to strike out what she said -- I did not ask that. I asked what she did.

THE COURT: Strike it out.

BY MR. TEVEN:

Q You did not grasp his hands but you grasped these instruments, you say? A Yes.

Q He released them? A Yes.

Q Then what did you do? A I went to the parlor window and called Officer Gaffney and Mr. Flood.

Q You did not call them by that name, you did not call Officer Gaffney? A No -- I think I called him Tom, I think I did.

Q You said nothing which apprised him that these people were officers? A No.

Q In the course of your experience as an investigator, you have been in situations of this character before? A Yes.

Q You have had examinations made, have you not?

A I think I have had two examinations.

Q When you were being examined in this manner, where would the physician be who was examining you? A I was not examined by any physician before. I was examined by a midwife.

Q Where would she stand when she examined you? A Right beside me.

Q Have you ever had a speculum inserted? A Yes, sir, not



by a midwife but at the hospital.

Q By a physician? A Yes.

Q Other than the defendant? A Yes, sir, when I was at the hospital.

Q Because the defendant did not insert any instrument of any character at all? A No.

Q How many times have you had a speculum inserted?

A I believe it was only once.

Q Do you recall the circumstances under which it was inserted? A Yes.

Q Where did the physician place himself when he inserted the speculum? A Right at my side.

Q By your side? A Yes.

Q Are you absolutely positive of that? A Yes.

Q Was it a speculum of the character which you have identified here? A Of this character (indicating)?

Q Yes. A No, it was not like that.

Q It was a pendulum speculum? A I don't know the name.

Q Shaped entirely different from this with a weight on it? A No, it was a plain one clamped on top of the other -- this one has three pieces to it. The other I have reference to has only two pieces.

Q Did you have that in your hands, this speculum you now describe? A In the hospital?

Q The one which you are now describing, - not the three pieces, the one which is identified here, but the other one?

A No.

Q You did not? A No.

Q You do not know whether it was pendulous or not?

A That I could not say.

Q Was the drawer from which you took these instruments open or closed when you came into the room? A Closed.

Q Did the doctor handle any other instruments other than this speculum and this sound? A Did he handle?

Q Yes, did he touch them? A Not from that drawer.

Q Nothing else? A No.

Q Did the doctor say he wanted to examine you? A Yes.

Q And so far as you know, his only purpose in taking up this speculum was to examine you, is that right? A No.

Q You don't know whether he wanted -- he said he wanted to examine you -- you don't know that it was his purpose to do anything else than to examine you, do you? A No, I could not say that.

Q So that it may be his only object in taking up this speculum so far as you can say was to examine you? A Well, he had this sound in his hand also.

Q Is that right -- regardless of the fact that he had the sound? A I don't know.

MR. SMYTH: I ask to strike out the question and the



answer because it is for the jury to say from the words and the expressions and acts of the defendant himself.

THE COURT: The witness says she does not know.

MR. SMYTH: I want the whole thing stricken out because it is calling for her conclusion on a state of facts, which is not material -- he having the sound in his hand, what might be his object regardless of that fact is a speculative question.

THE COURT: I will strike out the question and answer. Defendant excepts.

BY MR. TEVEN:

Q Now you say that you told the doctor that you were vomiting three or four days, is that right? A Yes.

Q Did you tell him you thought yourself pregnant?

A No.

Q You did not? A No.

Q Do you recall where this table upon which you were lying is placed or was placed at the time that you were there?

A Yes.

Q Whereabouts was it placed with reference to a wall?

A To the wall?

Q Yes?-- A The doctor's desk was first and then came the table. There is a little space between.

Q Speaking now with reference to the point at which you enter the office, on which side, right or left, was the desk?

A To the right.

Q As you enter the office to the right? A Yes.

Q Upon which side was the table? A To the left.

Q How far from the wall was the table? A A very short distance. It was quite a small room.

Q When you sprang from the table as you say you did not spring off toward the wall? A No.

Q But toward the other side? A Toward the desk.

Q How close was the doctor to you at the time you sprang from the table? A Right near me. He was very excited and he ran away.

Q What? A He was right beside me and then for a second just stood still and then he ran away.

Q Where was he with reference to the table, towards the head of the table? A No, towards the foot of the table.

Q Where did you spring off the table, over the foot of the table or over the side of the table? A The side nearest the desk.

Q Did you brush him or push him aside in springing from the table? A I hit him -- jumping from the table I touched him.

Q You did? A Yes.

Q And when you ran to the window, you say that you had two of these instruments in your hands? A Yes.

Q What made you come back and take the other instruments?



A From the drawer?

Q Yes. A No, I took -- when I took this sound and speculum from the doctor's hands, I jumped down and of course he ran right around like this and I took all the instruments that were in the drawer also.

Q Why did you take them? A I had not any special reason to take them -- I just simply took them all along.

Q Did you see other instruments in the doctor's office besides these? A Yes.

Q You did not attempt to take any of the other instruments, did you? A No.

RE-DIRECT EXAMINATION:

Q You stated on cross examination that the doctor asked to examine you, was that on the first or the second day you were there? A On the first visit.

Q He did examine you on the first visit? A Yes.

Q After that examination pronounced you pregnant?

A Yes.

Q Did he on the second visit ask to examine you? A No.

BY THE COURT:

Q No? A No, your Honor.

BY MR. SMYTH:

Q Just what position was the doctor in with reference to you at the time you laid on the operating table and he had the

speculum and sound in his hand? A I was laying on this table. My limbs were elevated up on the table and my skirt was above my knees. The doctor was right beside me and my feet being elevated he was with his speculum and sound in his hand and just about to use them.

Q He did actually ~~touch~~ touch your knee with his hands?

A Oh, yes.

Q It was when it had proceeded to that extent that you jumped up off the table? A Yes.

Q How soon after the doctor left the room did Flood and Gaffney enter -- about how much time elapsed? A The most would be four or five minutes.

Q What did you do in that interval yourself? A I could not get the window up in front and then I had to go to the public hallway to get out and I let the officer in.

Q You went to the window and tried to open the front window? A Yes, and could not do that.

Q Did you struggle with that any length of time?

A No, and then I went right to the public hall and went out.

Q Did you go downstairs -- you were on the ground floor?

A Wewere on the ground floor.

Q You went to the door in the public hall? A Yes.

Q Where were Flood and Gaffney when you opened the door?

A Mr. Flood -- I don't know where he was -- I did not see him myself.



Q Did you see him enter? A Oh, yes, I saw Mr. Flood come in.

Q How soon after you opened the door did he enter? A Two minutes.

Q Did you go out to the street before they came in? A Yes, Officer Gaffney was there.

Q You walked out into the street and saw Officer Gaffney? A On the stoop of this house.

Q And then he come immediately in? A Yes.

Q The amount of time that elapsed before Gaffney came in was the time it required you to go to the front window and try to open it and come back and go to the front door and get Officer Gaffney and come back? A Yes, sir.

Q Was Flood in there when you came in? A No, sir, I didn't know where he came from -- he came up from the back of the house -- I don't know just --

Q When you took the instruments from the drawer was that drawer open or shut? A Open.

Q It was open while you were on the table? A Yes.

Q Did you take all the instruments that were in that drawer? A In that drawer, yes.

BY THE COURT:

Q The first day did anybody accompany you to the place?

A No.

Q And wait for you on the outside? A No.

Q What was the condition of the windows in that room in which the doctor examined you? A The condition of the windows -- had a sash curtain on.

Q Was this an apartment house? A Yes, apartment house.

Q Did you observe the outside condition of the house?  
A Yes.

Q Could one look into the room from the street, into the apartment? A No, it is very high.

BY MR. SMYTH:

Q Was anything said on the second day on the subject of the price? A No, the price was \$25.

BY THE COURT:

Q Was there any money paid in this case? A No.

Q There was no money paid? A No.

Q The defendant did not ask you for the money before he proceeded to do this? A No, he did not.

RE-CROSS EXAMINATION:

Q How long an interval elapsed before you sprang from the table and the officers came in? A At the most five minutes.

Q Now, how far were your clothes raised? A Above my knees.

Q They were at your knees? A Yes.

Q Could you see beyond your knees? A Well, I don't



know that. My feet were elevated.

Q Therefore you could not see beyond your knees, could you, you could not see your lower limbs? A Yes, sir -- my skirt was above my knees.

Q Therefore your skirt may have been lower than your knees and below your knees, may they not? A No, they were not.

Q How do you know they were not? A Because I saw with my eyes.

BY MR. SMYTH:

Q In the position you were in, there is some doubt as to what you mean above and below -- do you mean at a point between your knee and hip? A No, right here (indicating) they were.

BY MR. TEVEN:

Q They were at your knees?

BY MR. SMYTH:

Q As matter of fact your feet were up in the air?

A Up on this table.

BY MR. TEVEN:

Q Your feet were lower than your knees? A Yes.

BY MR. SMYTH:

Q Your knees were up something in the position mine are now? A Yes.

Q And your skirt up to the point of your knees?

A Yes, sir.

BY MR. TEVEN:

Q Could you see the end of your skirt? A Yes, it was at my knees.

Q Could you see the end of your under skirt?

A No.

Q You don't know what position your under skirt was in?

A No.

BY MR. SMYTH:

Q Who said the position of your skirt to your knees?

A The defendant.

BY MR. TEVEN:

Q You are perfectly certain the defendant raised your clothes? A Yes, sir, he elevated my feet, and he said come on, and let us get ready.

Q Did the doctor on your second visit say he wished to examine you again? A No.

Q Absolutely certain of that? A Yes.

BY THE COURT:

Q Did you make any memorandum of what transpired between you and the defendant on those two occasions?

A Yes.

Q Are you now testifying or have you testified this morning as a result of your recollection of the incident or as a result of having consulted any private memorandum with



a view of refreshing your recollection? A I consulted this paper to find out about my dates. Otherwise I remember everything distinctly.

Q You remember the conversations? A Yes.

Q Did you make any memorandum as to conversations?

A Yes, sir, at that time I did.

Q At that time? A Yes.

Q But you are giving testimony as the result of having refreshed your recollection; is that right?

A Not to-day I did not refresh my recollection.

Q When did you?

A We were down in this court some time ago and the case was put off at that time.

Q How long ago?

A I don't know, it must have been -- I will look in my book if I may.

Q Approximately can you state? A About a month ago I should judge.

MR. TEVEN: That was about six months ago, in March.

THE COURT: March 29th the case was on the last time, 1909.

THE WITNESS: There is October 8th and October 13th.

THE COURT: That is so, October 8th.

BY MR. SMYTH:

Q Was it prior to October 8th or last March that you last looked at your notes to refresh your recollection? A I read them before last March.

Q Have you these original notes with you now? A No, I have not. Mr. Duivivier had them.

Q Were they written out in typewriting? A No, I wrote them out myself.

B E R N A R D A. F L O O D, called as a witness on behalf of the People, duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. SMYTH:

Q What is your occupation? A Police officer attached to the office of the District Attorney, New York County -- a member of the Detective Bureau.

Q Were you holding that position on the 24th day of July, 1908? A I was.

Q Did you on that day accompany Mrs. Benzecry to premises at 862 Caldwell avenue, in the Borough of the Bronx, County of New York?

A Yes.

Q Who else went with you? A Officer Gaffney from the County Medical Society.



Q Did you go in with Mrs. Benneory? A I went into the hallway.

Q That is an apartment house? A Yes.

Q On which floor was the apartment of this defendant?

A Ground floor.

Q Right or left side as you entered? A On the left side.

Q Were you in the hallway when Mrs. Benneory entered the apartment of the defendant? A I was.

Q What did you do, stay in the hall or go somewhere else? A I tried to go downstairs by going down into the hallway, but found there was no stairs and could not get down, and so I came outside and went downstairs through the steps which lead to the basement from the front.

Q You went down in the basement of the building? A I did.

Q Then where did you proceed? A To the rear of the house or back of the house as far off as I could get.

Q Where did you stay when you got there? A I stayed there looking up at the window.

Q Were you in the house still? A I was still in the house -- that is on the premises of the house.

Q You were in the basement of the house? A In the basement or yard, little side yard.

Q Were you in the side yard? A Yes, sir, little side

yard.

Q The backyard of the apartment house in which this defendant's apartment was? A Yes.

Q What first attracted your attention while you were out there waiting? A I heard somebody heller Gaffney, as I thought, or "Help", something else -- I rushed out and went to rush inside and I looked out and saw somebody going over the fence in the back of the house.

Q As I understand, when you heard that call, you left the back yard and entered the basement again, so as to proceed to the front of the house? A Yes.

Q And you looked back, did you -- towards the backyard?

A Yes.

Q You saw some one going over the back of the fence?

A Yes, saw somebody going over.

Q Where did you go then? A I went upstairs and saw the lady from the County Medical Society and Gaffney in the hall, and so we both walked in the apartment of the doctor.

Q What did you do in the apartment of the doctor? A We walked into the room where the lady from the medical society she was --

THE COURT: No.

BY MR. SMYTH:

Q Into the office? A Into the office.

Q What did you do there? A Just looked around the



room and saw various things there.

