

Wonderful trial of Caroline Lohman, alias Restell : with speeches of counsel, charge of court, and verdict of jury : reported in full for the National police gazette.

Contributors

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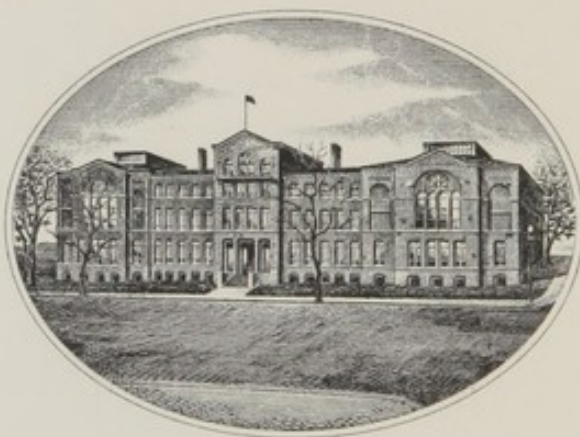
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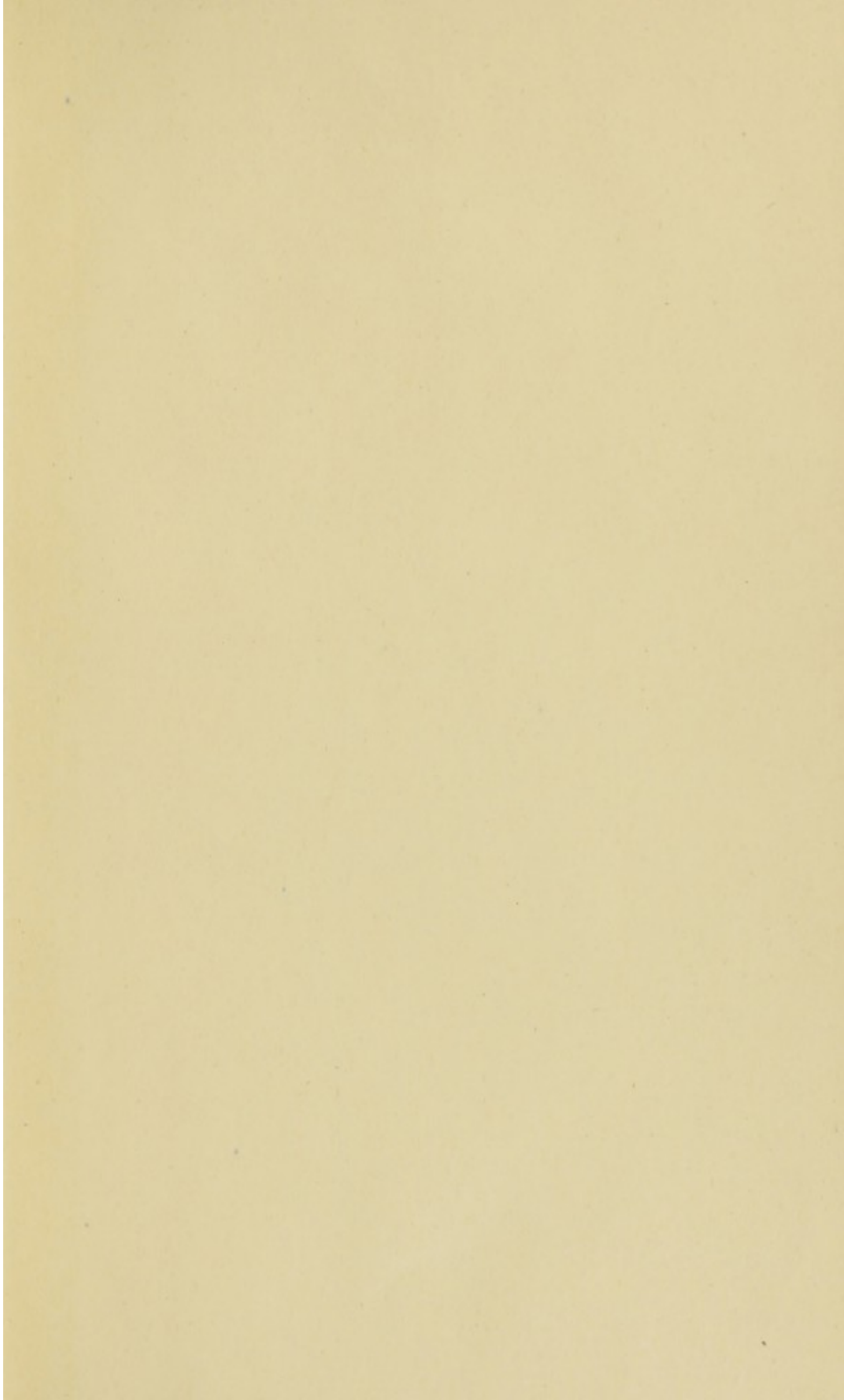
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Lohman, Anna (Trow)

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WONDERFUL TRIAL
OF
CAROLINE LOHMAN, ALIAS RESTELL,
WITH SPEECHES OF COUNSEL, CHARGE OF COURT,
AND VERDICT OF JURY.

[REPORTED IN FULL FOR THE NATIONAL POLICE GAZETTE.]

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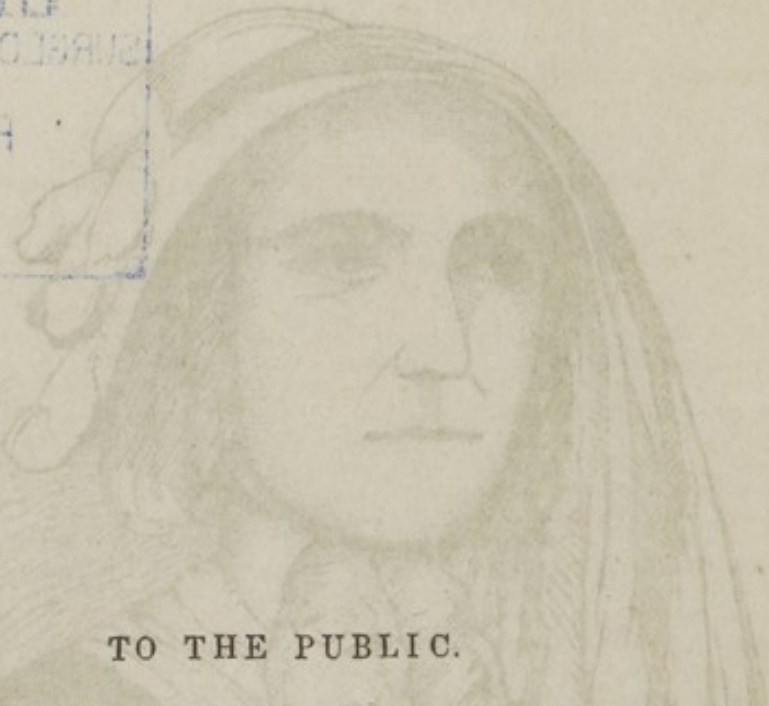
1847

CAROLINE JOHNSON RESTELL
WITH SPEECHES OF
CHARGE OF COURT

AND VERDICT OF JURY.

(PRINTED IN THE NATIONAL POLICE OFFICE)

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TO THE PUBLIC.

The within report will be found full and particular in the extreme, embracing every tittle of the medical testimony, showing to females the perils and the terrors of an invasion of the course of nature; comprising the whole science of physiology and obstetrics, from the moment of inception to the period of full time, as elicited in the testimony of some of the most celebrated and distinguished physicians of New York, and concluding with the most extraordinary citation of evidence by the defence, against the character of the female witness, for the purpose of invalidating her testimony, ever produced before a criminal tribunal.

Our report has been taken by a physician of extensive learning and great experience, and will be found not less valuable to the medical student and legal practitioner, than as a warning lesson to females who may err, not to resign their lives to the infernal practices of an abortionist.

This pamphlet will be found illustrated with two splendid engravings, one allegorical of the "Female Abortionist" and the other an excellent likeness of Madame Restell, taken by our artist, as she appeared on the first day of the trial in the Court of General Sessions of New York City—the 25th of October, 1847.

COURT OF GENERAL SESSIONS.

TRIAL OF CAROLINE LOHMAN, ALIAS MADAME RESTELL,

FOR MANSLAUGHTER IN THE SECOND DEGREE,

BY PRODUCING ABORTION UPON THE BODY OF MARIA BODINE, IN
JULY, 1846,

REPORTED VERBATIM FOR THE NATIONAL POLICE GAZETTE.

FIRST DAY.

This woman was put upon her trial for manslaughter in the second degree, for committing an abortion on the person of Maria Bodine, and killing her quick child, under the law of 1846.—She is impleaded in this offence with Joseph P. Cook, cotton manufacturer, of Walden, Montgomery county, whom the complainant alleges is her seducer and father of the child, and also with John McCann, who was in the employ of Cook, and made all the arrangements with Restell for the procurement of the abortion. There are five counts in the indictment, four of which are punishable with State prison not less than four years, nor more than seven. One count charges the procurement of the abortion of a child not quick, which is punishable as a misdemeanor only.

The court-room was filled with spectators. The prisoner was attended by Lohman, her husband, and appeared much dejected and downcast. She had no female associate, nor were there any in the court-room save herself.

The People were represented in this case by District Attorney McKEON and Deputy JONAS B. PHILLIPS, assisted by OGDEN HOFFMAN, Esq.

The prisoner had the valuable aid of JAMES T. BRADY and DAVID GRAHAM, Esqrs.

After the opening of the Court, two jurors were called and set aside, for having formed an opinion.

Richard Venables, hosiery merchant, No. 120 Canal street, was next called, and having sworn that he had not formed an opinion as to the guilt or innocence of the accused, he was sworn as a juror-in-chief.

Two jurors were then called and set aside, for having formed an opinion as to the guilt of prisoner.

Russell Benedict, merchant, 63 Pearl street, was next called, and having sworn that he had

formed no opinion of the case, he was admitted.

Robert Young, thread store, 122 Grand street, was next called, and having sworn that he had neither expressed or formed an opinion, and was decided in not having any impression as to the guilt or innocence of the accused, he was admitted.

Three jurors were then called who had formed an opinion, and they were set aside.

Noble G. Minor, was then called, and swore that he had neither expressed or formed an opinion, but the counsel for prisoner challenged him peremptorily, and he was set aside.

Thirteen persons were then examined and set aside for having formed opinions. One man was challenged peremptorily, and two more set aside for having formed an opinion.

The panel was here exhausted, and an order was made upon the Sheriff for an additional panel of one hundred jurors to be returned the next day.

SECOND DAY.

The new panel being returned, the empanelling of the jury was continued.

Five jurors were sworn and set aside for having formed opinions.

Hugh Curry, 176 Sixth Avenue, stated that he had not formed any opinion, and the challenge for principal cause not being sustained, he was challenged for favor, and the two first jurors sworn as triers. He was finally set aside by consent of counsel.

Three jurors were then called and set aside, for having formed an opinion.

Ferdinand S. Cortelyou, saddler, 933 Broadway, stated that he had formed an opinion to a certain extent. The juror's competency was left to the two first jurors as triers.