Q Did you take any instruments or anything from the premises? A No-- Gaffney took the instruments.

Q Did you go through the rest of the apartment? A I went through the other rooms.

Q Did you find the doctor there in the apartment?  
A No, the doctor was not in. I saw his family there.

BY THE COURT:

Q Did you know the doctor? A No.

Q How do you know he was not there?

BY MR. SMYTH:

Q You went through all the rooms of the apartment?

A Yes, sir, through the entire floor, and I did not see this defendant there.

Q You did not see this defendant? A No.

BY THE COURT:

Q You did not know the defendant at the time? A No, I did not know him at that time.

BY MR. SMYTH:

Q Was there any man in there except you and Officer Gaffney? A I believe there was another man there.

Q Was that this defendant? A No.

Q When did you next see the defendant? A When I arrested him.

Q When was that? A I think it was on the day that his

indictment was found.

Q He was arrested the 3rd of September, the endorsement shows -- where did you see him then? A He was in his own apartment at the premises where he had his office.

Q Did you have any conversation with him? A I went into the room accompanied by another officer from the Bronx Detective Bureau who was with me at that time, and I asked this defendant if he was the doctor, and he said he was, and I showed him the bench warrant we had, and I told him I was a police officer and of course he was under arrest. He said that he would gladly come down with me, and he said he rather anticipated the arrest. He said he was rather foolish to have acted the way he did on the day we were there before:

Q Did he testify what he meant by acting that way?

A No -- yes, He said it was very foolish for him to try to get away, or get away.

Q He did not refer to anything he had done on that day?

A No.

Q He referred to getting away -- that was all the conversation you had? A Yes, that was all.

BY THE COURT:

Q You were stationed where, in the rear of the house?

A Yes, I went downstairs into the basement.

Q Why did you go into the basement? A I was trying to get into the back of the premises where the windows of the flat



looked out on.

Q You did not succeed? A I did not succeed -- in fact the lady from the County Medical Society which she afterwards told me --

THE COURT: Not what she told you.

THE WITNESS: All right.

BY THE COURT:

Q How far away were you from the man who scaled the fence? A Oh, I was 30 feet, I guess.

CROSS-EXAMINATION BY MR. TEVEN:

Q Did you recognize the man who scaled the fence? A I saw his back -- no, I did not.

BY MR. SMYTH:

Q Was there any method of egress from the back of the first floor to that apartment house, to the back yard?

A No, there was not.

Q The only way to get there was go out the front door?

A The front door down into the basement and through the side door of the house into the basement and then out on the side. There were no stairs which led from the hall -- that is the hall down into the basement; you had to go on the outside to get down.

THE COURT: Ask him what method there was to get out from the rear of the house?

THE WITNESS: It was not in the rear -- it was on the side -- door leading to the side.

BY MR. SMYTH:

Q No, where was this back yard where you were, was that back of the apartment or along one side? A This was a court which was on the left side of the house there, on the left side of the apartment where the doctor resided -- a kind of a court way there.

Q How high above the ground of that court way were the windows of the doctor's apartment? A Twelve feet up.

Q Was there anything <sup>between</sup> those windows and the ground, any way of getting down from his windows? A Only a fire-escape on the rear.

Q There was a fire escape in the rear? A Yes.

Q How near to the ground in that court way did that fire-escape come? A I imagine it was about 12 feet.

Q To go down from the fire escape to the ground? A There was a drop right from the fire escape, right into the yard.

Q To get down there you would have to drop that 12 feet?

A Yes.

BY THE COURT:

Q Did you see any man drop from the fire escape? A No, I saw a man on the fence, going over the fence, and my attention was attracted.

BY MR. SMYTH:

Q From that backyard? A Yes.

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Q That man had not gotten into the backyard through the passageway through the building? A No, not through where I was.

Q So far as you knew, was there any other entrance from the building into that backyard? A No, not that I knew of.

MR. TEVEN: I move to strike out the testimony with reference to getting over the fence as not being connected with the defendant.

MR. SMYTH: It is connected exactly in time and we prove he did not come out the front way by the next witness.

THE COURT: It is only a circumstance. There is no proof this defendant is the man who scaled the fence.

MR. SMYTH: No, we simply prove he disappeared, as to where he went is immaterial.

CROSS-EXAMINATION:

Q So far as you know the defendant was not in the apartment -- you are pretty positive he was not in the apartment or he might have been there without your knowing it? A I hardly think he could have been in his apartment without me knowing he was there because I went through every apart of his apartment.

Q There is a possibility in that, is there not? A I hardly think there was -- there may be.

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BY MR. SMYTH:

Q What did you do by way of searching the apartment?

BY MR. TIVEN:

Q Excuse me, Mr. Smyth -- when you went into the dining room who was with you? A You mean in the doctor's apartment?

Q Yes? A Gaffney was with me.

Q Mrs. Benzerry followed? A I didn't take much stock of where she was at that time in particular. I think she followed on.

Q How far is the dining room from the front door of the apartment through which you come in? A The dining room is the last room of the flat.

Q Have you a general idea of the distance from that dining room from the entrance door? A Might be three or four rooms -- three rooms, I think.

Q Might be as much as 40 feet? A I hardly think it is that.

Q As matter of fact, it is considerably more than 40 feet? I think, Mr. Flood -- that is a possibility, is it not?

A If it is 40 feet from the door of the entrance of the hall to the dining room?

Q Yes? A It may be 40.

Q It would be perfectly possible for the doctor to walk out of the front door, while you were in the dining room,



wouldn't it? A No, because I had gone through the first part of the flat, that is the parlor of the flat first, and I made a thorough search of that and Gaffney stood in the corridor or hallway leading towards the dining room while I was looking through there -- or at least the lady did, and Gaffney came in while the lady stood there and then I went out and we proceeded to the next room and made a search of each room until we finally got to the dining room.

Q I understood you to say you went directly to the dining room when you got into the flat? A No, I did not.

T H O M A S G A F F N E Y, called as a witness in behalf of the People, duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. SMYTH:

Q Are you an officer of police or court officer?

A Yes.

Q An officer of the police assigned now as probation officer? A Yes.

Q To Judge Barlow? A Yes.

Q What was your occupation on the 24th day of July, 1908? A I was detailed with the County Medical Society.

Q You were an officer of the police? A Yes.

Q Detailed by the Commissioner of Police to service of the County Medical Society? A Yes, sir.

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Q On that day did you go to the apartment of this defendant at 862 Caldwell Avenue, in the Borough of the Bronx, County of New York? A Yes, sir, on July 24th.

Q Officer Flood and Mrs. Benzecry went with you? A Yes.

Q Where did you stay when Mrs. Benzecry entered the doctor's apartment? A I stayed two doors away.

Q Out on the street? A Yes.

Q And how long were you there before Mrs. Benzecry again came out on the street? A I was there about between eight and ten minutes.

Q During that time what were you doing? A I was watching for an outcry.

Q What first attracted your attention after Mrs. Benzecry went in? A I heard a lot of excitement and hollering.

Q Where? A Coming from the premises.

Q Of the apartment house? A Yes.

Q What did you do when you heard that? A I immediately went up to the door and Mrs. Benzecry came rushing out of the entrance to the hall door with about five instruments in her hand.

Q With instruments in her hand -- now, between the time you saw Mrs. Benzecry go in and the time she came rushing out with these instruments, were you watching the entrance to that apartment all the time? A Yes, sir.

Q Did this defendant come out of the front door of that



apartment during that time? A No.

Q When you joined Mrs. Benzecry what did you do? A I attempted to get into the house and the door was locked.

Q After she had come out, you started into the apartment again but the door was locked? A Yes, sir -- slammed the door.

Q Was there a spring lock on the door? A Yes, sir, it was a very thick door.

Q What? A It was a very large, thick door, and we attempted to break it in and we could not break it in.

Q What happened then? A Finally the doctor's sister opened the door and let us in.

Q Did you then make a search of the apartment? A Yes.

Q Was this defendant in the apartment? A No, sir.

Q Did you see him at all that day? A No, sir.

Q When did you next see him? A I next saw him on the day he was arrested.

Q Now, did you have any conversation with him the day he was arrested? A No, sir.

Q Or hear any conversation with him? A No, sir, I heard none of the conversation.

Q What happened to these instruments that Mrs. Benzecry had in her hand when you met her in the hallway? A She gave them to me.

Q Did you take them and retain possession of them for a

while? A Yes.

Q Then what did you do with them? A They were turned over to Mr. Duvivier.

Q Did you turn them over to Mr. Duvivier? A Yes.

Q Were the instruments you turned over to him the instruments you took from Mrs. Benzecry in the hallway of the apartment house where the doctor lived on the 24th of July? A Yes. I believe they were all tagged and marked.

Q I ask you whether the instruments which you turned over to Mr. Duvivier were the instruments you received there that day? A Yes.

Q Did you turn over to Mr. Duvivier any instruments which you did not receive? A No, sir.

Q In the doctor's apartment that day? A No, sir.

Q By Mr. Duvivier you mean this gentleman just entering this enclosure here? A Yes, sir.

#### CROSS-EXAMINATION:

Q Do you recall, Mr. Gaffney, getting the hat and purse of Mrs. Benzecry? A Getting her purse?

Q Her hat and purse out of the apartment? A Yes.

Q How did you get it? A How did I get it?

Q Yes? A We attempted to break in the door and the sister was at the window and we came back to the window and she threw the hat out over the gate, out of the window.



Q Did you ask her to pass them out to you? A No, sir,  
I did not ask her to pass them out.

Q You did not ask for them? A No.

Q Afterwards she did open the door and allow you to  
enter the apartment, did she? A Yes.

BY THE COURT:

Q Were you present with Officer Flead when the defendant  
was placed under arrest? A I happened to be upstairs in  
court here.

BY THE COURT:

Q Were you at the defendant's house? A No, sir.

BY MR. SMYTH:

Q You saw him when he was brought down here to plead  
to the indictment? A When he was brought down here to  
the District Attorney's office.

THE COURT: Is there any dispute that these instru-  
ments belong to the doctor?

DEFENDANT'S COUNSEL: No, sir.

THE COURT: Then there is no necessity of putting  
Mr. Divivier on the stand. These are the instrument of  
the doctor.

MR. SMYTH: You concede these instruments are the  
instruments referred to by Mrs. Benzecry?

THE DEFENDANT'S COUNSEL: Yes; it being expressly  
stipulated on the record that the found which is exhibited

was perfectly curved at the time it was taken into the possession of these people and that it has since become kinked in this fashion.

MR. SMYTH: There is a bend here in the instrument.

THE COURT: The instrument was curved.

MR. TEVEN: Yes.

MR. SMYTH: The instrument begins to bend at the point where my fingers are and from there on is curved on an even curve. Now there is a little bend in it which has been done accidentally since.

JAMES N. WEST, M. D., called as a witness in behalf of the People, duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. SMYTH:

Q Where do you reside? A 71 West 49th street.

Q What is your occupation? A Physician and surgeon.

Q How long have you been licensed to practice in the City of New York? A Since 1891.

Q Have you made any specialty during that time? A During most of that time.

Q What has been your specialty? A Diseases of women.

Q What special experience have you had in that line, as far as hospital and other training experience is concerned?

A I was interne in the Woman's Hospital of the State of New



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Yerk and was an assistant surgeon in that hospital for thirteen years, and I am now professor of diseases of women in the New York Post Graduate Medical College.

Q Have you written at all upon the subject of diseases of women? A Yes, sir.

Q Included in the diseases of women, do you include what is known as gynecology? A That is another name of diseases of women.

Q That refers especially to diseases of the womb or uterus and other female organs? A Yes, sir.

Q Have you ever, as a matter of necessity, to save the life of mother or child, been called upon to perform an abortion? A Yes, once.

Q Are you familiar with the implements used by doctors and surgeons for such purposes? A Yes.

Q I show you People's Exhibit 2 for Identification, and I ask you if you will state what is the name of that instrument? A That is a vaginal speculum.

Q For what purpose is that instrument used? A It is used to examine the vagina and the neck of the womb.

Q It is placed into the womb? A Placed into the vagina and then opened.

Q That distends the vagina? A That distends the vagina and makes it possible to examine the neck of the womb and the part of the vagina between the limbs of the instrument.

Exhibit 2 for Identification is offered in evidence and received.

Q I show you People's Exhibit 3 for Identification and I ask you what that is -- it has been conceded that this bend in here was not in the instrument in its natural condition?

A That is a sound. It looks like a male sound.

Q Used as an instrument on a male, what is its purpose?

A For dilating the urethra.

Q That is the canal through which the urine passes?

A Yes, sir, canal from the bladder to the external world.

Q If that instrument were inserted into the uterus or womb of a pregnant woman, what would be its natural probable effect? A It would set up pains, probably, and produce an abortion.

The instrument is offered in evidence, received and marked People's Exhibit 3.

Q I show you Exhibit 1 for Identification, and I ask you what that is?

DEFENDANT'S COUNSEL: I object to that upon the ground that there is absolutely no evidence to make this instrument relevant to this case. It simply laid in the case, according to the testimony.

THE COURT: I sustain the objection.

MR. SMYTH: May I call your attention to the case of the People against White, 1st department, Appellate



Division, 1908, where it is held that it is entirely proper to prove that shortly after the alleged performing of an abortion the defendant was in possession of instruments for that purpose -- that she tried to hide them and gave no reasonable explanation of her possession of them. Such evidence is permissible upon the same principle as the possession of burglar's tools. This drawer was open in which these instruments were.

THE COURT: We must understand that a physician is in possession of every form of instrument. For instance, the doctor has testified a speculum might be used to insert into the vagina for the purpose of examining the womb. The sound might be used for the purpose of dilating the wound and thereby producing an abortion. These instruments may likewise be used for a legitimate and lawful purpose. The evidence in this case shows there were two instruments that the defendant had in his hands.

MR. SMYTH: The others were there in the open drawer immediately available to his hand, and I wanted to prove the nature of the instruments there available.

THE DEFENDANT'S COUNSEL: Every instrument he had in his office was immediately available.

THE COURT: You have not shown whether they were all in one place.

MR. SMYTH: Yes, with the exception of the two -- these instruments were in the drawer in the operating table where the woman and the doctor were, and these were all the instruments in that drawer. Mrs. Benseory said she took out all the instruments in that drawer. She said there were other instruments in other parts of the office.

DEFENDANT'S COUNSEL: There is not a scintilla of evidence that he did not have instruments in other parts of the desk and if he wanted to get out his speculum he had to swing open that drawer.

THE COURT: Technically speaking, the objection might be sustained, but it does not seem to me that it is prejudicial to the interests of the defendant to have these exhibits offered in evidence.

MR. SMYTH: I am willing, if counsel objects, not to go into these instruments because what they are has small bearing upon whether this defendant is guilty of the crime or not.

THE COURT: Exactly.

MR. SMYTH: I simply wanted the jury to understand what they are so we might be clear on it. If counsel objects to the offer of these instruments -- do you object to telling what they are?

DEFENDANT'S COUNSEL: I do not object to telling what



they are.

BY MR. SMYTH:

Q What is that instrument you hold? A That is an instrument for dilating the neck of the womb. It is called a cervical dilator.

THE COURT: You have such an instrument in your office?

THE WITNESS: Yes.

THE COURT: In fact every experienced physician has similar instruments?

THE WITNESS: Yes.

BY MR. SMYTH:

Q What is this instrument? A That is a uterine dressing forcep -- the uterus is the womb -- that is a dressing forceps which is specially designed to pass material up into the womb.

Q And what is this instrument? A That instrument is a uterine curette, instrument to curette the womb.

Q And what is this instrument? A That is a uterine applicator to apply medicine to the interior -- no, that is a probe -- I did not notice it closely enough at first, but I see it is a probe.

Q What is that for? A Not necessarily for any use about the uterus. Just a probe to pass into any little canal.

Q And what is this instrument? A That is a double

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vulsellum forceps, an instrument usually used to take hold of the neck of the womb to steady it.

Q And is this instrument anything other than what it appears, an ordinary paper cutter (showing another instrument)?

A I think that is only a paper cutter with some sort of a stamp in it.

Q As matter of fact, these last instruments I have shown you are instruments which any doctor who attends to women's diseases has in his possession as a rule? A Yes, sir.

Q And all of these instruments may be used for purposes other than that of performing an abortion? A Yes, sir.

#### CROSS-EXAMINATION:

Q The first instrument which was shown you was a speculum; will you describe to the jury how the speculum is inserted into the vagina -- let me put my question differently -- where would you stand if you proposed to insert the speculum into the vagina for the purposes of examination? A As a rule I should sit down in front of my operating table, the patient being before me.

Q You would not stand at her side for the purpose of inserting a speculum? A I might under some circumstances, but not as a rule. I say as a rule I would sit right in front of the patient.

Q If her dresses were to her knees, would you stand at her



side and insert a speculum? A Not well, no.

Q Could you insert that speculum with one hand?

A Yes.

Q You could? A Yes-- I would not wish to do it in that way but I could.

Q That is to say you could as a test of skill, but it would be a most unusual thing for a physician to undertake?

A Yes, sir.

Q To insert a speculum with one hand? A Yes, sir.

Q Now if you were about to insert a speculum into the vagina of a woman, would you have an another instrument in your hand at the time you were making the insertion -- would you be liable to have another instrument in your hand at the time you were inserting a speculum? A No.

Q You would not use both of your hands for the purpose of inserting the speculum, and you would place yourself at the head of the table and between the feet of the woman?

A yes, sir -- at what I would call the foot of the table.

Q The foot of the table? A Yes.

Q You would use both your hands? A Yes.

Q As matter of fact it would be quite a difficult thing for a physician to insert the speculum and at the same time carry a sound in his other hand, would it not -- quite an inconvenient thing for him to do? A Yes.

Q With such a sound as Exhibit No. 3? A Yes, sir.

Q Exhibit No. 3 is as you said, a male urethral sound, to dilate the urethra? A Yes, sir.

Q If you were proposing to perform an abortion, assuming of course you did so for lawful purposes, would you insert the speculum standing at the side of the table? A No, I don't think I should under any ordinary circumstances insert the speculum in that way.

Q So far as your instructions at medical school are concerned, and so far as your observations of the experts in gynecology are concerned, you have never seen any of them insert the speculum in that way, where a serious operation was contemplated? A I do not think so.

Q Assuming that the male urethral sound which is exhibited there was properly curved -- you of course are familiar with the proper curve of such a sound -- would it be used upon a female -- would it be liable to be used upon a female? A If you put it that way it would be hard to answer the question. I should say it might be used and it is fairly frequently used, a male sound, in diseases of woman, in treating them.

Q It is used in the treatment of woman -- would it be liable to be used where an effort was being made to correct a retroversion or falling of the womb? A Yes.

Q In the insertion of tampons? A Might be.

Q I will use your knowledge instead of my own -- state how it would be used in the endeavor to correct retroversion?



A The sound would be passed into the womb and the curved part passing back in the direction of the retroversion, and then the sound would be turned up and passed up towards the front with the idea of replacing the womb. That is rather an obsolete method, but it is still performed sometimes in that way.

Q You have an office of your own and have instruments of the character such as are exhibited here, and other instruments also -- where do you keep those instruments? A In an instrument case near my table.

Q Do you sometimes keep them in a tray of your examination table or have you these trays upon your examination table?

A I have a tray but I do not keep the instruments there.

Q Do some physicians within your knowledge keep instruments in trays upon the examination table? A Yes.

Q They do? A Yes.

Q Then if you entered a physician's office and saw him keeping instruments of this character in a tray upon his examination table, you would draw no extraordinary conclusion from that fact, would you? A No, sir.

Q You would draw no extraordinary conclusion from the fact that the doctor in this case had these instruments in a tray upon his examination table? A No, I don't know anything the case, sir, but just in regard to the instruments.

BY MR. SMITH:

Q What is retroversion of the womb -- of the uterus?

A Retroversion is where the womb is turned over backwards. Its normal position is resting upon the bladder with the top of the womb towards the front or pubic bone, and in retroversion it revolves upon an axis and turns over until the top of it is back in the hollow of the sacrum.

Q What is the ordinary and normal method of treating a retroverted womb, to straighten it out? A It varies considerably. You can hardly say there is an ordinary or usual method, but I think the method, however, usually adopted is to replace it by means of the finger and by manual manipulation draw the top of the womb up and push the cervix back -- push the top of the womb up from within and reach over from above and draw it up.

Q Did I understand you to say that the use of an instrument like this for the purpose of straightening out a fallen womb is an obsolete method more or less? A Yes, it is rather obsolete method I should say, although it is still used.

Q Do you know of any instrument that is better calculated to start an abortion in a woman who is pregnant only a short time, than an instrument such as that (indicating)?

Objected to. Objection overruled. Exception.

A No, I think that would be as good an instrument as any, if one wished to set up uterine pains in a pregnant woman, by inserting it in a pregnant woman.

Q Just how does an instrument of that sort operate to



cause an abortion? A It passes up between the membranes of the ovum and the tissues of the mother, and starts up a bleeding -- usually forms a little clot between these membranes and this sets up pains on contraction of the womb, which loosens up the ovum and finally force it out.

Q What is a catheter? A A catheter is an instrument --  
Objected to. Overruled.

THE WITNESS (Continuing): There are various kinds of catheters. When you speak of a catheter as a rule, you refer to an instrument used to draw water from the bladder.

Q Could a catheter be used to cause an abortion?

A Yes.

Q How is that used to cause it? A By passing it up into the womb.

Q To insert an instrument like that into the womb is it necessary to take any special position with regard to the patient? A Well, I should say that it was not absolutely necessary but the most ~~favorable~~ convenient position would be directly in front of the patient, with the patient upon the table.

Q Could it be done from the side with her legs drawn up? A It could be -- be rather an awkward position, though.

Q The purpose of the speculum is to enable one to look into the womb? A Yes.

Q In order to use a speculum you have to be in a position so you can see into the womb? A Yes.

Q And as I understand you it is very difficult to use a speculum without being in a position immediately in front of the patient? A Yes, to get the use of it you have to be in front.

Q That is practically between the legs as they are spread apart? A Yes.

Q In order to use the speculum, or an instrument of this sort, the first step is to cause the legs to be drawn up in some way? A Yes, sir.

Q What is the position of the legs assumed for that purpose? A The person lies upon the back upon the table and the legs are drawn up until the feet as a rule are about on a level with the body; thereby the thighs are flexed somewhat upon the abdomen.

Q The leg is somewhat in the position of mine now? A Yes.

Q Before starting to use any of these instruments, the first step is to get the body into that position? A Yes, sir.  
BY THE COURT:

Q Is there not some instrument used outside of this sound shown to you in order to produce an abortion? A Yes, a good many.

Q Name some of the instruments? A A rubber bougie is an instrument often used to produce an abortion.

Q Is not that very frequently used? A Yes, sir.



Q By physicians? A Yes, sir. Then another way is to dilate the neck of the womb with one of these dilators and pass gauze into it, sterilized gauze or iodoform gauze, and pack the neck of the womb open in that way until it sets up pains, and then sometimes an abortion is produced by simply dilating the neck of the womb thoroughly and scraping it out with a curette and empty it immediately without any preliminary dilation.

BY MR. SMYTH:

Q That was the instrument you said was a curette (indicating)? A Yes, sir, but not a curette of that kind, scarcely, for an immediate abortion. Then we find criminal abortions performed with all sorts of instruments, blunt instruments that can be inserted into the neck of the womb.

Q Practically any instrument inserted into the womb would start the abortion? A Yes, sir.

RE-DIRECT EXAMINATION:

Q Would you immediately, if it were necessary and lawful to perform an abortion, would you immediately upon dilating the vagina with the speculum, insert such a sound?

A No, I would not in that way.

Q What would you do? A Unless the case were very urgent I should use a method of gradually dilating the neck of the womb, which I would do by tents -- take 24 hours or more.

Q Or by packing? A Or by packing.

Q If you considered the circumstances justified you in using an instrument to pass between tissues of the fetus and the womb, would you immediately insert a sound or bougie -- would you immediately, upon dilating the vagina with the speculum, insert your sound or catheter or bougie? A If I wanted to produce an immediate abortion?

Q Yes? A No, I would empty the uterus as I have described, by dilating it immediately with a dilator, and then curetting it.

Q In other words, your steps would be these, you would insert the speculum so as to dilate the vagina; you would then take a dilator and dilate the neck of the womb, is that right? A Yes.

Q And then you would cleanse it, and then you would pass your catheter or bougie or sound, is that correct? A You have not exactly given the technique I would pursue, and I cannot answer that question in the affirmative.

Q You may give the technique, but I want to know if there are any intermediate steps between the insertion of the speculum and the use of the sound? A Between the insertion of the speculum and the use of the sound?

Q Yes? A In emptying the uterus immediately?

Q Yes? A I would not use the sound at all to empty it immediately.

Q What would you do? A Dilate the womb with a cer-



vical dilater and then empty it with a curette.

BY THE COURT:

Q prior to doing that would you cleanse the wound?

A Yes, it would be a long process before that.

Q Have to cleanse it? A Yes.

Q Before the insertion of any instrument at all?

A Yes, sir, of any instrument at all.

BY MR. SMYTH:

Q Why do you take these precautions? A To prevent the woman from being infected and dying from septic peritonitis.

Q It is necessary for the safety of the operation? A Yes.

Q It is not necessary for bringing about abortion?

A No.

Q Why is it you would not use an instrument of this sort without those preliminary and other steps? A If I wanted to produce an immediate abortion it would not be necessary to use an instrument of that kind. As soon as I had cleansed it properly I would dilate the cervix and go into the uterus and empty it with my curette. I refer to where I want to enter it immediately for the purpose of removing the fetus in a case of heart disease, or something of that kind.

Q At what stage of pregnancy does that arise?

A Very early.

Q This method differs from that in not being so immediate?

A Yes, substantially.

Q This method would bring about an abortion in about how long a time? A It might take two or three days.