Examined.—I have formed the same opinion that I would from any other statement I read in a paper; I believe Madame Restell was the in-

dividual the charge was against, but I did not conclude her guilty. I would deal with a fellow being the same as I would wish to be dealt by. The statement I read did not make an impression on my mind unfavorable to the prisoner. I was but a short account, and I did not assume it to be true.

Mr. Graham.—If the juror has a bias personally against the defendant, he does not stand impartial.

Examination resumed.—I have not formed an opinion unfavorable in this case, but have formed an opinion unfavorable to the general character of the prisoner. It was my opinion that her general character is bad.

By Hoffman.—If you were sworn as a juror would you disregard what you have heard or read out of court, and render your verdict on the evidence alone?

Mr. Graham objected, and an argument ensued between counsel, but the Court admitted the question to be put.

The counsel for prisoner excepted, and the question was again put.

A. I would endeavor to do so to the best of my ability.

Mr. McKeon then addressed the triers, and they decided the challenge not true and the juror was sworn.

Six jurors were then called and set aside for having formed an opinion.

J. B. Anderson, grocer, corner of Horatio st. and 10th Avenue, was next called.—I have neither formed nor expressed an opinion; I have never seen any sketch or statement that led me to form an opinion. What I have read made no impression, and I have not now any unfavorable opinion against accused. I can't say that I have formed any opinion as to her character generally. He was sworn as a juror.

Four jurors were then called and set aside for having formed an opinion.

William Blacket was next called, and stated that he had formed an opinion, but if sworn as a juror he would endeavor to decide according to the evidence. He was challenged by counsel for prisoner for favour, and set aside by the triers.

Five jurors were called and set aside for having formed an opinion.

James Stout, bootmaker, 440 Hudson street, was next sworn.—I have heard about the case and expressed an opinion.

McKeon.—Do you know what the prisoner is indicted for? A. O yes. Q. What is it for? A. For bigamy (great laughter), I have formed a general bad opinion of her character. Q. What do you understand by the word bigamy? A. I don't know enough of the nature of this case to understand what the trial is for—I have a strong prejudice against the defendant, the same as I would have against any other woman following the same business; this prejudice is founded upon general reports. This juror was set aside.

Twenty six were then called and set aside for having formed opinions.

John Hadden, 148 Third Avenue, was next called and testified that he had not formed or expressed any opinion, nor had no prejudice or prepossession whatever. He was sworn as a juror.

The panel here became exhausted, and an or-

der was made for 100 more jurors, to be returned next day.

THIRD DAY.

The Court room was crowded to excess, but not a female except the prisoner was present.

Five jurors were called and set aside for having formed opinions.

Stephen H. Skidmore, tailor, 137 Spring st., was called and answered as follows:—I have expressed an opinion, I think, but not upon this charge; I can't say that she is guilty on this charge but I am not free from bias; I could not try the case fairly; I have heard for years past of her business, and I could not divest myself of all that I have read, and I could not try it impartially. If I erred at all, I should go in favor of the prisoner. On the answering of this last question the challenge was withdrawn by counsel for prisoner, and the juror was sworn.

One juror was then set aside for forming an opinion.

R. W. Higgs, painter, 62 Vandam street, was next sworn, and stated that he had neither formed nor expressed any opinion; the statements he had read had left no bias, nor impression or prejudice whatever, against the defendant. He was sworn as a juror.

Four jurors were then set aside for forming an opinion.

Thomas Edmonds, 67 Sullivan st., was next called, and said that he had not formed an opinion from any statements he had read. That he felt his mind so free from prejudice that he could fairly try the case. He was sworn.

Five jurors were called and set aside for forming opinions.

Martin Benedict, watchmaker, 226 Bowery, was called, and stated that he had not expressed any opinion, and did not know what the case was; he had heard rumors, but had formed no unfavorable impression against the accused. He was sworn as a juror.

Six jurors were here called and set aside for having formed opinions.

Job Chandler, merchant of Maiden Lane, was next called, he stated that he had neither formed nor expressed any opinion; had no prejudice against the accused and thought he should be impartial if sworn as a juror. He was sworn.

Several other jurors were called and set aside.

Isaac Binns, straw manufacturer, 309 Hudson street, was next called.—He said he had formed no opinion; that there was so much nonsense in the papers he did not believe all; that he knew nothing about the case and had resided in New-York 17 years.

He was sworn.

The jury was then completed as follows:—

Richard Venables,	Russel Benedict,
Robert Young,	Ferdinand S. Cortelyou
John B. Anderson,	John Hadden,
Stephen H. Skidmore,	Thomas Edmonds,
Robert W. Higgs,	Martin Benedict,
Job Chandler,	Isaac Binns,

Owing to a request of the Recorder, the Court then adjourned until Monday.

FOURTH DAY.

The Court-room was crowded to excess, and the jury being seated, the case was opened by *JONAS B. PHILLIPS, Esq.*, Assistant District Attorney, as follows:—The time which has been

occupied in selecting you as the arbiters who are to decide upon the guilt or innocence of the accused, has not been mispent, since it has secured to her a jury which may emphatically be said to be one of her own selection, who will patiently listen to the evidence in the cause, and who will pronounce their verdict with fearless and firm impartiality.

To such a jury no caution is necessary; I have that confidence in your intelligence and integrity which assures me that while you will accord to the prisoner all the rights which the law guaranty to her, those of The People will be maintained with equal fidelity; the supremacy of the laws will be vindicated, and if the evidence satisfies you (as I cannot doubt it will) of the guilt of this defendant, the community will no longer be cursed with one, who disgracing her sex, forgetting that she is herself a mother, disregarding at once divine and human laws, has amassed a fortune in the daily perpetration of a crime which violates and annuls one of the most sacred ordinances of Almighty God.

You will be told that you must discard from your minds all prejudices unfavorable to the prisoner growing out of the peculiar position she has held in this community. Useless precaution to men like you! right minded men, who will never permit their abhorrence of a crime to influence their decision as to the guilt or innocence of those who may be charged with its perpetration.

The holiest spot in the Temple of Justice is the Jury box; sympathy, prejudice, or passion cannot enter it; ye are then withdrawn from the world and all its external influences, the stern, honest and inflexible ministers of Justice, whose decision the guilty alone await with terror and apprehension, but to whom innocence ever looks with confidence and never dying hope.

The duty which devolves upon me in conducting the prosecution of this cause is simply to narrate the facts, an investigation of which, by the Grand Inquest of the country, has resulted in placing Ann Lohman, otherwise known as Madame Restell, upon her trial, on a charge of manslaughter in the second degree, for having on the 19th of July, 1846, produced an abortion on the body of Maria Bodine, she being then pregnant with a quick child, and thereby producing the death of such child. This indictment is founded upon the Act of the 4th of March, 1846, having read which, I will state with as much brevity as perspicuity will permit, the facts which the prosecution wish to establish, by the most conclusive evidence, and upon which we shall ask you to pronounce this woman guilty.

(Mr. Phillips then briefly presented the main facts in the case, which will be found in the reported testimony.)

The heart sickens at such a narrative. Nature is appalled, that woman, the last and loveliest of her works, could so unsex herself, as to perpetrate such fiend-like enormities.

The gardner watches, with jealous care, the seed he casts into the fertile earth, until it germs, and buds, and blooms, in the consummated perfection of nature's loveliness. But this defendant destroys the germ of nature.—she kills the unborn infant; endangers, if she does not destroy the mother's life, ruins her health; and all for the sake of the base lucre,

which she allures the frail, or wicked, who have fallen, to pay her, in the vain hope that she can aid them to conceal their shame. It is for you as jurors, husbands, fathers, and brothers, to say, whether these monstrous crimes are to continue; whether God's laws, and those enacted for your society and protection, are to be violated with impunity. The community look to you for a fearless, firm, and faithful discharge of your duty. In this behalf, the progress of this cause will be watched with intense and anxious interest by your fellow citizens. A sacred and important responsibility has devolved upon you, the sworn conservators of their peace and their security. The spirit of truth will guide and control your deliberations, and so directed, the result will be such as your consciences can safely rest upon, and the public voice approve.

The complainant, Maria Bodine, here came into Court with a feeble, tottering walk, and took her seat in the chair usually occupied by witnesses. She is a young woman, about 26 years of age, middling size, and evidently in a rapid decline of health. She was neatly dressed, and her appearance created much excitement and sympathy throughout the crowded court-room.

On being called to be sworn, Mr. Brady, one of the counsel for the defence, objected to the competency of the witness, on the ground that she was an accomplice with Madame Restell, and, therefore, was not a competent witness.

This objection was argued by Mr. Brady and Mr. Graham. The prosecution declined replying, and the Court decided that the witness was competent.

This chief witness for prosecution was examined, as follows, by J. B. Phillips, Assistant District Attorney:—Q. Where were you born, Maria? A. In the town of Montgomery, Orange County. (The reply was given in so low and feeble a tone, and was so indistinctly heard, that the Court ordered all persons who wished to withdraw to retire at once, as they would have perfect silence.) Q. How old are you? A. Twenty-six years.

Mr. Phillips.—State to the Court and Jury whether you were ever pregnant, and what was done in the case, and by whom.

Brady.—That line of interrogation will not answer.

Phillips.—Q. Where were you living in April, 1845? A. In Orange County. Q. Do you know Mr. Cooke? A. Yes, sir. Q. When did you go to live with him, and in what capacity? A. Two years ago, as housekeeper, at Walden.—Q. Had Mr. Cooke a wife? A. No. Q. Was he a single man, or a widower? A. A widower. Q. When you were at Walden, at what time did the intercourse commence? A. About one month after I went there. Q. How long did it continue? A. It continued up to May one year ago. Q. In what situation did you then, or about that time, discover yourself? A. I found that I was pregnant—that I was in the family way. Q. How did you discover this? A.—(The witness blushing, and after much hesitation, replied.)—I found I had lost my monthly turns. Q. What else did you find or feel? A. I was very sick, apt to vomit, my breasts became larger, and were very painful. Q. Did you notice any peculiarity about your nipples.—

A. A dark streak came around them. Q. Did you communicate this fact to any body, and if so to whom? (The question objected to, and altered in form.) Q.—(Varied.)—In consequence of your situation, did you come to New York, and when? A. I came down to New York in June, about the middle of it. I came from Ramapo, where we had removed to, in the cars, and then in the Piermont boat to New York.—Q. To whose house did you go when you arrived in the city of New York. A. To Nancy Trimble's house, the wife of Capt. Trimble. It was about 12 o'clock at night when the boat arrived. I remained at Capt. Trimble's all night, and went to my sister's, Esther Dexter, at 216 Bleecker street. Q. What is your sister's husband's name? A. Geo. W. Dexter, 216 Bleecker. Q. How long did you stay at your sister's house? A. In all about two weeks. Q. How long were you in New York before you went to Madame Restell's? A. A few days—about 3 or 4 days. Q. Where is Madame Restell's house, and how did you discover it? A. It is in Greenwich street, and I saw the number in the newspapers. Q. When you got there who let you in, and whom did you see? A. Madame Restell admitted me at the door; I see her now sitting in the Court. Q. What did you say to her, or she to you? A. She asked me what I came for? I said I wanted her advice. I wished to know my case. She asked me how I felt and what I complained of? She said she thought that I was in the family way, but could not tell any thing without an examination; she repeated she could not tell for certain without making an examination. Q. Well, what then? A. She said her price was \$5 for examination, and \$100 for operating. Q. What next? A. She said, she had pills at \$1 a box, and \$5 a box. I could get them, and take them; and if I were so, they would bring me right. If I were not so, they would do me no harm, and no good. Q. Did she make any other inquiries? A. She asked me what my circumstances were. She said it would be a very expensive job. She inquired what my beau was: and I told her he was an agent in a factory. Q. Yes, and what next? A. She asked me if—

Here the witness, Miss Bodine, completely faltered, her countenance changed, and she was overcome by sickness, complaining to the District Attorney "she was fatigued and had over-spoken herself." She was allowed to withdraw for a short time, into an adjoining room, and the Court and Jury also retired. Before the examination was resumed, Mr. Brady and Mr. Graham, of Counsel for the accused, insisted on her speaking loud enough herself to be heard by the jury, and that her answers should not be repeated by the District Attorney, or other of her Counsel. The attempt to enforce this regulation seemed to produce considerable surprise and dissatisfaction.