Q And in the meantime the woman might leave your office and go to her home? A Yes.

Q And the abortion would take place at her home? A Yes.

Q Whereas if you used your method the abortion would take place in your own office? A Yes, sir.

Q This method being one which would give opportunity for her to leave your office and the abortion would take place in her home? A Yes, sir.

Q And these other steps are steps which are not necessary to create an abortion, but necessary to make it perfectly safe or as safe as it is possible to make it? A Yes, sir.

Q Would you consider the use of an instrument of this kind without these preliminary steps of cleanliness very dangerous? A Yes.

BY THE COURT:

Q Can you tell whether a woman has been conceived with child, in its early stages -- in other words, can you tell whether a woman is in a state of pregnancy for a month or two or three months? A Not absolutely.

Q Can you say if she is pregnant from objective examination for a period of one month? A No.

Q Or two months? A No.

Q Or three months? A No.



Q It would have to depend upon statements made by the patient, as to early pregnancy, the subjective symptoms? A When I say I cannot tell that I mean that I cannot be absolutely certain, but at three months a man can be almost certain from the appearance of the womb, from its density, its consistence, the appearance of the part and the symptoms of the patient -- he can be almost certain, but -- do not believe any man can be positive of pregnancy until the period of fetal movement or the hearing of fetal heart sounds. You may experience that fetal movement at four and a half months, and at five you may hear the fetal heart sounds, but before that you cannot state positively that your patient is pregnant.

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THE COURT: Assuming that a patient has been in a state of pregnancy for a period of twelve days or any one month, would a physician of any experience attempt to produce an abortion by the insertion of a speculum or sound?

A Not for any legitimate purpose.

Q I speak of an abortion, would that be a method to be pursued? A Yes, just to place the sound there would be the simplest and easiest thing to do. That would aid what they call bringing on the periods.

BY THE COURT:

Q At a period of less than a month? A Yes, if pregnancy had existed less than a month.

BY THE COURT:

Q There would be no physical symptoms to indicate there was pregnancy in the early stages, the first month or two?

A No, sir.

Q That is universally accepted as the truth? A Yes, sir.

BY MR. SMYTH:

Q If I understand you, if the woman has the subjective symptoms of pregnancy, of being overdue in her periods and nausea which accompanies it, you are not able to either positively affirm or deny by a physical examination whether she is pregnant or not? A No.



Q And if a woman gave that history you would not attempt to deny pregnancy or would not be convinced that she was not pregnant from any physical examination? A No.

Q Your physical examination would enable you to say she was not pregnant more than a certain amount of time?

A Yes.

Q You would be able to state she was not more than a month pregnant? A A physical examination could not give you positive evidence until much later than that.

Q So if the symptoms were there present, your examination would enable you to state that she was not more than so much pregnant? A Yes, sir.

THE COURT: In other words there is no way of telling whether a woman is in a state of pregnancy in her early stages.

BY MR. SMYTH:

Q There are other symptoms which indicate pregnancy in the early stages? A Yes, sir.

Q That is being overdue and nausea, those are both symptoms which may indicate pregnancy? A Yes, sir.

BY THE COURT:

Q Would those be indicated to the physician by an objective examination? A No, not from an objective examination. That would be subjective.

Q What the woman tells you? A Yes.

Q You would have to rely upon her story? A Yes.

**RE-CROSS EXAMINATION:**

Q Now, Doctor, as to nausea and vomiting, when would nausea and vomiting begin in pregnancy, about what time?

A It is not a uniform symptom of pregnancy.

Q But when it appears, when does it appear? A It varies much -- some women begin to be nauseated almost as soon as they become pregnant, within a few days -- it begins quite early in some women.

Q As a general rule when does it begin? A About six weeks to two months.

Q If you can tell us about how many exceptions in a hundred there would be to the rule that it begins six weeks or two months after pregnancy has taken place? A I could not possibly answer that question. There are no statistics that I know of upon which to base an answer.

Q Would you say the proportion was large or small in which vomiting appears at an earlier time than that?

A Small proportion I should say.

Q If a woman came to you and told you that she was overdue three or four days and complained she had suffered from nausea and vomiting, would you regard that as a symptom of pregnancy? A It would depend upon the woman's past history in regard to her menstrual period.



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Q Suppose you had no past history, would you then regard it as a symptom of pregnancy? A I should consider that it was a symptom of pregnancy.

Q You mean that it was or might be? A That it might be a symptom.

Q Now, if upon an examination you saw that she had retroversion or falling of the womb, might you assign the nausea and vomiting to this retroversion? A I should be more apt to do it at that early stage, than to pregnancy.

Q In other words under those circumstances you would say her nausea and vomiting were rather due to a retroversion than to any condition of pregnancy, is that right? A Yes.  
BY MR. SMITH:

Q Retroversion of the womb, if considerable, is very manifest upon physical examination and it is perfectly apparent on physical examination? A It is to those who are accustomed to examining women.

Q Are there any outward physical symptoms that the patient herself would be conscious of? A None typical of retroversion.

Q What? A There are no symptoms that are typical of it.

BY THE COURT:

Q Would the speculum be used to ascertain whether there is retroversion of the womb? A No.

Q It would not be used? A No.

BY MR. SMYTH:

Q The speculum would not be used for that purpose?

A No.

Q How would it be ascertained? A By a manual examination, placing the finger in the vagina and the hand upon the abdomen.

Q Could you determine it by using the speculum?

A Not by using the speculum alone.

BY THE DEFENDANT'S COUNSEL:

Q In treating retroversion, would you use a speculum?

A Yes.

Q In other words, on the first day the doctor did examine the patient here and it was only on the second day when she called for treatment that he inserted the speculum -- would some of the instruments which are in evidence here be needed for treatment of the retroversion? A Yes, sir.

BY MR. SMYTH:

Q Ordinarily you say you would treat retroversion by manipulation of the fingers and not an instrument? A No, I said I would replace the uterus with my fingers and hand and not replace it by inserting an instrument into it.

Q Is the use of an instrument of that sort at all common to-day in the treatment of retroversion of the uterus?

A I think it is -- rather common.



Q You think it is common? A Yes.

Q But you say it is not the approved method? A No.

BY THE DEFENDANT'S COUNSEL:

Q You say that in treating retroversion you would with your fingers manipulate the uterus so as to place it in position -- how would you support it in that position?

A That would depend upon conditions I found but I might use an instrument called a pessary for that purpose or I might pack it in place if there was some inflammatory action about it.

Q With what would you pack it? A With lamb's wool.

Q Called tampons? A Yes.

Q How would you insert these tampons? A Through a speculum with a dressing forcep.

Q Such as that (indicating)? A That would be good for that purpose.

BY MR. SMYTH:

Q This here you mean? A No.

Q Which one? A That one (indicating).

Q You hold it with that (indicating)? A Yes.

BY DEFENDANT'S COUNSEL:

Q In inserting these tampons with dressing forceps, would you use any other instrument or use the dressing forcep?

A I would probably use only the speculum and dressing forcep.

THE PEOPLE REST.

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DEFENDANT'S COUNSEL: I move to dismiss upon the ground there is absolutely no evidence whatever here to support the indictment. There has been no overt act shown in all the testimony. The entire case rests upon the unsupported evidence of the first witness who merely testifies that the doctor stood at her side with instruments in his hand; that he did nothing with those instruments and before he could do anything whatever she sprang from the table. The testimony of the last witness shows that a perfectly innocent construction can be placed upon the use of those instruments. Her own testimony as to the purpose for which she called the second time is of so uncertain and so indefinite a character as absolutely would not justify the necessity of the defendant putting in any defense.

THE COURT: I will deny your motion for the present and give you the benefit of an exception.

The Court admonishes the jury in accordance with Section 415 of the Code of Criminal Procedure, and takes an adjournment until to-morrow morning, October 15th, 1909, at 10:30 o'clock.

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CASE



BENJAMIN HOFFMAN, called as a witness on behalf of the defence, being duly sworn and examined, testified as follows:

DIRECT-EXAMINATION BY MR. TIVEN:

Q Where do you reside? A 271 Seventh street, Manhattan.

Q You are a Justice of the Municipal Court of the City of New York? A I am.

Q Do you know the defendant, Dr George Gluckman?

A Yes, sir.

Q For how long a time? A I have known him since childhood. We were neighbors together on East 5th street for many years.

Q Have you known him socially all this time? A Yes, sir, during the time his parents and his family lived down in my section.

Q Do you know his general reputation? A Yes, sir.

Q Tell the jury what it is? A Very good.

Q Do you know his reputation professionally? A I have heard it discussed.

Q State what it is? A Very good.

CROSS-EXAMINATION BY MR. SMYTH:

Q Have you heard it discussed among physicians? A Yes.

Q What section of the city are you residing in now?

A The East Side of New York.

Q About 5th street? A Seventh street.

Q You say that this defendant lived down in the neighborhood of 5th street at one time? A Yes.

Q With his family? A With his parents, brothers and sisters.

Q How long ago did he live in that neighborhood? A I should judge about eight or ten years ago.

Q Have you known him well since that time? A Yes, met him upon many occasions.

Q During the last few years have you met him? A Yes, very often.

Q Where has he lived during the last two or three years?

A In the Bronx--in Harlem.

Q Do you know about where? A I don't know the exact address--I did know it, but have not carried it in my mind.

Q Do you know how long he has lived there? A I think he has lived there since he left my section of the city.

Q Do you know how long he has had an office there?

A Ever since he has been admitted to practice as a physician.

Q About how long is that? A I think about six or seven years.

Q Have you ever lived in that neighborhood? A What neighborhood have you reference to?

Q Where his office is? A No, I have not.



Q Are you much acquainted in that neighborhood? A I am acquainted all over New York--born and raised in New York and know every section of it, I believe.

Q Have you many friends you visit in the particular neighborhood? A I have some.

Q Is your knowledge of his reputation pretty good as to what it is among his neighbors there? A I think so.

Q And there you say it is good? A Very good.

Q Do you happen to know Mr Moran? A I do not.

REDIRECT-EXAMINATION BY MR. TEVEN:

Q You are fellow members of several organizations?

A Yes--lodge members--two societies.

M A X S C H W A R T Z, called and affirmed on behalf of the defence, testified as follows:

DIRECT-EXAMINATION BY MR. TEVEN:

Q Where do you live? A 326 Riverside Drive.

Q Tell the jury your business? A Restaurant business.

Q Do you know the defendant, Dr George Gluckaman?

A Yes.

Q How long have you known him? A Since childhood.

Q Have you known his parents? A Yes.

Q You know them longer than you know him? A Yes.

Q You have known him as a physician? A Yes.

Q Do you know him socially? A Yes.

Q What is his reputation as a physician so far as you know? A Good, the best.

Q What is his reputation socially? A Good.

CROSS-EXAMINATION BY MR. SMYTH:

Q Do you know whether he made any specialty as a physician? A No, sir. He has been the doctor of my Society.

Q How long ago is that? A Four or five years ago.

Q Is he now? A Not now.

Q Do you know whether or not he has any specialty?

A No.

Q Do you know anything about who most of his patients have been? A No.

Q Do you know whether or not he has to a large degree treated women? A No, sir.

Q You mean you do not know? A I do not know.

Q You do not know very much as to the character of the medical practice that he has been engaged in? A I heard much of him because he is a member of my Society.

Q You heard he was a good doctor? A Yes.

Q Do you know anything about what line of work he has been doing as a doctor, what sort of people he was treating?

A He was a doctor.



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Q Do you know whether or not he was doctoring one class of persons more than another, or one class of disease more than another? A No.

J A C O B J A C O B S, called as a witness in behalf of the defence, duly sworn and examined, testified as follows:

DIRECT-EXAMINATION BY MR. TEVEN:

Q Where do you live? A 823 Fox street, Bronx.

Q What is your business? A Merchant tailor.

Q Where is your business? A 302 Grand street.

Q Do you know the defendant, George Gluckman? A Yes.

Q You are a neighbor of his? A Yes.

Q Live within a very short distance of his house?

A Yes.

Q Have you known him professionally? A Yes.

Q How? A He is family physician of mine.

Q Your family--been your family physician? A For three years.

Q And is still? A He is still a physician.

Q In your family? A Yes.

Q What is his professional reputation among his neighbors? A Very good.

Q Do you know the Doctor personally and socially?

A Yes.

Q What is his reputation? A Very good.

Q As a gentleman? A Very good--perfect gentleman.

CROSS-EXAMINATION BY MR. SMYTH:

Q How near to his apartment do you live? A A few blocks.

Q Do you know whether or not he was away from his apartment for any length of time last summer? A I do not know.

Q Do you happen to know a Mr Moran? A No.

SAMUEL F. KOENIG, called and sworn on behalf of the defence, testified as follows:

DIRECT-EXAMINATION BY MR. TEVEN:

Q Where do you live? A 237 7th street.

Q You are Secretary of State of the State of New York?

A Yes.

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

Q How long have you known him? A Probably ten years, I think.

Q Have you known him socially during that time? A Yes.

Q Do you know his general reputation socially? A Well, I know his reputation generally.

Q What would you say as to it? A He has a good reputation.

Q Do you know his reputation as a physician to any ex-



tent? A He sometimes treats my sister in the Bronx.

Q Do you know for what he has treated her in the past?

A No.

Q Do you know of his reputation as a physician--have you heard anything as to his reputation as a physician as would enable you to testify to it? A I have never inquired into his ability as a physician. I had no occasion to. I know his general reputation is good and his character is all right.

CROSS-EXAMINATION BY MR. SMYTH:

Q Have you ever heard anything against him? A No.

Q Do you know many doctors who know him? A Yes, sir.

Q Have you talked him over with other doctors? A Not recently.

JULIUS CONE, M. D., called and sworn in behalf of the defence, testified as follows:

DIRECT-EXAMINATION BY MR. TEVEN:

Q Where do you reside? A 296 Windsor place, Brooklyn.

Q Where do you practice? A Brooklyn, New York.

Q How long have you been practicing in Brooklyn?

A About a year and a half.

Q Prior to that time where were you practicing? A New York.

Q In the Bronx? A The Bronx.

Q Were you a neighbor of Dr Glucksmann? A Yes.

Q Did you come in contact with him socially? A Yes.

Q Do you know his reputation socially? A Yes.

Q What is it? A Very good.

Q Did you come in contact with him professionally?

A Yes.

Q Heard him discussed by physicians who were mutual friends and acquaintances of yours? A Yes.

Q What has been his reputation as a physician? A Good.

Q Do you know the character of the Doctor's practice?

A Yes.

Q What is it? A Very good.

Q Does the Doctor specialize or is he a general practitioner? A General practitioner.

No cross-examination.

LOUIS ALEXANDER, called and sworn in behalf of the defence, testified as follows:

DIRECT-EXAMINATION BY MR. TEVEN:

Q Where do you reside? A 296 Windsor place, Brooklyn.

Q What is your business? A Optician.

Q How long have you been such? A Thirty-two years.

Q How long have you known the defendant? A About eight years.

Q Have you known him socially during that time? A I



did.

Q What is his reputation? A Very good.

Q Have you known him professionally in any way during that time? A Somewhat.

Q From what have you known him professionally? A Friends of mine whom he attended to.

Q Did you have any direct dealings with the Doctor or with patients of the Doctor? A Some.

Q In what respect? A He sent me the patients for examination, that is for their eyes.

Q Do you know his reputation as a physician? A Yes.

Q What is it? A Very good.

No cross-examination.

MYRON BUTLER, called as a witness in behalf of the defence, affirmed, testifies as follows:

DIRECT-EXAMINATION BY MR. TEVEN:

Q Where do you reside? A 562 West 144.

Q In what are you engaged? A Attorney and counsellor at law.

Q Do you know Dr Gluckaman? A Yes, sir.

Q How long have you known him? A About five years.

Q Have you been a neighbor of his? A Lived in the same section about three years.

Q Do you know his reputation in the neighborhood in

which you live?, A Yes, I do; it has always been above reproach.

Q Both socially and professionally? A I met him socially very frequently.

No cross-examination.

JOSEPH MANISOF, M. D., called as a witness in

behalf of the defence, duly sworn, testified as follows:

DIRECT-EXAMINATION BY MR. TEVEN:

Q Where do you reside? A 963 Prospect avenue, Bronx.

Q How long have you known Dr Gluckman? A About fifteen years.

Q Have you known him intimately during that time?

A Very.

Q You are a near neighbor of his? A I am.

Q Do you know his reputation in your neighborhood?

A I do.

Q Do you know him both socially and professionally?

A Yes.

Q What is it? A Very good.

No cross-examination.

HUGO GUTTMAN, called as a witness in behalf of

the defence, being duly sworn, testified as follows:

DIRECT-EXAMINATION BY MR. TEVEN:



Q Where do you reside? A 501 West 125th street.

Q What is your business? A I am an accountant.

Q How long have you known Dr Glucksman? A About a year.

Q Through what do you know him? A He is controlling physician of the Society of which I am secretary.

Q What is the name of the society? A The Order of the Sons of Benjamin.

Q Has he been the physician of the society for any length of time? A Five years.

Q Do you know his reputation as a physician? A I know his general reputation, yes.

Q What is it? A So far as I know it is good.

No cross-examination.

MR. SMYTH: I am prepared to concede this doctor has an excellent reputation.

GEORGE GLUCKSMAN, M. D., the defendant, called as a witness in his own behalf, being duly sworn and examined, testified as follows:

DIRECT-EXAMINATION BY MR. TIVEN:

Q Where do you reside? A 862 Caldwell avenue, Bronx.

Q How old are you? A Twenty-eight.

Q How long have you been practicing physician? A A little over five years.

Q Do you recall the witness Mrs Francis Benseery? A I do.

Q When you first saw her did she come to you under that name? A I don't think so.

Q Do you recall the occasion upon which you first saw her? A Yes.

Q Will you tell the jury just what took place when she called upon you? A Some one rang my front door bell. I answered the bell, and there was a lady in the anteroom. She said, Is the doctor in? I said, Yes, I am the doctor. She, Doctor, can I see you? A I said, Yes, step into my office. I led her through my waiting room--through the private hall and then into the office, and then sat down at my desk and gave her a chair alongside of me. I asked her what I could do for her. She said, "Doctor, I have been recommended to you for treatment." I said, By whom? She mentioned two people, a Mrs Moran and Mrs Kietel, I think--I am not positive of the last. I only recollect the name of Moran because I heard it this morning. I said, It is surprising to me that Mrs Moran should have recommended me to you because I had some difficulty with the Morans civilly. I said, Well, other people recommend me, and so why not she. I said, What can I do for you? She said, Doctor, I have been vomiting for three or four days and



my menstrual periods have not come around. So I said to her, "There are one hundred and one causes for that." I said, Are you married? She said yes. How many children have you? Two or three; I don't recollect which she answered ~~me~~ the youngest, if I recollect right, was a little over a year or a year and a half. And I said, Have you had a cold. She said no. Have you back aches; and she said, Not particularly. I then told her I would have to examine her before I could tell her what was ailing her. I asked her to take off her hat and step upon the operating table to be examined.

Q What took place after she got upon the operating table? A She got up on the table and I raised the stirrups to make a gynecological examination. I then made a by manual examination.

THE COURT: Some of us may have studied medicine, but some of know nothing about medical terms, so please explain to the jury what you mean by the various medical terms you use.

THE WITNESS: I made an examination in which I used both hands, one on the abdomen above the position where the womb would be, and one hand internally. It took me a couple of minutes. I then took a towel and wiped my hands and sat down at the desk and said, That is all.

BY MR. TEVJEN:

Q Did you come to a conclusion as the result of this examination? A Yes.

Q What was that conclusion? A That she had what is commonly known as retroversion or falling of the womb.

Q Explain to the jury what retroversion or falling of the womb is? A Retroversion or falling of the womb is a condition in which--the womb has two portions, the cervix and the body--otherwise a neck and body. The neck is narrow and the body is short and stout, and in women who have given birth to children before you will often find a condition in which the body of the womb falls backward at an angle different from what it was originally intended.

Q Did any conversation take place between you after you sat down? A Yes.

Q What did she do after she got off the examination table? A She sat down in the same chair she had been before.

Q And then a conversation took place between you?  
A Yes.

Q Tell us what that conversation was? A She said, "Well, Doctor"-- then I said, You have a retroversion--you have retroversion there; and I said, That would account for your vomiting spells, which are reflex, and might account for the fact that your menstruation is held up. She said, What shall I do? I said, I can correct that retroversion. She said, Would you open me up? I said, Naturally if it was due to the retroversion--your menses, when the condition is corrected, will return, but if pregnant it will not interfere with



your pregnancy.

Q Did she say anything after that? A Yes, asked me what my fee was. As is usual with physicians we gave the fee according to the patient, and Mrs Engle looked as if she could afford to pay, and I told her my fee would be \$25 for the correction.

Q What did she say? A She said, Well, Doctor, I have no money with me.

Q Did you answer her? A Yes, I said, It makes no difference, you will probably have ten or twelve times to come, and pay as you go along or in a lump sum.

Q Was there any further conversation between you?

A Yes--made an appointment for a future date.

Q Then she left the office? A Yes.

Q Did she come again? A Yes, a day or two following.

Q When she came then who admitted her? A I am not positive, I think it was I.

Q Was there any conversation between you when she came the second time? A Yes.

Q What was that conversation? A If I recollect rightly, I had made an appointment with the lady for a little after 12, and she did not get there until a quarter of two, and I was in the act of getting ready to go out and meet some engagement for the afternoon. She said, "Were you afraid I would not come?" I said, No, it made no difference, and I have not

any of your money, so I have not begun to treat you.

Q Did this conversation take place in the office?

A On the way to the office, through the private hall and waiting room into the office.

Q When you got to the office was there any further conversation? A As to what?

Q As to anything at all, if there was any further conversation? A Yes, I sat down at my desk, and the lady sat down in the same chair she had been the time she was there previously. And I asked her then, Have you menstruated since? And she said, No. And I said, Well, what are you going to do? She said, Go ahead, Doctor. I said, Take off your hat and get up on the table and I will re-examine you to look this thing over, because I had not made any examination with any instrument that I could tell what the real condition was. I could feel the retroversion the first time.

Q Did she get on the table without assistance? A Yes.

Q At this point describe to the jury as well as you can the relative position of the table and the desk? A I have an office about the width of the jury box, possibly three-quarters the length of the jury box. In the right hand corner of my office is a wooden instrument cabinet with glass shelving. Directly in front of that, as this is alongside of the wall-- directly in front of that I have a flat top desk. Next to



that in the corner nearest to me I have a revolving bookcase. On the opposite side, on the left side of the room, close up against the wall, probably four inches intervening, I have an operating table--operating and examination table combined.

Q About how big a space is there between the operating table and desk? A Possibly four or five foot.

Q Now, will you tell us what took place after the woman laid herself down on the operating table? A Yes, sir. She was on the operating table in the dorsal lithotomy position.  
BY THE COURT:

Q What is that? A Flat upon her back with her thighs raised and knees flexed, with feet supported in a pair of stirrups and head on the cushion, on a small leather cushion about four inches thick, and I was sitting at my desk or standing at the desk, and as I turned around she said, Doctor, will you let me have some water, please? I said, Certainly, and I brought her a glass of water, and handed her the water, and she raised herself on the table and sipped the water, and gave me the glass back, and I turned around from my table to the desk, and as I turned back again--

Q Can you place your glass of water standing by the table upon the desk? A Yes, sir, by reaching far over I could.

Q Did you on this occasion? A I could not--my chair

in which I sit was there in front of the desk.

Q Did you reach over? A No, I turned around and faced it--took about one or two steps. I turned around again, and she said, Let me have some more water, I had a fish dinner, this is Friday, and so I handed her a second glass of water--the glass of water again, and she drank again and returned it to me and laid down and I turned around to put the glass down.

Q Then what took place? A Then as I turned I heard some rattling at the instruments which are kept in that operating table. She said, Doctor, do not touch me, and she shouted some name, either Tom and Barney or something of that kind--I remember Tom.

Q Are there drawers in this operating table of yours? A Yes, sir, there is a swivel on the side of the table in which I keep my gynecological instruments.

Q How many drawers are there in this table? A Three, the top for the instruments, the center one for cotton or gauze, and the bottom for waste cotton.

Q Were you accustomed to keeping the instruments in this drawer of the table? A Yes, sir, as my cabinet is rather filled with other instruments, and they are gynecological instruments used at the table.

CROSS-EXAMINATION BY MR. SMYTH:

Q Proceed from that point, what did you do then?



Objected to as incompetent, irrelevant and immaterial and not proper upon cross-examination.

Objection overruled. Exception.

Q She shouted and what happened? A I ran out.

Q Where did you go? A I left the house.

Q How did you leave the house? A She called for Tom and the other man, whoever he was, in front of the house, and I ran through the back. I am living on the ground floor, and out of the window into the back yard.

Q Jumped out of the window? A Yes, I am on the ground floor.

Q How far is the bottom of your window from the ground? The bottom of my window?

Q Yes. A About six or eight feet.

Q Did you jump down that distance? A Dropped down.

Q Where did you go? A On Trinity avenue.

Q You went out over the back fence? A Yes.

Q Then where did you go? A I went down to look for my counsel.

Q Went down to look for your counsel? A Yes.

Q Who was your counsel? A Mr Tevin.

Q What did you do then? A I could not find him.

Q Then where did you go? A I went down to see some friends of mine.

Q Who were they? A Mr Schwartz.

Q The gentleman who testified here to-day? A Yes, sir, because my father is generally at his place.

Q Did you see him? A No.

Q Then what did you do? A I went to relatives.

Q What relatives? A Some relatives to stay there until I could see my counsel.

Q Where were the relatives? A Living in the Bronx.

Q What address? A Eagle avenue.

Q When did you get there? A That night.

Q What time? A I guess about 12 o'clock.

Q Spend the night there? A No.

Q You got there at 12 o'clock? A Yes.