After the excitement and dissatisfaction at the enforcement of this rather novel rule in legal practice, had somewhat subsided, the examination in chief of Maria Bodine was resumed by Jonas B. Phillips, Esq., as follows:—

Q. Maria, you told Madame Restell that your beau was an agent in a factory? Go on. A. She then said, if he wanted an abortion it

would be one hundred dollars. Q. What else was said or done at that time? A. She said she would rather not give me an abortion, and I had better come and stay at board at \$5 a week for the time out. Q. Well, and what then? A. I said, I was six months gone, and would rather stay and board the time out at \$5 a week, but my beau would object to the charge. Her husband then came in, and wanted her to go out with him. Q. How do you know it was her husband? A. She said it was—she told me so; I see him in court; the same man now sits beside her. Q. What else took place? A. To my recollection there was nothing more then said; I left the house, and went to a dry goods store to purchase some things; an officer overtook and arrested me; I told him my name and place of residence, and he went with me to my sister's in Bleecker street.

Graham.—The Court will observe that we object to any question unless Mad. Restell was there, and had a share in the transaction. We know nothing about this policeman; we were not there—the defendant whom you are trying was not present, and such evidence ought not to be dragged before the Court.

McKeon.—We intend, the Court will observe, to show that an officer had been directed to watch these premises, to follow visitors, take down their names and residence, and preserve the memorandum. We intend, subsequently, to corroborate this witness' evidence.

Ogden Hoffman defends this line of inquiry, and is answered by Mr. Brady, who denounces it as irregular and absurd.

Recorder rules the correctness of such previous questions, and is interrupted by Mr. Brady, saying, we object to any questions where she went, who accosted her, or what was done, unless our client, the defendant was present.

Recorder.—(With a smile, but with some warmth.) Do you object in evidence that she came out of the door at all? Ten thousand little difficulties are thrown in the way of her detail, and I cannot admit of such wasting the time of the Court.

Brady.—I object to questions as to any thing where we were not present.

McKeon.—I propose to sustain every link in this chain of testimony by corroborative proof. I can't go to the jury alone upon this woman. I must show what she did after she left this house, where she was, and with whom. Reads from a well bound quarto, the course followed in Costello's case.

Graham.—What book is that Mr. McKeon? Looking very inquisitively at the volume.

McKeon.—The "Police Gazette," to be sure, and I quote its authority.

Graham.—"I object to that journal as evidence because it is not a law book;" and says Mr. Brady, "you have previously objected to it. Mr. McKeon, when introduced by myself.

Mr. McKeon.—"I go on then and quote from memory."

Mr. Phillips.—Who accompanied you home and where did you go to, Maria? A. the officer accompanied me to my sister's, in Bleecker-st., Mrs. Dexter's. Q. How long did you remain at your sister's? A. About a week. Q. During that time did you consult any medical man, and if so, whom?

Question objected to by defence.

Q. Where did the doctor live, and who was he whom you saw? A. Doctor Coles in Carmine street.

Philips.—Now state what happened afterwards?

Maria Bodine.—I went back to Mr. Cook's, at Ramapo; I remained there a week and a few days; I left Mr. Cook's house at Ramapo, by the cars, and came down again from Piermont by the boat. John McCann accompanied me. He is a boss weaver for Mr. Cook in the factory; this was on the 17th of July; I saw Mrs. Restell in the afternoon of the 17th of July, the first occasion, this time.

Philips.—What conversation had you with her? Now declare all, slowly.

Question objected to, and the form altered.

Q. Did any one go with you to Restell's? who? A. Yes; McCann; he went with me to within two or three doors from Restell's house, and then left me, and I went in. Q. Well, and what occurred next? A. Madame Restell asked me if I had the money; I said I had \$30; she said that was not enough; she must have \$75; as her price; I said I had not got it; I told her I did not know what to do then; she said that I must go and see Mr. McCann; she told me she had seen Mr. McCann that afternoon, and had told him that her price was \$75, and no less; I went to the boat and met McCann; I told him what Madame Restell had said, and he answered, "go back to Madame Restell's and stay;" I returned to Madame Restell's. Q. What then happened after you returned? A. I took a room from her; she went with me up two pair of stairs into a back room; I remained in that room from that day; she turned the key in the door on me, outside; I remained a week in that room; Madame Restell brought me my meals; on Sunday the 19th, McCann came and paid the remainder of the money. Q. How much money? A. The balance of the money at nine in the morning; (Sunday) he gave me the money, and I gave it to Madame Restell, the whole sum of \$75; McCann left immediately after giving me the money. Q. After he had gone away, what happened then? A. We went up stairs; Madame Restell took the pillows off the bed, and directed me to lay on the floor, right down; I did so; she said she wanted to make an examination, to see how far I was advanced; I lay down as directed, and for five or ten minutes with her hand, she made an examination; she inserted her hand up my body, in the vagina; (in a whisper, but audible, and repeated by Philips.) She hurt me very much, and I made loud groans. The reason she was so long, she said was, that I was differently situated from any one else; she could not find the right direction; she turned her hand round in my body as if she was breaking something; the operation continued from five to near ten minutes; I did not all the time lay on the floor; I got up then and sat on a chair; she told me to take a pill three times a day; she left five or six pills; I took them as she directed for two days; she left the room, but I don't recollect whether she turned the key; I was very much distressed indeed; I had my courses while she was in the room, and I noticed it on her leaving; I saw her again that afternoon, and told her what had occurred; I said to

her I saw my courses; Madame Restell said it was nothing; I should see a little until I went through the operation; she came to me in the evening, and brought me a glass of water and a light; she said she did not think I should need her that night, but if I did I must ring the bell; next morning, Monday, I saw Madame Restell about seven o'clock; she asked me how I was getting along; I said not first rate, as I am much distressed; I was much distressed, she said, the pills were taking effect; I felt getting worse and worse; she continued to visit me occasionally through the day; that evening, Monday night, Madame Restell slept with me; I was in great agony all the night; in the morning, Tuesday, about daylight I took a great flooding; I had been very sick at the stomach and vomited; during the flooding she had me get up out of bed, and she jumped out; she told me to sit down on a stool; an earthen chamber; narrow at the bottom and broad at top; whilst seated there I suffered violent pain, and Madame Restell inserted her hand in my privates, and said it would make it easier for me; it gave me more pain; every pain I had I heard something fall from my body into the stool or chamber; I told Madame Restell of it; she said be patient; one more pain and I would be through. Q. Was there any thing peculiar in the last pain? A. I thought I was at stool straining; I don't recollect exactly how long I might be on the stool, perhaps five minutes; I then got on the bed, as she bid me; Madame Restell again inserted her hand; she hurt me so, I halloed out and gripped hold of her hand; she told me to have patience, and I would call her mother for it, she did not say any thing at that time more particular in reference to my pain; when I again told her, she said my pains were after-pains. Q. Did you ever see, Maria, what came from you? A. No, sir, she would not let me see it. Q. Did you ask her to let you see it? A. I did, but she said it was not worth while; she would not; and she put it behind the fire place, saying she would remove it at night; Madame Restell attended me during that night; I remained at her house till Thursday afternoon; I had crackers and tea, the first day, then afterwards some vegetables and soup; on Thursday afternoon she came into the room and found me crying; she asked me what was the matter; I told her I wanted to go home, but I had no money to go with; if I wished to go, she said, she would give me money to pay my passage and get some refreshments; she gave me a dollar; my passage money was six shillings; she then took me down into the parlor and gave me some wine; she then said she would listen and look around to see if any officers were about; she looked out and said there were not; she said if any one arrested or accosted me, I must return to her, and I should go in a carriage; she said I must say nothing to any one about what had been done; if I told, she said we should both be liable to the State's prison, as I had no right to go there, and she had no right to give me medicine, or to do it; my breasts pained me very much, and milk came from them over my dress; on telling her, she said, if they troubled me much, I must wrap them in red flannel, and rub them with camphor; she said, I was to draw them out with a smoking pipe; I left Madame Restell's about three or four in the afternoon; she shook

hands with me on parting, gave me a kiss, and told me I must never do so again; I then left.—
 Q. Before going to Madame Restell's had you any sensation peculiar about your stomach?—
 A. Before and about the 17th of July, I had different sensations from what I ever felt before; my breasts were swelled, and my bowels, and I felt something flutter in my womb. Q. What was the condition of your health after leaving New York and returning to Ramapo? A. I walked to the boat; it started a short distance from her house; I was in very, very great agony, all the while a flooding; the flooding continued for five weeks; after I got home my health was very bad; lumps of something like flesh or liver came from me as large as a hen's egg, and larger; I left Mr. Cook's, at Ramapo, and went to my sister's, Mrs. Youngblood, at Walden, in Orange County; this was about the 1st of September; the discharge continued to come from me whilst staying at my sister's, and from the same cause; I was confined to my bed for four months at my sister's; I was under Dr. Evans' care at Walden for the same cause; was flooding when he came to see me, the third day after my arrival at my sister's; other physicians visited me also; Dr. E. brought with him Dr. Martell; and also Dr. Gouverneur, Dr. Lewis Moore, and Dr. Thos. Moore, and Dr. Samuel Smith, visited and attended me; Dr. E. attended me three months; the others about two months; Dr. Smith attended me from last April to last August; my sister's name is Maria Youngblood; her husband died about a month ago; I was constantly under the care of a physician from the time I left New-York for Ramapo to August, 1847. Q. Maria, what is the present condition of your health? A. My health is still feeble; I have constant distress in my head; pains; falling of the womb; weakness in my back; burning in my hands; weakness and trembling all over me.

The Court adjourned a little after three, without concluding the direct examination. The witness, pale and agitated, was assisted by an officer from the stand, and left it with feeble and faltering steps, evidently laboring under severe pain about the spine and loins.

FIFTH DAY.

At the opening of the Court the witness was again called to the stand.

Philips.—Maria, did you communicate to any person, and if so, to whom, the fact of your having been to Madame Restell? and the purpose for which you went, and when?

Brady.—That will take some time to answer, and I would like to know the object of the inquiry?