Q How long did you stay there? A Half an hour.

Q Where did you go when you went out? A I went visiting some other friends.

Q Who were they? A In Hoboken.

Q You went over to Hoboken? A Yes, sir.

Q What time did you get to Hoboken? A About half past two or three o'clock.

Q Did you find your friend there? A Yes, sir, a second cousin of mine.

Q Is it a man? A The family.

Q Was your cousin the man of the family? A Yes.

Q You found him? A Yes.

Q About half past two in the morning? A Yes.



Q Did you spend the night with him? A Yes.

Q What did you do the next day?

Objected to upon the ground it is subsequent to the act alleged and as immaterial.

Objection overruled. Exception.

Q You mean Hoboken, New Jersey? A Yes.

Q What did you do the next day? A Came back to New York.

Q Where? A Looking again for Mr Teven.

Q Downtown? A Yes.

Q Did you find him? A No, he was out of town.

Q Then what did you do after that? A I simply kept coming,--tried to find out why this woman was in my office and why she had called these men. I got in communication with members of my family.

Q You came over to New York the next day looking for Mr Teven and did not find him and then did you go back to Hoboken?

A I spent a good part of that day in New York.

Q What part of New York? A On the East Side, 158th street and Eighth avenue.

Q Where? A At the Polo Grounds.

Q Baseball game? A Yes.

Q Then you went back to Hoboken again that night?

A Yes.

Q How long did you stay there? A That night I did

not stay at my cousin's house.

Q But you stayed in Hoboken? A Yes.

Q Where? A I don't remember the name of the hotel.

Q Why didn't you stay at your cousin's house? A He has a big family and I did not like to inconvenience him too much.

Q You went to a hotel there in Hoboken? A Yes.

Q What did you do the day following? A The day following I think was the day I met Mr Teven.

Q You consulted with him? A Yes.

Q How long did you stay in Hoboken? A That was the last day in Hoboken.

Q What did you do after that? A Mr Teven advised me--he said you are nervous--

Q Never mind what he advised you--I ask you what you did after that? A I gave Mr Teven time to see what this thing was about and stayed away.

Q Where did you stay? A Newark.

Q Giving Mr Teven time to find out what it was all about? A Yes.

Q Did you do that under Mr Teven's advice? A Yes.

Q He advised you to stay out of the city? A No.

Q Advised you to go to Newark? A He said as long as you are away you might as well stay away until I find out what this thing is.



Q How long did you stay in Newark? A Not positive-- don't know how many days it was--until Mr Teven asked me to come back.

Q About how long? A About three or four days.

Q Did you come back to New York then? A Yes.

Q What did Mr Teven tell you about coming back? A He said, Come back, the District Attorney wants to see you.

Q He told you the District Attorney wanted to see you?

A Yes.

Q Then where did you go? A To the District Attorney's office.

Q Whom did you see there? A A gentleman by the name of Mr Duivier.

Q Who? A Mr Duivier.

Q And then what did you do? A I don't know. I was speaking to Mr Duivier.

Q Then you went home after that and you were arrested?

A No, I was not arrested then.

QX I say you went home and stayed there until you were arrested? A No, I went home and practiced again and was home about a week and then went on my vacation and came back from my vacation after three weeks and practiced about two weeks more before the arrest.

Q Now, when Mrs Benseory came in, what did she say was the trouble with her? A That she was vomiting.

Q Simply said that she was vomiting? A And was four days overdue, three or four days overdue.

Q You told her that might be due to one of one hundred and one causes? A One hundred and one different causes.

Q Did she ask you to examine her and find out what the cause was? A Naturally if a patient comes to my office and wants to know what is the matter with them, they come there for treatment.

Q Did she tell you she thought she was pregnant? A Not at the time--she told me she was in a weakened condition.

Q On account of the vomiting? A I don't know on account of what--and then asked her, Are you married, and she said yes. And I asked her how old her youngest child was.

Q What did she tell you? A As I recollect, as I testified before, a year and a half or two. I am not sure.

Q Then you examined her? A Yes.

Q You were satisfied from your examination that she had a retroversion of the uterus? A Yes, sir.

Q Did you tell her so? A Yes.

Q In telling her so what did you say about it? A I said, You have a retroversion and that in itself may cause both the vomiting and the cessation of menses.

Q Did you say anything about the necessity of treatment?

A Yes, sir, naturally.

Q What harm does a retroverted uterus do? A It will



cause reflex vomiting and also--possibly cause cessation of the menstruation for a time. If the condition is corrected it will return.

Q Supposing the condition is not corrected? A Then the woman will suffer pain, and after two weeks or so she may have stopping.

Q What do you mean by that? A Menstruation, as though it begins and stops again--irregular.

Q That would cause irregular menstruation? A Yes.

Q Very irregular? A According to how much retroversion there is.

Q How much retroversion was there in this case?

A Retroversion of about the second degree.

Q About how much irregularity is that likely to cause?

A There are first, second and third degree according to the amount.

Q We talk about retroversion in the second degree, I want to find out what harm that is going to do to a woman?

A Likely to cause this vomiting.

Q And what else? A Cessation of menstruation for a time until the uterus, when it is loaded with blood, it will throw itself forward and then throw off some of the blood.

Q After that what would be the further trouble?

A The womb would then fall back and she would still have pain

and vomiting.

Q That would be likely to continue quite a long time?

A Yes.

Q It is not necessarily the cause of these symptoms?

A It must not cause them, but it does--it is not always the cause of them.

Q Is it a condition that can exist without causing any trouble? A No, there is always some trouble or other, either back ache or vomiting or nausea.

Q Do not women frequently have it without knowing for a long time? A Yes, women who have given birth to eight or ten children.

Q But not women who have had one or two children?

A No, not as a usual thing.

Q You made an examination merely with your hands?

A Yes.

Q And that examination is perfectly sufficient to ascertain that fact? A No, not to make sure. Naturally it is an examination which a man can make. He cannot positively say.

Q You can tell by manual examination whether there is a retroverted uterus? A Yes.

Q And there is no doubt about it if you find it? A No.

Q Was there any doubt about her having it? A No.

Q You were sure she had it? A Yes.

Q Did you form any conclusion as to whether she was



pregnant or not? A No, I could not.

Q Did you have any conversation with her as to whether she was pregnant or not? A Except so far as the fact that she was three or four days overdue.

Q What was said about her being pregnant? A I told her, I said I could not tell she was pregnant nor could any other man at that time.

Q Did you have any conversation with her as to what would be the nature of the treatment you were about to give her?

A Yes.

Q What did you say about that? A Tamponing.

Q Describe to the jury what you mean by that? A A tampon is a cotton on a string which is placed behind the uterus so as to throw it back and keep it in place.

Q How do you insert that? A First insert a speculum, clean out the vagina and cervix, which I explained before, and then taking a cotton applicator or uterine dressing forceps, carry the cotton in that dressing forceps on a string and pass it behind the uterus and simply leave it there.

Q Not into the uterus, but behind? A Behind.

Q You told her you would carry out that treatment?

A No, I do not explain the treatment to my patients.

Q That was the treatment you had in your mind? A That was the treatment required.

Q You say that takes a number of times? A Yes.

Q About how many times? A Ten or twelve or fifteen.

Q You do the same thing over again each time? A Yes, sir, every second or third day.

Q The next day when she came in had you prepared any instruments? A No, the instruments were right there, always prepared.

Q Had you boiled them, sterilized them? A When they were last used.

Q Did you tell her you had had the instruments boiled since 12 o'clock? A I don't recollect.

Q Do you deny that statement of hers that you said that? A As to what?

Q That you had had the instruments boiled? A I might have said so. My instruments are cleaned and always boiled. They are boiled when they are put away and cleaned again when I am going to use them.

Q Did you tell you had them boiled since 12 or half past 12? A I don't recollect that I did.

Q Did you tell her she was pregnant twelve days? A No.

Q Sure about that? A Yes. I took her statement that she was three or four days overdue.

Q Did you tell her she had been pregnant twelve days? A No, sir.

Q Did you say to her, I had the instruments boiled at 12



o'clock or 12:30--she was not quite sure? A I don't recollect that.

Q And did she say, I wish I had brought my sister with me? A No.

Q Did you say you would not let anybody in with her?

A I said as a usual thing in making a gynecological examination no one was admitted in the office because the woman is exposed.

Q How did you happen to say that, what brought that out, that conversation? A Because, if I recollect correctly, she asked me to have some one bring her the water into my office, and I went for it myself.

Q What? A She asked to have some one bring her in a glass of water, and I went out for the water myself.

Q Who else was in your apartment with her? A In my office or waiting room, no one.

Q No, in your apartment? A My mother, my sister and a relative of my mother's who had just come from the other side.

Q A man or woman? A Woman.

Q And because she wanted you to have some<sup>one</sup> bring her some water and there were women there, you told her you would get it yourself because you did not want anybody else to come in?

A Members of my own family I was not going to have see her exposed.

Q She was not exposed? A Yes.

Q Was she exposed? A Yes.

Q Her private parts? A Yes.

Q When she asked for the glass of water? A Yes.

Q You are sure she did not say, I wish I had brought my sister with me, and that is why you said you not let anyone in?

A I am sure those words were not mentioned.

Q You did not have any nurse with you? A No.

Q You did go out and get the glass of water? A Yes.

Q Did you take any instruments out of the drawer? A No, I simply swung the swivel.

Q Did you have any instruments in your hand at all?

A No.

Q Did you, as she states, before she was on the table, or after she was on the table, hold a catheter in your hand?

A I don't recollect.

Q She said you held a catheter and said that was what midwives usually use, but you would not use that? A I do not recollect that I told her that. I don't think I had a catheter. I don't think there is a catheter there, because they are always bought new.

Q She said, "He went to a closet in the corner, like a china closet, and took out a red looking thing, a piece of long rubber, it looked like a catheter, and he said, This is what midwives use, but I am not going to use that." Is that statement true? A I do not recollect it.



Q Do you deny it? A I do not recollect it.

Q Did you then take this curved sound in your hand, which has been introduced in evidence here? A No, sir.

Q Did you have that in your hand at all? A No.

Q Did you say to her you would have to use a curved sound because a straight one would not do, it was very dangerous? A No.

Q You did not say that to her? A No.

Q Did you have a speculum in your hand? A No.

Q It was not true that she took the speculum and sound out of your hand? A No, because they were in the tray.

Q You did not take any instrument. A I had not time. A I had my back turned to her putting down the glass of water when she jumped from the table.

Q She jumped for the table? A Yes.

Q Did you look around when she jumped from the table?

A Yes, I heard the noise of the instruments.

Q What was she doing when you looked around? A She said, "Doctor, don't touch me," and called Tom.

Q She said, Doctor, don't touch me? A Yes.

Q And called Tom? A And some other name.

Q Is that all she said? A At the time, yes; and then for the moment I was stunned.

Q And what happened? A I ran out.

Q Is that all she said while you were there? A That

was all I heard.

Q Simply heard her say, D not touch me, and called Tom and Barney? A Yes.

Q And then you ran out? A Yes.

Q And got out of your back window and over the fence?

A Yes.

Q Did she tell you she was from the County Medical Society? A No.

Q You are sure she did not? A I did not hear it. She might have after I was gone. The thing did not take four seconds.

Q Why did you run away? A Because I remembered at the time when she hollered, "Doctor, don't touch me" and called tom, and I had some difficulty with a family named Moran before in a civil action, and when they were defeated in the civil action this Moran threatened in court to do me injury.

Q What was the difficulty you had with Moran? A Civil action.

Q What sort of difficulty?

Objected to as incompetent and immaterial.

Overruled, and exception.

Q What was the difficulty you had with Moran? A Moran was dissatisfied with the treatment his wife had received from me.

Q What did you treat his wife for? A For hemorrhage.



Q Do you remember telling Mrs Benseory you had given Mrs Moran treatment? A Yes.

Q Do you remember telling her there was a woman in Cape May that you had performed a certain number of abortions on in three years? A No; I remember saying there was a woman in Cape May that lived in Cape May whom I had treated.

Q What did you say you treated her for? A I don't think I said anything.

Q As matter of fact had you not performed an abortion on Mrs Moran? A No.

Q Now you say--how long ago was ~~it before this~~ that Mrs Moran had made this threat against you? A In court.

Q How long before this occurrence was it that Mr Moran made that threat against you in court? A A few months.

Q What? A I don't know whether a month or two or three.

Q About when was it? A I don't recollect exactly.

DEFENDANT'S COUNSEL: I can fix it if you want it.

MR. SMYTH: If you can, when the case was up in court.

DEFENDANT'S COUNSEL: June 17, 1908.

BY MR. SMYTH:

Q What threat did Mr Moran make against you? A He threatened to shoot me, I think.

Q Threatened to shoot you? A Yes, and threatened all

sorts of things.

Q What was Mr Moran's first name? A I don't recollect. I think it was Tom.

Q Had you seen Mr Moran between that time and the time when Mrs Benzeory was there? A No--between what time?

Q Between the time he made that threat in court and the time Mrs Benzeory called at your office? A No.

Q You mentioned Mrs Moran to Mrs Benzeory when she came in the first day? A Yes.

Q What did you say about her? A I said, It is funny that Mrs Moran should recommend me.

Q You say she told you Mrs Moran recommended you?  
A Yes, I think so; that was how the name came to be mentioned.

Q Sure about that? A Almost positive.

Q You said it was funny that she should have recommended you? A Yes.

Q And this woman jumped off and shouted Tom, and then what was it you were afraid of? A Afraid of that bodily injury which ran through my brain at the time, recollecting Moran's threat.

Q What were you afraid was going to happen to you?

A How was I know I was not going to get a beating there.

Q You were afraid some men were going to come in and give you a beating? A Yes.



Q Did you let Mrs Benzecry in that day? A The second time?

Q Yes. A I think so.

Q You have a spring lock on your door? A No, regular Yale lock.

Q It locks when it shuts? A No, there is a catch to it.

Q It was locked that day? A I don't know, I did not try it.

Q What you were afraid was there were two men outside there who might give you a beating? A Yes.

Q On account of the trouble you had with the Morans? A At the moment I was rather disconcerted.

Q Why did you go to the police station when you ran away? A When I was running I said I was going downtown to see about it.

Q Going down to see your lawyer? A Yes, as he told me if I had any difficulty with the Morans let him know.

Q When you did not find him why didn't you go to the police, when you thought men were threatening your life? A I then thought it over and made up my mind I was going to see what this thing was.

Q As matter of fact, did not Mrs Benzecry state to you that she was from the County Medical Society? A I did not hear it. It did not take ten seconds from the time she jumped

from the table until I was out of the room.

Q You did not report to the police that you were in danger and ask them to escort you back to your premises and give you protection? A No, I never had any dealings with the police and don't know how to go about those things.

Q So you went to your lawyer? A Yes--he is not my lawyer alone, he is my friend. He has been a friend of mine.

Q Was he your lawyer in this civil action? A Yes.

Q You went down to see him about it? A Yes.

Q Then you went out of the State? A Yes.

Q Why did you go to Newark instead of staying in Hoboken?

A This cousin of mine moved to Newark.

Q When did he move to Newark? A In the interval-- that was one reason I did not stay the second time.

Q Because he was moving to Newark? A Yes.

Q Did you live with him at Newark when he got to Newark?

A Yes.

Q In his house? A Yes.

Q That was the reason you stayed in Newark because you were afraid some men would give you a beating? A No, at that time--my counsel told me to stay there until he found out what this thing was about.

Q Found out what thing was about? A Why this woman was in my office. You have to ask him that.

Q Didn't you know at the time that you were away that



the trouble in your office was, there was a representative of the County Medical Society there? A Yes, sir, I found that out the next day.

Q How did you find it out? A Through my brother, the youngest one.

Q You found it out the next day through your youngest brother that it was a County Medical Society representative who was there? A Yes, sir.

Q Then you were not afraid of a beating any longer?  
A No.

Q Why didn't you go back home then? A Then I saw my counsel--I wanted to see him.

Q Why didn't you go back home, you had not done anything wrong? A I wanted to know what he had to say. I did not know what this thing was.

Q You were not afraid of a beating any longer? A No.

Q Why didn't you go back and stay home then instead of staying out of the State? A Well, now, I don't know very much about the police or police methods, but I understand if they wanted to arrest me they could have, so I thought, and I was going to see my counsel and arrange for things before I was arrested for anything whatever.

Q What made you think you were going to be arrested?

A I heard she was an officer or there had been officers there from the police or from the County Medical Society.

Q You had not done anything wrong to be arrested for?

A No.

Q You have no other explanation to give than what you have already given for your conduct in getting out of your back window and jumping over the fence and staying out of the State?

A None whatever.

Q Had you ever had any trouble with the County Medical Society? A No.

Q Or with Mrs Benzecry? A No.

Q You know of no motive on their part for wishing to do you harm? A No.

REDIRECT-EXAMINATION BY MR. TEVEN:

Q In correcting a retroversion tampons are not inserted into the womb? A No.

Q They would have absolutely no effect on pregnancy? A None whatever.

Q Is it possible for a physician at any time to state to a woman that she is pregnant four or five or six or twelve days? A No.

BY THE COURT:

Q Did you have any instrument in your hand that day?

A No, sir, pretty positive I did not, because I did not have time. I had the glass of water.

BY MR. TEVEN:



Q Now, you were asked whether you had a nurse present, is it the general thing for physicians in your neighborhood, physicians of your practice, to have nurses in their offices?

A No, sir.

Q Now, you learned the next day that the people who had come to your office were representatives of the County Medical Society and police officers? A Yes, sir.

Q Did you consider the question of securing bail upon arrest? A What?

Q Did you consider the question of securing bail upon arrest? A I had not been arrested.

Q I know, I want to know whether you felt you wanted to be in a position to secure bail immediately before surrendering yourself? A Yes, sir.

Q Was that one of your reasons for going over to Newark? A Yes, until bail could be arranged, if bail was necessary.

Q You are familiar with the County Medical Society? A As to what?

Q You know if the County Medical Society should, through its representative, seek a warrant for the arrest of a man, they would be quite apt to secure it? A Yes.

Q Did you feel that you wanted to take precautions so as not to stay in jail? A Yes, sir, certainly.

Q Until such time as you could obtain bail? A Yes, sir.

WILLIAM I. SIROVICH, M. D., called as a witness in behalf of the defence, being duly sworn and examined, testified as follows:

DIRECT-EXAMINATION BY MR. TEVEN:

Q Where do you reside? A 539 East 6th street.

Q You are a physician and surgeon? A Yes, sir.

Q How long have you been in practice? Since the last four years.

Q You are a graduate of what institution? A I graduated from the public schools and high schools of New York, from the College of the City of New York, and received my Master of Arts degree from Columbia, and graduated from the College of Physicians and Surgeons of Columbia University.

Q Is it a possibility for any physician to be able to say to a woman that she has been pregnant twelve days? A Not that I know of.

Q How do you reckon the time at which a birth is to be expected, from when do you reckon and how long do you reckon?

A From the first day of the last menstruation three months back and you add seven days. In other words if I wanted to determine the time when a woman will be delivered of a child I ask her, When did you have your last menstruation? If she says to me, I had it on October 10, I date back three months, that is to say, September, August, July 10, and add seven days.



That is the way we determine just about the time when a woman will be delivered of her child.

BY MR. SMYTH:

Q You mean nine months and ten days is what you add?

THE WITNESS: I simply said we take the first day of the last menstruation and we date back three months and add seven days.

Q You do not mean you expect them to be born three months before? A No.

BY MR. SMYTH:

Q You mean you set the date as a year from three months before? A If you heard me you would hear that I said we date three months back and that makes it just about 280 days.

Q You say you take the date of the last menstruation? A Yes.

Q And go back three months? A Yes, sir, and add seven days.

Q You talk of a year from that date? A No, sir.

Q You do not expect a child to be born three months before? A You add a year later, of course, I meant that of course.

BY MR. THVIES:

Q Will you tell the requisite steps for treatment of a retroversion of the uterus? A We have about three treatments for retroversion of the uterus. Retroversion means falling back of the womb. The first treatment and the usual treatment is treatment by tamponing the wound. We do that first by inserting the speculum and then taking a plug of cotton tied with a piece of cord and with forceps or by the aid of a uterine applicator we put that underneath the womb and then take out the forceps and leave the cotton in place 24 or 48 hours, and have the woman come back -- take it out herself -- and we insert it



again -- that is one method. The second method is the use of pessaries -- a kind of rubber - made out of rubber or made out of different materials, and we place that in a position so as to prop up the womb and maintain it in its place. The third way of correcting retroversion of the uterus or a womb fallen back instead of being in front is by operative procedure -- the technical term is known as ventro fixation. We open the abdomen and sew the womb to the abdomen. These are the three methods in common use.

Q Now do you know which of these is commonly adopted?

A The most common one before we rely upon the pessary is the method of tamponing. We always try by tamponing first, and then we have recourse to the pessary, if we do not succeed with the tampon, because, the pessaries may give rise to inflammation and injury. It is an object made out of rubber or some hard material and if we put that inside of the canal to support the womb, it is liable to cause irritation by friction or rubbing, and there are some cases where it gives rise to serious trouble and that is why we have recourse to that as the second method.

Q I show you People's Exhibit 2, what is that used for?

A This is a speculum. This instrument is used to examine the internal organs of any woman. We separate the lip of the woman and we insert the speculum like that, dilate it, and then with the screw -- this screw works up against this instrument so

(indicating), so that when we look into the canal of a woman we can see if there is any disease or any ulceration or any discharge from the womb or any trouble whatever. This is known as a speculum.

Q Is it possible to manipulate that instrument with one hand and manipulate the screw? A We cannot manipulate the speculum with one hand for the simple reason that every physician in college is taught first to separate the lips of the woman before introducing it and then put it inside and turn it around, and by holding it in place, and then use the other hand to screw this -- because he cannot screw it down this way and hold it down like that with one hand.

CROSS-EXAMINATION:

Q Would you use a sound to treat a retroversion of the uterus? A Yes.

Q I understood you to say that a physician could not say that a woman was twelve days pregnant, by that I understand you of course to mean that he could not with absolute precision determine that fact? A Yes, sir.

Q But he might say it? A Yes.

THE DEFENSE RESTS.



FRANCIS BENZECRY, recalled in rebuttal by the People.

BY MR SMYTH:

Q Have you ever suffered from falling of the womb?

A Not that I knew of.

BY THE COURT:

Q Not that you knew of? A No.

BY MR : SMYTH:

Q At the time you went to see the doctor were you sick in any way whatever? A No, not that I knew of.

Q Did you suffer any physical ailment at all at that time? A No.

Q You were having your regular monthly sicknesses at that time? A Yes.

Q At their regular times? A Yes.

Q Without any unusual symptoms? A Yes.

Q And continued to do so thereafter? A Yes.

Q You have never been treated by any one for falling of the womb? A No.

Q You are still well and have been since that time? A Yes.

Q In fact, have you suffered from sickness at all except your regular periods? A No, never have.

Q For a good many years? A No, sir.

Q Did you say to the doctor that Mrs. Moran had sent you there? A No, I did not.

Q As matter of fact had you known and seen Mrs. Moran before you went there? A Yes, I did.

Q Did you mention Mrs. Moran's name in any way before he spoke of her and of other women, as women he had treated?

A No.

BY THE COURT:

Q Do you knew Mrs. Moran? A I met her down at the District Attorney's office.

Q Prior to the time you visited the defendant? A No, sir.

Q You did not know her? A No, sir.

BY MR. SMYTH:

Q Had you heard of her before you went to this defendant?

A Yes, sir.

Q How old was your youngest child at the time you went to see the doctor? A About six and a half years.

Q You had two children? A Yes.

BY THE COURT:

Q And did you go to the defendant's place on any complaint made by Mrs. Moran? A Yes.

Q Then you knew that Mrs. Moran figured in the case?

A Yes.

Q Did you make mention to the defendant of the name of Mrs. Moran? A No.

Q What did the defendant say to you about Mrs. Moran?



A He told me that he had treated Mrs. Moran and she had paid him \$75.

Q At that time you were fully aware of this Mrs. Moran?

A Yes.

Q Did you say to the defendant that Mrs. Moran recommended you to him? A No.

Q Did he say to you that he was surprised that Mrs. Moran would recommend him to you? A No.

Q Before Mrs. Moran called at your office did you have occasion to go to the defendant's office? A No, sir.

CROSS-EXAMINATION:

Q Did you tell the doctor when you called at his office that you had been vomiting? A Yes.

Q You did? A Yes.

Q Did you tell him that you were three or four days overdue? A Yes.

Q Did you tell him that you were vomiting and feeling somewhat weak? A Yes.

Q Is it in your mind that the doctor upon his examination and also upon the statement which you made to him was misled as to what you were suffering from, or was led into the belief that you were suffering from retroversion of the uterus which had arrested your menstrual flow? A I have not got that question straight. I went there of course --there was not

anything the matter with me when I went there.

Q You pretended there was? A Yes.

Q In other words, you misled him into thinking that you were an invalid and then he examined you accordingly and tried to discover what it was that was causing this vomiting and arresting your menses and causing you this weakness? A Yes.  
BY MR. SMYTH:

Q What did you try to mislead him into thinking that you were suffering from? A Pregnancy.

PEOPLE REST.

T e s t i m o n y      c l o s e d .

MR. TIEVEN: I move, your Honor, to direct a verdict on the ground that there is absolutely no evidence upon which to submit the issue to the jury.

Motion denied and exception.

THE COURT: Gentlemen of the Jury, in denying the motion the Court does not pass upon the guilt or innocence of the defendant, but merely determines that a question of fact has arisen for your determination. You must understand that the Court expresses no opinion as to the guilt or innocence of the defendant. At the close of the case the Court merely says there is a question of fact which you as the exclusive judges of all questions of fact must determine.