Phillips.—The purpose is, to show that shortly afterwards, she did so communicate her movements; and we do this with a view to preventing you from impeaching her story, or evidence, in fact, in order to corroborate her.

Brady.—We object as inadmissible and irrelevant.

O. Hoffman.—This is merely a foundation for other testimony.

Recorder.—The Court decides that she may say that immediately afterwards, she made some communications to others.

Graham and Brady.—Excepted;—and drew up a paper for signature by Recorder.

McKeon.—This question we put as a sort of sequel to the violence perpetrated upon her. I will read the authority.

Q. Maria, when did your courses stop? A.—A year ago last April, that is, in 1846. Q. What time in April? A. The beginning of the month of April, in 1846.

The direct examination here closed.

Brady.—The witness must put aside her veil, and turn to the jury, so that her answers may be heard. My cross-examination will be long and severe, and if at any time she be exhausted, I will pay every attention to her state, much as I have been used to these faintings.

Q. Maria, I want to know the exact time you went to reside with Mr. Cooke? A. Two years in July. Q. What business did Mr. Cook carry on? A. He was a farmer, and engaged in no other business. I had known him before about a year. He came for me to go into his employment at Mrs. Youngblood's. I was then in no employment, and had not been for a week, but before that was doing general house work, in Shawangunk. While I resided with Mr. Cook, there was M^rLean (Geo.) resided in the house as boy; and there was his mother and his son about 10 years old, and his daughter Maria about 9.—I had had no conversation with Mr. Cook before I went to live with him; and in about a month, that is in August, I had intercourse with him up to the 1st of May, 1846—but I think he had no intercourse with me in May. The last time of intercourse was on April 16th, at Ramapo. Mr. Cook, with his family, had removed to Ramapo. He was still farming up to then. At Ramapo he was an agent in Mr. Pearson's cotton factory. I continued living with him up to July, engaged all the time as housekeeper. Q. Was this intercourse frequent and how frequent? A. About once a week all the time. Q. Before the time you had removed to R. had you missed your courses? A. No sir, I had had them regularly. Q. What had been the state of your health up to this time. A. I had had middling good health. I mean to say I was in good health all the time. Q. Had any physician attended you during that time? A. Not that I can remember, from July, 1845, to April, 1846; there was none. Q. If I understand you, you had no illness during this time that made it necessary to have a physician?—A. Nothing more than heavy colds. Q. You had no illness except colds, for which you doctored yourself, and had no physician? A. I had none. Q. When had you your courses the last time? A. About the beginning of April, or the 12th or 13th. Q. Can you fix that date with certainty? I have a general recollection, no memorandum. I missed my courses about 13th of May. This had never in my life, from any cause whatever, occurred before. I had of course never taken any medicine, nor employed any means to restore my courses. Q. Had you never before supposed yourself, or said you did, to be pregnant? A. Never. Q. Never gone before a Justice of Peace to make complaint against a man that you were pregnant by him? A. Never. Does not know or recollect a man by the name of Wm. Broadhead, nor Horace Armstrong. Does not know a physician nor a lawyer of the name of Monell? A. No sir. Q. Did you ever pretend to any one of these peo

ple, before 1845, that you were pregnant? A. No sir, I did not. Q. It never had in fact occurred, and you never suspected it before 1846? A. No sir. Q. Had you ever had intercourse with any other person before you had with Mr. Cook?

McKeon.—This is one of the questions which the witness may or may not answer. But, I advise her to answer.

The question repeated. The witness declines to answer.

Brady.—This woman had for years, constantly and habitually, indulged in habits of prostitution, and she shall answer.

Recorder.—The Court is bound to protect the witness.

Brady.—No mawkish sensibility here. This woman is guilty. We have no sympathy for her, but shall use her as we think proper. She is the felon, the instigator, the prompter. The defendant had requested her to wait her time.—She would not. I shall show that the pretence that Mr. Cook ever had intercourse with her is false and abominable. She never was pregnant. She had for years been accustomed to have free promiscuous intercourse with men. That witness is guilty as much as the accused, and ought as much to be tried.

McKeon.—I don't pretend to have a virgin upon the stand coming from Restell's house. It is an impossibility, and we do not pretend that she is a woman of immaculate character; but contrary to all law and all decency to criminate the witness to the extent attempted. It is not true, and I am correctly instructed as to her real character. It is not true.

Graham argued the point. Her present state of health, to which the District Attorney alluded yesterday, is caused by a long course of intemperance, a constant career of prostitution, and is the natural consequence—not of Madame Restell, but of habitual and promiscuous intercourse as a harlot—not with Mr. Cook, but with every man, every hour, or every five minutes of her life.

Here, in the midst of Graham's argument, the witness became overpowered by sickness, and was obliged to be withdrawn from the stand by the attending officer. It was with difficulty she was prevented from sinking on the floor.

Graham.—I insist that the Court compel the witness to answer this question.

O. Hoffman, replied.—We say the testimony is not relevant. The question is not as to her character, but whether an abortion was produced by the instrumentality of this woman Restell.

Recorder.—The Court decide that the witness may decline to answer this question; you have no right to compel her, if she refuse or decline, on the ground that it would tend to disgrace her.

Brady.—I suppose the next question I put to her will be objected also, and so I will write it.

Q. During the fall of '45, or winter of '46, had you any sexual disease, arising from sexual intercourse with men?

McKeon objected to it absolutely as inadmissible and irrelevant, and that she was not bound to answer such question.

Brady.—I will alter the form of it. Q. Maria, had you in 1845 or 6 the venereal disease

McKeon.—The witness may answer or not, as she pleases, as far as I am concerned.

Recorder and McKeon both.—We tell her she may or may not answer.

The witness declined, as in her opinion the question tended to degrade her.

Brady and Graham tendered their written exceptions to the Court.

Brady.—You missed your courses about the 13th of May at Ramapo? A. Yes sir. Q. When was it you first became sick and vomited? A. In May, I think, about the middle, about a week after the 11th. Q. Had you taken any medicine whatever in May? A. No sir. Q. When was it you first noticed your breasts became larger? A. The last of May or first of June, as near as I can recollect. Q. When did you first notice the dark streak upon or around your nipples? A. About the same time. Q. What other mark or sign about the first of June from which you concluded you were pregnant? A. Yes sir. Q. What was it? A. My breasts were very painful, my appetite was entirely lost. Q. Up to the 1st of June you had had no return of your courses? A. No sir, and I had not them in June. Q. Did you apply to any person to help you to bring them back? A. No sir. Q. Before you went to Mad. Restell's house did these symptoms go on? A. They increased. Q. Was there any new symptoms? A. I felt a fluttering and a stirring before I went to Mad. Restell's; a few weeks before I went the second time. Q. Was it before your first visit to Mad. R.'s? A. I think it was, a few days. Q. Did you feel that more than once? A. Yes, several times during the day, some days. It continued a few days prior to my first visit. I felt it all the time between my first and second visit. I took no medicine in the interval; I consulted Dr. Coles during that time; I had no return of my courses; when I went the first time to Mad. Restell I told her when I lost my courses, that I had had them lost in April; I don't recollect that I told her every particular; I believed I was in the family way when I went; I was not in a certainty about it, I thought I was so, but not absolutely certain; I went to know the truth, and for no other purpose. Q. Did you go with the intention to ask her to do anything for you? A. I went to have her advice and opinion whether I was pregnant, and nothing further. Q. After you got there, did you then form the intention to ask her to do anything for you? A. No sir, I did not ask her to do anything for me; I did not hint to her or give her by any gesture to understand that I wanted her; I did not ask her to examine me. Q. What did you hesitate about, or study? A. I had not money enough. I did not conclude anything about it; I had a dollar with me. When she spoke about her pills at \$5 and \$1 I did not intend to purchase any, and did not, in fact, buy any; I do not recollect that I in any manner hinted or suggested that I wanted an abortion affected; I said my beau would object to my coming down when I was about 6 months gone, and boarding the time out. This is as near as I can remember; I came away in the same uncertainty in regard to my pregnancy as I went; she asked me to call again, but I did not hear any particular reason; I then consulted in a few days Dr. Coles; he examined my breasts, nothing else. My general

health at this time was affected by my breasts. I returned under the care of Capt. Trimble to Ramapo; I left the city about 4, and arrived home about sun down. No other person but Dr. Coles examined me; I resumed my work as housekeeper, I did all except the washing; I got up at sunrise and retired about 9; I did this until my second visit to Mad. Restell; up to that day no one had examined me; I left Ramapo on Thursday evening to come to this city, and on this occasion Mr. McCann came with me. he left me 3 or 4 doors from R.'s; I don't know the name of the officer who followed me; I have not seen him nor had any communication with him; he was within a few doors on the other side of the way; he went all the way home with me to my sister's; he told me that I had been in a bad murderer's house, and it was his orders to see me home, for the purpose of taking my name and residence; he asked me if I had purchased any medicine, and I told him I had not; I told him I was very unwell, and I went to consult her as a female physician; he did not ask me and I did not tell him what was the matter with me; I did not intend at that time ever to return to see her; and I have never either seen or received any message from that officer. There was no arrangement with McCann that I was to see him again. He seemed as if he was going home. Q. When you went in what did you say to Mad. Restell? A. She asked me if I had the money; I told her I had \$30; she said that was not enough, her price was \$75. I told her I did not know what to do. She told me to go and see McCann, for she had told him that she would not do it for one cent less than 75; it was about 3 o'clock; I had not up to this time hinted or suggested that I wanted anything done. On my second visit, I felt quite certain that I was pregnant.

The Court here adjourned, at 3 o'clock, until 11 o'clock to-morrow, and then to hold evening sessions, henceforward at 5, until the case is terminated.

SIXTH DAY.

Previous to our commencing a report of today's proceedings, we cannot in fairness omit to offer a well-merited tribute of thanks to the gentlemanly officers of this Court. Their politeness and courtesy to the representatives of the Press, though strangers, or appearing for the first time, deserve and demand this at our hands; for were they not thus attentive, the immense pressure of the daily increasing crowd, would frustrate any ordinary attempt to gain a seat. The general urbanity of the officers in this Hall, especially, makes it imperative on the press to render this acknowledgment for the facilities they have accorded to the organ of public opinion, during the trial of this most flagrant and atrocious case.

The crowd of spectators this morning is immense. The attendance of gentlemen of the Bar from other States, is considerable, including several members of Congress.

Maria Bodine was again called as a witness.

Brady.—I wish to ask you, Maria, if you last saw any thing, was about the first of April? A. Yes, it was. Q. Did you return alone from Mad. Restell's? A. No, sir. Q. What did you say to her on your return? A. I told her that McCann would bring her the remainder of the mo-

ney. Q. What did she say then? A. She made no reply, but took me up stairs. Q. Did she lock the door, turn the key from the outside? A. Yes, sir. Q. How soon did you next see her? A. In about an hour. Q. When she came back did she put the key in the lock and open it? A. I think she put the key in and unlocked it; I don't recollect how long she remained that time; I think she locked the door, and told me if any one came to it, not to let them in, unless it was she. She did not tell me how to let them in if they came; when she next came, she unlocked it from the outside. Q. Did she always lock and unlock the door when she came in or went out, from Thursday to Sunday? A. I believe she did, but she only gave me directions about the door once, and I had no means to admit them; the servant came, no other person, and at that time Madame Restell was in the room; no other individual; I never left the room from Thursday to Sunday; I expressed no wish to leave it, I did not want to quit it. Q. You were not locked up after Sunday? A. No. Mr. McCann did not come to my room; I saw him down in the parlor; Madame Restell herself came for me to go down, and I believe she unlocked the door; no one was present at the interview between McCann and myself; she sat in the back parlor; we were in the front; we did not speak very loud, but I can't say whether she heard us or not; after we got through our conversation, she came from the back parlor; there are folding doors between the parlors, and one door was open and the other closed; I think she was in the back parlor during that time, and I met her in the hall as she came from the back parlor; I started out of the parlor before McCann, and went up stairs before he left; she made the examination of me about 9 o'clock on Sunday night, just after McCann left; she was not locked up after he left; the door was on a crack; there is a middle door in the hall, I believe it was shut, but did not take particular notice; I met her in the front part of the hall. On Tuesday I asked Madame Restell to let me see what came from me; I merely wanted to see how it looked; she set it behind the fireboard in the room where I was; it was between daylight and sunrise; she left the room in about fifteen minutes. I was in bed; she was absent about, but within half an hour; I was a little easier then; it was after I had had my last pain on the stool; got out of bed, then; she fixed the bed and assisted me in; on Thursday afternoon I left her house for the boat, and arrived at home about ten o'clock; the walk was from Greenwich street to the foot of Duape; but a short distance; on Tuesday I remained in bed all day, I think; when I arrived at Ramapo, I went to bed in a few minutes after; I rose next morning to attend to my household duties, as usual; I was obliged to; from the time we left Ramapo to Walden I did the same; Mr. Cook went with me at the starting, but I was alone when I reached Walden; on my arriving there I was in a state of flooding; very weak and feeble; Dr. Evans was called in and attended me; I think he gave me powders; I took to my bed; he cupped me on the back; he leeches me to my bowels; he put issues in my back.

Q. He treated you, did he, for a complaint in the spine? A. That was one complaint. I had contracted no other disease, and there was no

cause of sickness but what occurred at Madame Restell's. I had taken no medicine but laudanum to ease my pains. Q. Do you know Mrs. Catharine Dowling, of Walden. A. I know her. She called to see me whilst I was sick. I did not tell her what was the matter. I don't know for certain, I might say the physician had said so. I did not tell her that I had been out of, or lost my courses at Ramapo. I did not tell her I had lost them, and gone to New York to an old lady who had relieved me. No sir, I did not. I remember distinctly I did not say so, nor any thing like it. I never told her I had been in the family way. Q. Do you know Mrs. Tiers, at Walden? A. I do. I have known her 3 or 4 years. She visited me. I did not tell her that I had been to Mr. Cook's, that I liked the place and had been well treated. I told her nothing about that, nor the other questions you have asked me. I know Mrs. Tiers' daughter. It never was the case, that I wished to associate with her; nor say, that if she did not leave off talking about me, Sam Smith would clear up my character. Never. I know Mrs. Hanch by sight. Never talked with her more than pass the time of day. She was in the house of my sister, but not in my room, nor at my bed side. She never dressed the issues in my back. She never asked me, and I never told her, any thing about my having been in the family way. I never threatened to prosecute her for defaming me. Q. Did your sister, Mrs. Youngblood, undertake to clear up your character? No, sir. I never said in any way that I wanted any body to clear up my character. Dr. Evans attended me 3 months.

The witness here fainted through absolute exhaustion. She was led, or supported out of court. She fell through physical inability to sustain herself against so stringent and searching cross-examination for the purpose of shaking her testimony.

In a little over half an hour, the witness, Maria Bodine, was returned to the stand, but still deadly pale, and her lip quivering with emotion.

Q. Maria, answer the question I put, before you withdrew from the Court? A. Dr. Evans left of his own accord. I had not sent for either of the Millspaws before he left. They came about the second day. My situation was worse, if any thing, when Dr. Thomas Millspaw came. The issues were still in my back. He neither cupped nor leeches me. He gave me powders and drops, to make me rest and ease my pain. I do not know that he said any thing about disease in the spine. He said I had been in the family way, and had had a miscarriage; and no other complaint existed, or was ever mentioned. He treated me for nothing else. About 2 months after Gouverneur Millspaw came and attended me. I was still suffering from the same symptoms for which Thomas had attended me, and had remained so for two months. He gave me drops, but I cannot recollect all the medicine. I did not tell either of the Millspaw's that Dr. Evans had not understood my complaint. I had not been out of the house for 5 months at all. All that sickness was the result of the miscarriage as I know and firmly believe.

Brady.—I wish now to put two questions, which the witness may answer or not, as the Court directs. They are pointed and distinct.

Q. Had you sexual intercourse with any person but Cooke between July 1846, and April 1846? namely 8 months.

McKeon.—Objects.

Graham dilates at some length, when the

Recorder.—Mr. Graham, this is only doing a second time what the Court has already overruled. There is no new matter, it is only a repetition. We have before decided the question, and this is identical with the other.

McKeon.—The bill of exceptions is only being prepared by the counsel for defence; in anticipation of a conviction.

Graham.—That is a most unprofessional statement.

Recorder.—The matter is presented in no new shape at all, and I do not see why our time should be thus wasted.

Brady.—Maria, about what time this spring were you sufficiently restored to go out of the house.

A. About the 1st of April. I was somewhat better. Dr. Samuel Smith then attended me. He prescribed a drink, and a kind of nourishment. He did not cup or leech me. My symptoms were a good deal the same, as when Dr. Evans attended me. I continued until August at my sister's. Dr. S. saw me three or four times a week. In August I came to the city. I came about the middle of August. Dr. Smith came with me, and I went to reside at his sister's, Mrs. Haughton, corner of Varick and Vandam sts.—Dr. Smith left next day. He went with me to no other place but his sister's whilst in the city. I next saw him about 3 o'clock. I then went to Mr. Neven's, in Gold street. I remained there nearly four weeks. I did not see him nor receive any letter from him. I was boarding there.

Q. Who paid for your board? A. I don't know, except it was the public; I saw no lawyer, neither went to see one and none called on me; Dr. McDonnell took me there; I became acquainted with him at Mrs. Haughton's; I went with her no where; before I saw Dr. McDonnell, I saw no public officer, or magistrate, or policeman; Mr. Bowyer was the first officer I saw; I saw him at Mrs. Haughton's; he took me before the Grand Jury; I was sworn there; I had made no statement in writing, and to my knowledge none had been made of my case; I don't know any of the persons of the G. Jury; The District Attorney I did not see there.—When I left the Grand Jury, Mr. Bowyer took charge of me. I had no intercourse with any lawyer, and no lawyer had charge of my case in this city. Dr. Samuel Smith called only twice whilst I was at Neven's. Since I was before the Grand Jury, no statement of my case has been made in writing to my knowledge. Mr. Bowyer wrote down something, and I signed it before I went before the Grand Jury. I did not swear to it. I don't know where it is, but I saw it when I was before the Grand Jury. I suppose they have it.

Brady.—Mr. McKeon, I should like to see that paper. We ask to see it.

McKeon.—You cannot see it, I refuse to give it in this stage of the proceedings.

Brady.—Fairness requires you to produce it, justice requires we should have it. This is unprecedented, to refuse to produce an unsworn document prepared by a police officer. During

the argument, the witness was permitted to withdraw.

Mr. O. Hoffman addressed the Court to the effect that the defence were not entitled to the paper, neither as a matter of law, nor on a principle of fairness or courtesy. The paper is only a memorandum, and has no legal vitality, and they are not entitled to it *ex debito justitia*, and if we permit it, through our desire of having the whole truth elicited, to be read at all, it shall be read through from beginning to end, without remark or comment, before the jury and in presence of the witness who signed it.

Mr. Graham replied, but

The Court decided that the Public Prosecutor had no right to yield up the paper, as it is in his possession officially, and he cannot be compelled to produce it.

The Court adjourned to half past five.

SIXTH DAY.—Evening Session.

A. L. Jordan, Esq., one of the counsel of Restell, for the first time during this trial, appeared in Court.

Brady.—Maria, when do you say was the last time you had intercourse with Cook? A. About the middle of May. Q. What was the first time you ever saw the milk you spoke about? A. I think it was the morning I left Madame Restell's to go to Ramapo, the last time. Q. Did you ever know any other Samuel Smith except the Doctor. A. No, sir. Q. You spoke of something that came from you that resembled liver or flesh—when was that? A. At Ramapo and Walden. Q. How many questions were asked you before the Grand Jury. A. There were as many as three, but not a dozen. They asked me if that paper contained a true story of what had happened. The paper was read to me by the District Attorney, but I don't recollect when exactly, but it was after I went before the Grand Jury. It had not been read to me before I went. I think it was not read to me in the Grand Jury room. I was there, not over five minutes. I signed the paper when Mr. Bowyer took it down, and I did not read it, and I signed it without reading. Q. Besides Mr. Bowyer and Dr. Smith, what other persons visited you? A. Dr. Bedford and Dr. Coles, but not the Mayor. I saw the Mayor at the Chief's office. I did not take an oath before him. I took no oath except the one in the Grand Jury room. I had heard from Dr. Smith that Mr. Bowyer was coming to see me on this case, in the country.—He came to see me.

Graham.—This paper was verified on oath by her before the Grand Jury, where she was for five minutes; and she was asked under oath whether it contained her true statement. We now insist on its production.

McKeon.—I will not give you the paper. The Grand Jury asked three questions, namely—Were you pregnant and quick with child? Was the child destroyed in you? Who destroyed it, or produced abortion? The Grand Jury found a bill. They did their duty, and I will do mine.

Recorder, to counsel for defence.—Gentlemen, you seek to compel the District Attorney to disclose that which he cannot disclose as counsel to the Grand Jury. We presume they found that indictment correctly, and he is bound to

keep their secrets as counsel of the Grand Jury room. The motion for the paper is overruled.

Graham presented exceptions.

Brady.—Maria, had you any ulcers in your throat in September, 1846? A. No, sir. Q.—Were you at any time between September, '46, and April, 1847, when you were ill, affected with the venereal disease? A. No, sir.

Re-examined by McKeon.—Madame Restell herself came to the door; she said she was the person wanted; I described my symptoms. Q. In the first interview was any thing said about an abortion? Question waived. Q. Maria, was your last intercourse or connexion with Mr. Cook in April or May? A. In May, but I cannot fix the day; the discharges which came from me after the operation, were very offensive; I was generally unwell for three days, sometimes a little more; I had cold chills on me; right in the heat of August I had to sit by the fire for hours, I was so weak and cold. Q. Had you ever a disease called the whites? A. Yes, for several years. Q. Had you ever a disease termed erysipelas? A. I had. Q. Where was this statement, written by Bowyer, made by you? A. At my sister's, at Walden, and signed at Nevens' in New-York, in the month of August. That's all, Maria.

Dr. Cole called.—No answer.