- THE COURT'S CHARGE -

Gentlemen of the Jury: The indictment filed by the Grand Jury of this county accuses the defendant, George Glucksman, of the crime of an attempt to commit the crime of abortion. It is charged that on the 24th day of July, 1908, in the County of New York and Borough of the Bronx, the defendant with intent thereby to produce and procure the miscarriage of one Frances Benzeory, who was then and there a woman whom he, the said George Glucksman then and there thought to be pregnant with child but who was in fact not then and there so pregnant, did feloniously attempt to use and cause to be used a certain instrument to the Grand Jury aforesaid unknown, by then and there attempting to force and thrust and insert the same and cause the same to be forced, thrust and inserted upon and into the womb and private parts of the said Frances Benzeory, the same not being then and there necessary to preserve the life of the said Frances Benzeory, against the statute in such cases made and provided.

You will observe that you are not called upon to determine whether or not the defendant committed the crime of abortion.

In order to determine what constitutes the crime of an attempt to commit the crime of abortion, it will be

necessary for you to understand what constitutes the completed offense.

A person who, with intent thereby to procure the miscarriage of a woman, unless the same is necessary to preserve the life of a woman or of the child of which she is pregnant, uses or causes to be used any instrument or other means, is guilty of abortion.

The defendant is charged with the attempt to commit that crime.

An act done with intent to commit a crime and tending but failing to effect its commission is an attempt to commit that crime.

It is important under this statute, in the first instance, to find from the evidence that this defendant believed that the prosecutrix was in a state of pregnancy, although it is not necessary for her to have been so in fact. In other words, it is a crime under our law to commit an abortion upon a woman, if a person uses an instrument with the intent to procure the miscarriage of the woman unless the same is necessary to preserve the life of the woman or of the child of which she is pregnant. But, in order to constitute this offense it makes no difference whether the complaining witness was pregnant or not, if the defendant believed she was in a state of pregnancy and he did some act in furtherance of a design or scheme upon



his part to procure the miscarriage, and in the doing of an act in the furtherance of the scheme and design on his part to procure a miscarriage, he did so with the intent thereby to procure a miscarriage.

Now it will be necessary for you to find under this charge first that the defendant thought that the complaining witness was in a state of pregnancy -- that is, that he believed it.

If he did not believe she was in a state of pregnancy and he did not intend to procure a miscarriage upon the prosecutrix, he is not guilty of any crime.

To constitute an attempt to commit the crime of abortion you must find that the defendant did the following: "First, that an act was done by him. Secondly, it must have been done with an intent to commit a crime, that is done with intent to procure the miscarriage of the woman. Thirdly, that the act so done must have a tendency to effect the commission of the crime. Fourth, that the act must fail in accomplishing the purpose intended. All of these four elements must concur and be present before you can render a verdict of guilty.

The defendant must have in his mind an intention to procure a miscarriage upon the body of the prosecutrix. That he did some act with that intent which tended to pro-

duce a miscarriage. That the act which he did failed to accomplish the purpose which he intended. And, you must also find that in the commission of this offense, under this indictment, the defendant attempted to use an instrument upon the person of the prosecutrix in order to procure a miscarriage.

In the case of the People against Conrad, tried in this court, and in which case Mr. Justice Goff of the Supreme Court, then the Recorder of this court, presided, Justice Goff called to the jury's attention a very important case on the subject as to what constitutes the crime of an attempt to commit a crime. In the case of the People against Sullivan, reported in 173rd New York, if my recollection serves me, the opinion was written by the present Chief Justice Cullen, and the Court said: "But assuming that mere preparation is not in all cases an attempt to commit the crime, it is well settled in this country that it is not necessary to constitute an attempt that the act done should be the last proximate one for the completion of the offense. It is not necessary that the last act should be the last proximate one to complete the offense of abortion. The act need not be the next preceding one which would render such substantive crime complete." And then he quotes from Bishop on law wherein the learned text writer said, "The question whether an attempt to com-



mit a crime has been made is determinable solely by the condition of the actor's mind and his conduct in the attempted consummation of his design."

The Appellate Division in the Conrad case further said and quoted from the Mills' case in the 178th New York, wherein Mr. Justice Vann wrote the opinion: "An overt act is one done to carry out the intention and it must be such as would naturally effect that result unless prevented by some extraneous cause."

So you gentlemen will observe that you must find from the evidence that the condition of the defendant's mind at that time was such that with the intent to procure the miscarriage of the woman whom he believed to be in a state of pregnancy, he attempted feloniously to use an instrument upon her in order to procure the miscarriage, and that the same was not done by him for the purpose nor was it necessary to preserve the life of the prosecutrix or of the child of which she was pregnant.

Under our law if a physician claims that he committed an abortion upon a woman in order to preserve her life, and it was necessary for him to perform the abortion, or to save the life of the child of which she was pregnant, it is no crime, and if it were claimed in this case that it were done by the defendant for any such purpose, it would be necessary for the defendant to prove, and not

for the People, that it was essential to commit the abortion in order to preserve the life of the prosecutrix or of the child.

If you come to the conclusion upon the evidence in this case beyond a reasonable doubt, that the prosecutrix went to the defendant's place of business for the purpose of having the defendant commit the crime of abortion and that the defendant did some act in furtherance of such scheme and design on his part, and it was with intent to procure a miscarriage under the circumstances as I have narrated them to you, and that with an instrument he intended to do so, and that in his attempt to execute his design his act proved abortive by the interference of some person, then under the law the offense is complete.

The defendant says that the prosecutrix did call at his office. He denies that he agreed to produce a miscarriage or that he told her that she was in a state of pregnancy or that it would be necessary to operate upon her in order to produce a miscarriage.

If you come to the conclusion upon the evidence that he placed the prosecutrix upon the table, that he raised her clothes, that she exposed her person to him, that he examined her, that he even thrust a speculum into her vagina in order to examine her, and that he had in his possession instruments which the People offered in evidence,

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but that in so doing his purpose was not to commit an abortion upon her but to treat her, according to the claim made by him, for a falling of the womb or retroversion of the womb, then he is not guilty under our law and you must acquit.

You are here, gentlemen, to analyze the testimony, to weigh the evidence, and to determine from all of the circumstances in this case whether or not the defendant attempted to commit the crime of abortion.

The prosecutrix in this case is a detective, employed by the County Medical Society. Under our law there is no particular rule of evidence which says how a jury should treat the testimony of a private detective employed by a private detective agency, or, the testimony of a private detective employed by any association, no matter for what laudable such association might be engaged in in order to bring to the light of day a wrongdoer who violates the law. There is no distinction in our law. The testimony of a private detective, while it is to be cautiously scrutinized and carefully reviewed in connection with all the circumstances in the case, should be weighed and considered as any other testimony and have the same tests applied to it, and the fact that a person is a private detective should be considered by the jury in determining what weight and credibility should be given

to such testimony.

Our courts have adopted a very salutary rule for the guidance of a jury in regard to the testimony of a private detective, and that rule is that evidence of a private detective should receive some corroboration in order to command confidence. However, such evidence may be criticised with respect to its character or as to its weight, yet, if there be corroborating circumstances in the record tending to support the testimony of a private detective, such testimony should receive the weight and credit that in your judgment you believe it is entitled to. In other words, you must satisfy your own consciences that the testimony offered by the People convinces you that the witness tells you a story which bears the ear marks of truth, and that there is some evidence in the case tending to support her story.

In this case no human being was present who witnessed what occurred between the prosecutrix and this defendant. Therefore you must resort to circumstances, and the circumstances must tend in the direction of guilt unerringly, and wherever a circumstance shows an innocent construction, you must place an innocent construction upon it when you retire to deliberate in this case.

If any witness has falsely testified in any material particular and has wilfully done so, you may disregard the

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entire testimony of such a witness. You may credit all the testimony as true, or discard it as all untrue; you may credit part as true and parts of it as untrue. What weight therefore you will give to the testimony of any witness called is a matter for your determination.

It is claimed by the People that there is evidence in this case tending to support the prosecutrix's story. But, that, gentlemen, rests with you to find from all the evidence in the case -- whether there is supporting evidence.

It is claimed that the defendant fled from his premises when the prosecutrix announced that she was a detective of the Medical Society, that he ran away, and that he came into the jurisdiction some days later and submitted to arrest.

If you believe the circumstances as narrated by the complaining witness, that the defendant was about to perform a criminal abortion upon her, that she prevented him from doing so because of an outcry made by her, that she took from him the instruments which it is claimed that he had in his possession, and that the defendant fled from the premises, it is for you to say whether such circumstances are indicative of a consciousness of wrongdoing on his part, and that he fled in order to avoid what consequences might flow as the result of such conduct.

On the other hand, if you come to the conclusion from the evidence, as claimed by the defense, that he had some difficulty with a Mrs. Moran, and that Mrs. Moran was concerned in sending the prosecutrix to the defendant's house, and that he fled for fear that he would be subjected to violence on the part of some one, and left the jurisdiction, it is for you to say whether the circumstance of the defendant leaving the premises and going out of the jurisdiction was the result of an innocent motive on the part of the defendant.

While flight is no evidence of guilt standing alone, yet the deportment, conduct and demeanor of a person charged with crime are important matters for a jury to determine. Did the defendant flee because of a consciousness of wrongdoing on his part, or did he flee because of some innocent motive? If he fled from the place because of a consciousness of wrongdoing on his part, you are to say what weight in your judgment and estimation is such evidence to be given. You must find evidence in this case which tends to establish the guilt of this defendant; that he did some act in connection with a scheme upon his part to commit a criminal abortion, and that in his intention to commit the crime he was interrupted and thereby failed to effect the commission of the crime.

The defendant is a professional man. You have seen



the instruments offered in evidence. The law does not require that any precise or particular instrument should be used, which the law forbids to be used, but the law says any instrument; that is, an instrument that might be used for an innocent purpose might be used in a case of this character, and as the testimony shows here, physicians who practice and who treat women for women's diseases, use similar instruments to those offered in evidence.

The defendant says that he did not use any instrument. The prosecutrix says that he did, that is, that he had an instrument in his hand and he was about to use it upon her, and under this indictment you must be satisfied that the defendant was about to use an instrument upon the person of the prosecutrix and that it was attempted to be used by him with the attempt to thrust it into her womb or into her uterus in order to bring on an abortion.

The defendant is presumed to be innocent until the contrary be proven. He is entitled to the benefit of every reasonable doubt arising from the evidence in the case. The burden is upon the People throughout the case to establish the defendant's guilt. The defendant is not called upon to establish his innocence. He can remain mute and the People must prove his guilt beyond a reasonable doubt. A reasonable doubt is such a doubt as reasonable men may entertain after a careful and honest review

and consideration of the evidence. The reasonable doubt must spring from the evidence in this case and not from any feeling of sympathy for the defendant or otherwise.

The defendant has offered evidence of good reputation. Our Courts have held that evidence of good reputation may create a reasonable doubt against the most positive and conclusive evidence of guilt, and that evidence of good reputation may create a reasonable doubt where without it none would exist; that where evidence of good reputation so satisfies you, it is your duty to give the accused the benefit thereof and to acquit him. Evidence of good reputation should be considered by the jury as any other probative evidence in the case.

Gentlemen, this case is of great importance to the People and of great importance to the defendant.

The object of the law, as I have repeatedly charged you is not to wreak vengeance upon a person charged with crime. Your duty is to render a proper verdict. If you believe the People have established the guilt of this defendant beyond a reasonable doubt, it is your duty to convict him of the crime of an attempt to commit the crime of abortion, otherwise to acquit him.

THE THIRD JUROR: Your Honor, please, is there any distinction whether or not the defendant had absolute knowledge as to whether the woman was pregnant or not,

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provided he was satisfied to bring about a miscarriage. Would it make any difference whether or not the defendant had knowledge of the pregnancy of the woman, provided he was satisfied, for any other motive whatever, to bring about an abortion?

THE COURT: The defendant must believe that the woman was in a state of pregnancy, and acting under that belief, with intent to produce a miscarriage, attempted to use the instrument upon her in order to commit an abortion.

THE THIRD JUROR: I understand the belief is necessary, it is not necessary to have absolute knowledge.

THE COURT: No, but he must have a belief, and without it the case falls.

THE THIRD JUROR: I understand that, but supposing the defendant did not care -- did not stop to think as to whether this woman was pregnant or not, but from a mercenary motive was satisfied to proceed in a way as though she were pregnant.

THE COURT: Then he is not guilty.

MR. SMYTH: I think he has to believe that she is pregnant.

THE COURT: He must believe. I see, Mr. Juror, what you mean. Supposing a physician, who is only after the lucre, made a statement to a woman which he did not believe, and was simply going to make an examination of the woman,

no matter how contemptible such conduct is, he is not guilty under the law, but, he must believe that she is in a state of pregnancy, because he must have an intention to produce a miscarriage. He must have a belief. Without the belief the case falls. That is why I read from the indictment which charges that he then and there thought the complaining witness to be pregnant with child but who was in fact not then and there so pregnant. Is it clear to you?

THE THIRD JUROR: Yes, sir.

The jury retired.

After coming into court for instructions, the jury again retired and later returned a verdict of not guilty.

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