Dr. Saml. C. Smith, called.—I am a practising physician, resided in Montgomery, county of Orange, for several years; I know Maria Bodine, since April 12, 1847; I was overseer of the poor and one of the physicians; I first became acquainted with her from information I had as overseer of poor; I called at Youngblood's to grant temporary relief as an overseer; she was enabled to be removed to the Alms-house on the 8th of May; she required medical aid; she was in a very delicate situation, constipation of bowels, pain in the head, inability to move, and a very feeble pulse; complained of difficulty about the womb: on the 5th of June I made an examination into the private parts with my hand; the neck of the womb was distended, by some foreign substance, and a slight prolapsus; the mouth of the womb was indurated, and was pained on the touch of the finger; there was a discharge or unusual secretion; as a medical man I considered the cause of her illness, from my examination, to be either that she must have had a delivery of a child badly managed, or must have had an abortion produced upon her, or by some mechanical injury by an instrument, or by violence of the hand.

Q. In consequence of your examination and the communication confidentially made by your patient, Maria Bodine, and the opinion you formed, what steps did you take?

Counsel for defence objected.

Hoffman.—I am going to show that the proceedings commenced with this gentleman, who communicated to the Mayor of New-York, and that the girl herself did not originate this case for trial. They proceeded from this physician to the authorities; and the last witness, Maria Bodine, did not institute this inquiry.

Hoffman.—Doctor, I now put the question as amended, and we do this to rebut the charge made by the defence, that this was a case of perjury or conspiracy, brought after a considerable lapse of time for corrupt motives. Now

Dr. Smith, answer my question? A. On the 2d of August, I wrote to the Mayor of this city, in reference to the matter; on the 6th of August, Mr. Bowyer, a police officer from this city, called upon me at my house at Montgomery, I accompanied him to Youngblood's, where Maria was; he left the house next morning; Maria Bodine came down with myself to N. York on the 12th; Mr. Bowyer brought me a letter from the Mayor of New-York; I left her at my sister's, Mrs. Houghton, in Varick street; my sister is married to a butcher. Q. Independent of your personal examination, did the patient make any representation to you, as physician, of the character, nature, symptoms, or effects of the malady under which she was laboring. And if so, what? A. She did. Q. What were those representations?

Brady objected, and was stopped by the Recorder, who requested that he might "hear what the other side had got to say."

Hoffman replied, and quoted Greenleaf powerfully to his purpose, but the question was not pressed, and the Court adjourned at 9 o'clock.

SEVENTH DAY.

Dr. Samuel C. Smith, called to the stand.

McKeon—As a medical man, can you give me the symptoms of an abortion being produced? A. Pain in the head, burning in palms of the hands, chills, pain in the back, discharge from the womb, generally called flooding. Q. Can you give to this jury any description of the kind of discharge?

Hoffman.—What would be the character of flooding which follows abortion by violence.

By a Juror.—How long would this discharge in ordinary circumstances continue? A. It may continue two or three weeks.

Hoffman.—Supposing an abortion to have been occasioned by violence, and the female neglects herself, or goes about her usual duties, how long would it last? A. A few weeks, but it would depend entirely upon her constitution. I cannot speak with certainty.

Cross-examined.—My age is 30; I have been a practising physician since May, 1839; I am now in business, and have a moderate practice; I have practiced in other places. Q. When did you first in your life know Maria Bodine? A. From a small girl, I knew her family; I was acquainted with her by times. Q. Do you know Mr. Cooke? A. I may have spoken to him, but not frequently; I had attended her in the summer of 1844, for a derangement of liver, and constipation of bowels, it was removed in 3 or 4 days. There was nothing else that I know of except as I judged from her representation and her symptoms called the whites; I judged from external symptoms. Q. What external symptoms led you to suppose she had the whites? A. General debility, pain in back, leaden hues under the eye-lids; nothing else. Q. Did you trace the affection of the liver to the existence of whites? A. She alleged this to be the cause. From her representation I did not examine the discharge; I never treated her for any complaint, nor for obstruction of menses. Q. Could these external symptoms you speak of, arise from obstruction of menses? A. They might sir. Q. Could you tell from the presence of these symptoms what was the cause of them, unless she told you, and could you, irrespective

of her telling you, form an opinion. A. She had a broken down constitution from some cause or other. Q. Could not a great many causes of a different character produce these symptoms; might it not be any one of twenty causes? A. I think it could not be distinctly told. Q. The first time you examined her was the 5th of June, did you ever make any other examination? A. Yes, yesterday morning. No one but ourselves were present; it occupied about 5 minutes; I inserted my first finger and felt the neck of the uterus or womb hardened. Q. Was the hardening a disease? A. It is natural for the uterus to be hard, but this was indurated; it was excited. Q. Was the excitement produced by your finger. A. Not solely. There might be discharge, but I did not see it; I did not make any ocular examination. Q. Do you mean to state to this jury that the neck was in a morbid or natural condition? Have you any certainty about your opinion? A. I am not prepared to answer. Q. Is this induration to be ascribed to one single cause or a great variety of causes. A. There are many causes to which such injury may be ascribed. Q. Was the neck of the uterus unnaturally distended? A. I thought so. Q. Does it exist in all cases of falling of the womb? A. I think not, always, or commonly. Q. Does this distention usually and in a majority of cases accompany falling of womb. A. It does; the falling of womb may arise from a great variety of causes, and is a very common disease among married females. Q. I mean a woman who has frequent intercourse with men? A. It is not usually so with a virgin. Q. The foreign substance you found there, what was it. I made up my mind it was retained menses. Q. Was the prolapsus slight? It was. Q. To how many different causes may all these conjoined effects be ascribed? A. They may be done by violence.

Brady.—That is no answer to my question. A. Either or any one of many causes may have produced this result. Q. What part of your examination then necessarily led you to ascribe the cause? A. The tenderness of that organ the uterus, led me to ascribe it to that cause. There was great pain on the touch. Q. Can the parts adjoining the uterus be touched by the finger without giving pain? A. They may. Q. Supposing the uterus to be diseased from any cause, would not touching the part produce pain, as the obstruction of courses. A. It would be painful from obstruction of courses. Q. How can you tell whether this pain was the result of violence, or from the mere suppression of menses. A. There are various causes which may produce it, but her narrative to me directed my mind to this as the cause. Without her statement, I should not at once have judged of this; my mere examination would not enable me to ascribe it to these causes. Without her declaration, I could not so clearly have done it at that distance of time. Q. Would suppression of menses, of itself, produce falling of womb; would it be a sufficient cause for such an effect? A. I think not, it may be, but I never had a case. Q. After the expiration of 6 months after an abortion, could any medical man determine absolutely the fact? A. I could not, and I am not aware any one could.

By Recorder.—I have not had much experience in abortion. In midwifery I have.

By Brady.—I have attended women—married women—after an abortion

Q. Are there not many other causes besides miscarriage to which all these symptoms collectively may be ascribed? A. I think not.—Q. In a case of miscarriage does flooding always occur? A. Always. Q. Can that stop and again recur? A. If the patient does not keep a horizontal position it will continue. Q. If she takes no means to stop it, keeps walking about, how long would that flooding continue? A. It might last two, four, or six weeks. Q. Would six weeks be the extreme limits. A. I never knew a case where it continued more than three days from miscarriage. Q. If not stopped, how long would patient live under such flooding. A. Cannot say. Q. Is there any sign or symptom by which any physician, before the foetus has life or the woman quicken, can, with certainty, determine? A. There are certain symptoms from which we infer, but, there is no certainty but quickening. Q. Can not all these symptoms result from suppression of menses? A.—There are such cases on record. Q. What do you mean by quickening. A. The motion of child or foetus in uterus. This flutter cannot be felt from a mere change in uterus. Q. What cause does the fluttering spring from? A. I think there is no cause to be assigned. Q. At what period does quickening occur? A. Sometimes 12 weeks, up to 6 months. Q. What author says 12 weeks? A. I don't know, if I did I would inform you. Q. At what period could you, by stethoscope, ascertain the quickening? A. At 12 weeks the pulsation can be detected by auscultation. The fluttering may be mistaken for wind or flatulence, and it is very unreliable or unsafe as a symptom and a woman may be mistaken. Q. Had you ever a case where a woman supposed herself in labor and was not pregnant? A. No, sir. Q. If a woman first misses her courses on May 13, could she have become quick with child on July 17. A. From missing the courses she could not be certain; but my opinion is she could be quick. Blisters, cupping, and other counter-irritants, are applied, in cases of disease of spine; but for what I knew to be an abortion, I should not use myself such means. I continued to attend Maria up to the 10th or 11th of August. I saw Mr. Bowyer only once, and no other public officer from New York. On September 31st I saw Maria, and I saw her twice or three times, and examined her yesterday. Q. At whose request and who was present? A. Dr. Covell, and it was at Mr. Nevins, and in the prison in the morning, before the Court opened. Q. Have you said to any one what purpose you had in view. A. No. I know Geo. Millspaw. I think I did not tell him I said I would make a good thing of this prosecution before I got through. I might have done so. I wrote to Mr. Cook, saying it might be settled.

McKeon.—Doctor, have you, and if you have produce the letters you wrote to, and received from the Mayor of New-York? A. I have them, here they are, [hands them the letter from himself, the Mayor's, the Chief's, and Mr. Bowyer's.]

Q. Does not the concurrence of all these symptoms in the same female, prove almost

with certainty, that an abortion has been produced?

Before this question was answered, another was asked.

Q. If a woman have her courses on the 16th of April, could she be quick with child on the 19th of July? A. I think she could; I am not connected or related to any party in this case, and expect no compensation, reward, or remuneration, and have no interest in this case except as a citizen.

By Brady.—I remember talking with George Millspaw. Q. What month did you write to Mr. Cook? A. In April or May; before I had made any examination; I consulted no lawyer but the District Attorney; I never paid any fee to any lawyer.

Dr. George Coles, called—I am a practising physician of this city, and reside at 55 Carmine street; I have resided in that street seven years; I have seen Maria Bodine; she called on me on the 29th of June, 1846; I made an examination; I found the usual symptoms of pregnancy; as a medical man I formed a conclusion that she was pregnant.

Cross-examined by Mr. Brady.—I had never seen her before, nor saw her till about six weeks ago. Q. What examination did you make for her? A. I made no internal examination, but from other symptoms, and my questions and her answers, formed my opinion; it was the areola, the darkness which takes place after pregnancy; I saw no other sign than this, and made no other examination; I formed my opinion without, and irrespective of any particular information. Q. I this areola caused by any thing else than pregnancy? A. It is not; I would not hazard the opinion; I have never known the discoloration under any other circumstances; It is not confined to the first child; I never saw the areola result from any other cause than pregnancy; I think it cannot arise from mere suppression of menses; there was no one with her when she came to visit me: I have been in practice nineteen years; all medical opinions are made up from the testimony of the patient, and the symptoms she presents, or as you find: from all the lights I had upon the case, I formed distinctly the opinion I have given; it is a fact known to all medical men, that a woman may menstruate after pregnancy.

Philip Staats, police officer, called.

McKeon.—This officer was placed on guard to watch all who went in or out of Restell's house. A system of espionage was carried on by the public authorities for the purpose of gaining positive evidence against the prisoner.

Mr. Brady objected to the witness, as his testimony is perfectly irrelevant and immaterial.

A. I was policeman at that time on duty; I saw this girl come from Madame Restell's on the 7th of June; I followed her to 216 Bleecker-st., to Mrs. Dexter's, who she said was her sister."

The Court here adjourned to 5 o'clock, P. M.

EVENING SESSION.

Dr. Edwin Evans, called—I'm a doctor in Walden, Montgomery county; a year last March I went there; I know Miss Bodine; attended her in September, 1846; I found her at Beriah Bloodgood's.

McKeon.—State all you know of this girl.

A. Being sent for, I found her flowing as it is

commonly termed, with pain in back and bowels, and after some conversation, I asked to examine her breasts; I did so; the breasts were enlarged, distended with milk; the covering of her breasts was wet; apparently from the oozing from the nipple; the nipple was prominent and drawn out, with a dark areola about it; the pains in her back were intermittent; this was the substance of what I first observed; after the flooding was suppressed, there was considerable trouble remaining, and I requested to make an examination of the private parts with my finger; this I did; found the parts quite tender, and the neck of the womb considerably enlarged and swollen; it was very hard, sensitive, and tender, and more than the natural heat; the discharges at that time were but little; this was in the forepart of the month of September; the mouth of the womb was open about the size of a shilling; the discharge was foetid and disagreeable to the smell. Q. How was her mind, at any time? A. She was right in her mind at this time, but when she had erysipelas, she was out of her mind. Q. Doctor, during the period of her trouble, what do you consider was the cause of that ailment? A. She must have been delivered of something to have produced this combination of symptoms. Q. What are the symptoms? A. If she had had a difficult labour, even a natural one, she might have sustained considerable injury from it. Q. Did she make statements to you at any time, in the month of September, as to the cause which produced her delicate situation? A. She did not till after I told her what I believed her situation was, and the cause of it. Q. After you told her your opinion, did she then say what the cause of her illness, and give you a history of her case?

The defence objected.

McKeon.—I insist upon having this answered as a legal question.

Recorder.—The witness has already said that she had made a statement to him, but has not been asked, or said, what that narrative was.

A. At that time she did not give me a history of her case, but during September she did.

McKeon.—Will you give the statement she made to you as to her symptoms and sufferings and the cause or causes which produced them?

Graham.—To that question we object.

Cross-examined by Brady.—Dr. Evans, what is your age? A. 26. Q. How long in practice? A. Since March last. Q. When did you obtain a diploma? A. In March; was a student for 3 or 4 years, in Cayuga Co., in Geneva, and in this city; I had paid particular attention to midwifery, and made that a subject for special attention with the general practice of medicine; previous to September, 1846, I had quite a number of cases in Walden; I had had several cases of miscarriage before this; they were natural and accidental; never saw Maria before I was called as a physician; at my first interview there was no third person present; my first visit I prescribed a cathartic to put her system in a condition for remedies to suppress hæmorrhage; the blood was coagulated and foetid; I was in the room when she removed the cloths from her person; menstrual blood does not coagulate; it does not come out in clots and coagula; it decomposes and does not come out in cakes.—

Q. Is there a disease called amenorrhœa?—

A. Yes, sir. It is sometimes defined a profuse menstruation, but is actually a natural menstruation, followed by hemorrhage. Q. Does the discharge produced resemble an ovum? A.—Often it does. Q. What is the difference in the blood? A. The blood is more foetid. The case was not one of amenorrhœa. The enlarged breasts, the milk, the areola, all prove that it was not a case of suppressed menses, but of recent pregnancy.

A. From the symptoms which I saw I formed an opinion, decidedly that she had been pregnant. A. No suppression of the menses could possibly produce it. Having given the cathartic I gave remedies to control the hemorrhage. I had other trouble to manage. Q. What treatment did you adopt, or remedies employ? A. I cupped her on the side of her back, and side of her hip; I leached her in the private parts; I put issues in her back. The cupping was for inflammation in the kidneys, and the issues were placed to counteract spinal irritation and the disease existing in the womb. This was two or three months after I first began to attend her. Q. Had she the venereal disease in any form or shape? A. No, sir, not while I attended her, I never heard of it. Q. Do you know Mrs. Dowling? A. Yes; but I never told any one of her disease till some months after I had ceased attending her. While I attended her nobody but myself knew; but as a ruse, and to divert people's attention, I said she had a disease in the spine, to conceal her shame. I ceased to attend her because I had a considerable bill against them, and they had no means of paying, and having done my share I thought the town of Montgomery might do the rest. I cannot state the condition of her womb when I left her. I did not examine it then, but at the last examination it was less sensitive, less heated, and somewhat more healthy, but for many reasons she was weaker. Dr. Marston and Dr. Hagar were called in by me. The intermitting pains gradually left when the hemorrhage had subsided.— This was within a week. They were after-pains, consequent upon delivery. These pains last as long as hemorrhage continues, and there is no exact limits, as there is often a long established oozing. It might come on for several weeks, two months, or more, and would recur by any exciting cause. Q. About what time did the erysipelas occur? A. Probably sometime in October. It occurs from a feeble and debilitated state of system.

Brady.—That is all, sir.

Dr. Chandler Gilman.—I am a medical practitioner of 20 years or more. I am a professor of astetrics or midwifery. My studies lead me particularly to cases of midwifery. Q. Does menstruation ever occur after pregnancy? A.—Yes, sir. Q. Is the fact that a woman has courses distinct evidence she is not pregnant.— A. Their are instances of women having their menses up to confinement. There are instances on record where women have quickened at three months. Q. What is most decided evidence of pregnancy. A. Placing your ear on the abdomen and hearing the beating of the fetal heart. Areola is very strong and almost decisive evidence. If it exist in the case of an unmarried female I should feel compelled to give my opinion against her. Q. If you found this areola

how far would you suppose she was gone. A.—As early as 12 weeks.

Hoffman.—From Dr. Evans' statements, what would be your medical opinion, as he described them?

A. They would indicate that she either then was pregnant or had recently been delivered.—That she had been delivered within quite a short period. I should think this girl had had an abortion. Suppressed menstruation would not account for such symptoms. The ordinary time of quickening is about four or four and a half months.

Brady.—Doctor, if a woman was 25 years old and in good health, who had never missed having menstruation, would she be quick with child? A. In the ordinary course of nature, she would not be; the deep color of the areola in a woman who has had children, always remains; it cannot be produced by obstructed menstruation, according to the accredited opinion of well informed medical men. The open state of the womb would continue for many months. Q. Had this woman been delivered, from the symptoms. A. There was nothing more than a probability that she had been delivered by violence, but a certainty that she had borne a child and been delivered of a child. The insertion of the hand in the vagina, and certainly the insertion of the finger into the mouth of the womb, would produce abortion by rupturing the membranes. Q. What are the effects of abortion? A. Discharge of clots and masses of blood, with very great pain in small of back and lower part of belly; uterine pain might cause her to vomit; the shock to her system might or might not produce rigors or chills, and the violence might produce fever with the ordinary symptoms; subsequently continued discharges of blood in larger or smaller quantity; sometimes very considerable; the burning in palms of hands is one symptom of irritative fever; the opening of the womb to the size, say of a shilling, would indicate that she had been delivered; I have known it continue 6 weeks, and there is no reason why it should not continue for 6 months or a year. Q. Independent of all other symptoms, would you or would you not form a decision and opinion that a woman with these symptoms had been pregnant? A. I should feel compelled to say she was pregnant, even if she were an unmarried woman.

Cross-examined.—Does menstruation ever continue during pregnancy? A. Every gentleman who has practiced medicine knows many instances.

Dr. George Wilkes was then called, and stated that he was a medical practitioner in this city, and concurred entirely with Dr. Gilman in the views and opinions he had expressed in Court.

The Court adjourned till Friday morning.

EIGHTH DAY.

Dr. Frederick A. Putnam, was called.—Q. Doctor, you reside and practice in this city?—A. I have resided here for some years. From your knowledge of Obstetrics, could a patient on whom the operation for abortion was performed on a Sunday, be able to walk on the following Thursday, from Greenwich street to the foot of Duane? A. Yes, sir, certainly. That's all, Doctor.

Ellen Call, examined.—Q. Where do you re-

side, and do you know Maria Bodine? A. I reside at Ramapo, and I know her; I was acquainted with her in July, 1846; she was living then with Mr. Cook in Ramapo, and I was in the habit of seeing her often. Q. Did you notice any peculiarity about her in July? A. Yes, she had her head tied up, and she had to have her clothes open, unhooked, as they had grown very tight. Q. When did she leave Ramapo, and how? A. She left in July, in the cars, in the evening, between 5 and 6 o'clock: the cars were coming to Piermont for New-York. Q. When did you again see her? A. The next time I saw her, was in about a week or ten days after that.—Q. Well, was there any thing particular about her, and how did she look then? A. On her return, when I saw her again, she looked just like a person risen from the grave; this was in July; after the 4th; I am certain of it; Q. Was any one with her, and who? A. Mr. John McCann was with her when she left Ramapo, and stood near the cars, along side of her.

Cross-examined by Mr. Brady.—Q. Maria, are you married? A. No, I am not; my parents reside in Ramapo; I reside with them; I am not twenty-three years old yet; I never have been married. When did you first become acquainted with Maria Bodine? A. In April or May, I cannot say which, when she first came to Ramapo; I was never very intimate with her; I was in the habit of seeing her at Mr. Cook's; it was the last day of June, or the 1st of July, when she left Ramapo for New-York. Q. When was it you next saw her? A. It was I think on the 13th of July, when I next saw her. Q. Was she taking any medicine at that time? A. I don't know, nor ever heard of her taking any medicine at that time. It was about a week after I saw her with her head tied up that she went by the cars. Q. And when was it you saw her again, when, as you have said to the counsel, she looked like one risen from the grave? A. It was about 10 days after, when I saw that change.

Mr. Brady.—That's all Maria.

Dr. Gilman's name was called over again, but no answer returned.

Dr. John C. Covell, examined by *Mr. McKean*.

A. I am a physician; I have been in practice twenty-two years; I am at present the physician to the City Prison; I have had considerable experience in midwifery; I attend at least fifty labours a year, and also see quite a number of miscarriages besides. Q. Doctor, can a female be impregnated—be in the family way, and yet have her menses? A. Yes, sir, she may have the discharge called menses; she may menstruate during that period. Q. Give us the general symptoms of pregnancy?

The witness gave the general previous detail of such, in the course of which he added "the breeding-look," well-known amongst ladies, the peculiar sharpness of features, and unusual expression of the eye, with frequent palpitation, rotundity of abdomen, general expansion of figure, with the very marked areola, or dark circle around the nipple, most distinctly marked.

Q. After abortion is produced, doctor, give us the general symptoms.

A. The first symptom during its progress would be a chill or rigor: reaction brings on

headache, pains in the back, then "a shew," or the clothes stained, then the expulsion of the foetus, with more or less flooding, according to the age of the child, and the amount of violence or force used. Q. Describe the operation, how it may be effected, as *shortly* as you can? A.—A female may and has done it upon herself.—Whatever instrument is used, there is first a gush of water, or water tinged—colored with blood; contraction of uterus takes place in a few hours, more or less, and the ovum is expelled, probably with considerable pain, or it may be according to circumstances, more easy. All this takes place, whether the hand, the finger, or a small instrument, have been used.—After the ovum is expelled periodical pains come on, there is a numbing sensation of the body and extremities, blood discharges freely, sometimes pure and liquid, sometimes coagulated, in masses, and then it looks like liver. This hæmorrhage or flooding would continue till fainting occurs, as the remedy of nature; the woman would bleed to death if she did not fall and faint: she may perhaps after the faint, and the stopping or suppression of the flooding, again for the time, stand upright or go around her house, for a week, or a day, or an hour, and the blood again gush forth until nature again stops it. I have known it to continue for six months, often for three or six months, off and on, pain and flooding, and then a short stoppage, and then pain and flooding renewed. Q. Have you ever seen a case where the areola was present, distinct, and the woman was not pregnant? A. I cannot say that I ever have where the areola was well marked and distinct. And I have never seen it absent where pregnancy existed.

Cross-examined by Mr. Brady.

Q. Up to the period of quickening, is there any *one* infallible sign of pregnancy? A. Not any *one* infallible single sign but quickening.—Q. Have you ever heard of detecting pregnancy by auscultation by the stethoscope, and what is your opinion of it? A. I do not think much about it. I may not have an ear fine enough for it: few people have. Q. What is the shortest period at which you have ever known females quicken? A. The usual period is about the 4th month, but I have known one case where the lady quickened certainly in three months and one week; and I have had several, considerable, where they have felt this decidedly quickening, distinctly at three months and a half. Q. Does distention of the abdomen always follow suppressed menses? A. Not necessarily nor always; sometimes there is a degree of it, but this detention is slight and peculiar. Suppressed menses never produce the same train of symptoms as pregnancy. The pregnant female generally looks healthy—the skin clear, the system in its right functions; but the woman laboring under difficult menstruation is sallow, discolored, anxious, spiritless about her eyes and motions. Q. If you saw all the symptoms you have detailed, what would you think of the woman? A. If I saw them all combined, as I have stated, I should say that the female was necessarily in the family-way. It could not be otherwise. I should give my opinion against a woman, any young lady, if her family said she was a virgin. I should know otherwise. I have seen feigned cases of pregnancy, but was never mistaken in

one. I never said a woman was positively pregnant, when it turned out she was not. The anxiety of women to have children, often misleads them. The motion termed fluttering is sometimes confounded with flatulence in the bowels. But the motion of the child is continuous, sometimes from hour to hour, and for weeks of course, and the internal sensation is perfectly different, more comfortable, than distention from flatulence. Pains in the back, and some minute symptoms, do not continue so severe after quickening. Q. Doctor, how long as a *not unusual* thing, does the menstrual discharge continue after pregnancy has been established? A. It often, not unfrequently, continues two or three terms after pregnancy, from the fact of the subsequent birth.

Dr. Evans, recalled. Examined by Ogden Hoffman.

Q. Give me, doctor, a particular description, and explain more fully, the appearance of the areola?

Several Jurors.—We should like to hear it.

Graham.—I object to this course most decidedly. This witness has been fully examined and cross-examined by ourselves.

Recorder.—When the jury do not perhaps exactly understand a subject, or a question, they are entitled to ask for any additional information, and they must have it.

Several Jurors.—The majority of us wish for it.

Q. by O. H.—Doctor, answer my question as I previously put it. A. The appearance round the nipple, called the areola, is quite dark, deep brown, a kind of circle, broad about the edge; it was distinctly marked in Maria Bodine; the papillæ or small prominences on the nipple itself were very distinct; on drawing the finger over them there was a moisture, a kind of unctuous feel. I examined particularly that I might not criminate her falsely; she was using flannel saturated with vinegar, applied to the bosom; the papillæ could be seen with the eye, as well as being perceptible to the touch; this moisture or secretion, had a slippery unctuous feel; there were lumps in the breast, caking, from the milk not having been well drawn out, or from cold.

Dr. Gunning S. Bedford, called.

Examined by O. Hoffman, Esq.—Q. You are I believe, Doctor, a professor, and well known in the profession. You hold in the University a similar situation with Dr. Gilman in the rival College? A. I occupy the chair of Obstetrics, including the Diseases of Women and Children, the same department as is filled by my friend, Dr. Gillman. This has been my particular study, and subject of attention.

Q. Doctor, can a woman menstruate after conception? A. A woman can be pregnant, and yet menstruate. Q. After conception, at what period generally does menstruation discontinue, or rather does a single menstruation prove at all she is not pregnant? A. It does not at all. Q. What is the ordinary period when a woman quickens with child? A. In answering that question, I beg to say that physicians consider that life is perfect in the earlier months, the earliest, in fact of pregnancy, and that the child is as much alive then, as at any subsequent period.

Brady.—Yes, but lawyers do not; there is a distinction between what you regard as life—natural life, and legal life.

Dr. B.—I wish distinctly to be understood, and to state only facts, and well received doctrines, as I know I am reported. Q. You are right, sir! I now renew the question. A. The general rule is that women quicken at four, or four and a half months; women will sometimes quicken at three months, and such is the difference as regards the time, that it is an accepted doctrine with the profession, that from ten to sixteen weeks are the two limits, within which quickening can or will take place. Montgomery is the best writer on this special subject; the old general rule of four months has a multitude of exceptions, and they are so numerous as almost to swallow up. Q. Do you know Dr. Evans, and if so, what importance would you attach to his opinion? A. What is his christian name! Dr. Edwin Evans? A. Yes I do, he graduated with great credit at our University. [Looking round.] Yes, there he is in the crowd; he was a very respectable and talented student. Q. Is the areola considered by standard writers an evidence of pregnancy? A. It is considered as the most striking evidence; it is regarded by the best authorities as the most distinct and special evidence, so much so that I will briefly relate an anecdote from the celebrated Doctor Hunter.

Dr. Bedford here related a singular anecdote recorded by the celebrated Dr. Hunter, who affirmed respecting a certain subject in his Dissecting Rooms, a young lady, whose bosom presented the areola most distinctly marked. Dr. H. asserted, that she had been or was then pregnant, though during life she was regarded strictly as a virgin, and also the membrane, called the hymen, was not ruptured. Dr. Hunter's diagnosis on this most improbable case turned out perfectly correct, as the young female on examination proved to be *enciente*, and a child existed.

Q. Dr. Bedford, can you depend with confidence upon this areola? A. We can rely with almost absolute certainty upon it when distinctly marked; it usually shows itself about the 4th month of utero-gestation.

Dr. Bedford.—I here wish to remark to the Court and Counsel that I have read no testimony in this case; I give my opinion quite abstractedly and irrespective of any thing which may have been previously said.

Q. Doctor, would the mere suppression of the menses, unaccompanied by pregnancy, ever produce this distinct appearance on the breast?—A. Certainly it could not produce the full and distinct appearance. Q. When does this mark or areola leave the female? A. It never entirely disappears; the breast never perfectly assumes its virgin color, but the areola diminishes after delivery, the cause of its existence having ceased, the effect declines. Q. Supposing a woman to have been pregnant, and abortion to have been produced, what would be the immediate effects of this violence? Describe if you please.

A. It would depend on the degree and manner in which the force had been applied. In an abortion generally, as it happens, the pain would be about the same as in natural labor. The womb contracts upon the expulsion of its contents, and if rudeness or hasty violence have been used, it rapidly contracts, a discharge of blood comes on, sometimes most fearful, for abortion is almost always succeeded, or accompanied, by extraordinary

ry flooding. This hæmorrhage, or flooding, would be greater or less, according to the age of the fœtus. A woman in early pregnancy will flood more than a person further advanced. A female who is two months gone, and aborts, would have heavier flooding than one five months advanced. Q. What would be the character of the discharges after abortion? A. At the first gush, fluid, then it would be clogged, coagulated, a soft red mass in clots, and undoubtedly there would be an after-birth; of course. If much force were used, and an abortion procured by violence, the after-birth might come away entire, or in shreds, it would depend on circumstances, but most likely it would come away in shreds, fragments, separate pieces, and it only comes away entire when nature is properly assisted. If the after-birth were retained it would decay, liquefy, become putrid, offensive.

Hoffman.—What substance would the clots you speak of, most resemble, that you can recollect? A. The liver that you see in market cut up in lumps, would resemble this closely; but the after-birth would be more friable. Q. If a woman who was delivered by this operation, say on a Sunday, or rather on the Tuesday, would she be fit to go on a journey on Thursday, and then go about her regular housework; or, rather to complete the question, how long would the flooding, in such a case, probably continue? A. I cannot define any period when it would terminate; it would run on, sometimes lessening, then recurring, until it destroyed life, if not arrested by proper medical treatment.

Cross-examined by Mr Brady.—Dr. Bedford, you edited, I think, an edition of Chally's Midwifery, some three or four years ago, and there have been recent editions of this book; now in that work is the areola mentioned as an infallible sign? A. I have not mentioned it as an *infallible* sign, but the best accepted writers regard it as a strong evidence of pregnancy. In fact, Mr. Brady, if I were to see a female, whether married or not, and I noticed on her breast such an areola as described, with papillæ distinctly developed around it, I should care for no other opinion, and regard no other testimony; I should say, decidedly, she was pregnant. The appearance could be produced by no other cause whatever. Q. Doctor, there is a disease which you call dysmenorrhœa, which I understand is difficulty of menstruation, does that ever produce a change? A. It sometimes does, but the appearances are widely different. Q. What do you think of "Kennedy on Auscultation in Pregnancy"? A. Why, it is a respectable work, but I would rather not be asked an opinion unless I can praise highly. I thought Chally well adapted for the ordinary practical details of the lying-in-room, a good elementary work as a companion, or I would not have edited it for my pupils, but I do not regard it as the highest standard work. Q. Now, what do good authors state as the shortest time of quickening? A. The accepted authorities state numerous cases where it has occurred at the expiration of the third month. Some instances have happened of quickening at ten weeks. Every practical man who is an accoucheur knows of them. Q. When a woman has been pregnant three months, how much open is the mouth of the uterus in her first pregnancy? A. It depends on the constitution, and the relative size of the individual. The os tincæ would vary according to

personal conformation. Q. Could any force break through the glutinous secretion with which it is closed? A. Force can accomplish anything if the heart will direct it; but the effects of any—the least interference—are sometimes dreadful. The insertion of the finger upon the part, and merely irritating the os, will in some cases produce abortion. In my opinion, the mere introduction of the hand into the vagina would produce, in a nervous, sensitive, excitable, or even ordinary temperament, hysterics, convulsions, it might be, death. Really, I ask any gentleman of common sense, to decide upon that question, it does not require a doctor. But a woman having had constant or frequent intercourse with men, might escape the abortion as produced by the introduction of the hand; the parts would not be so rigid or sensitive as in a more virtuous woman. Q. Suppose a woman was subjected to an abortion on Sunday, how soon would the fetus be discharged? A. It depends on the degree of force employed, the actual progress or completion of the attempt. It may be in 10 hours, or 20, or 36; it may even be shorter than 10. Sometimes the womb would be thrown into contraction immediately, and abortion prove instant. The fetus would come away at once; unless it had been destroyed; then it would come away in fragments, shreds, or piece meal. The after-birth would follow, sometimes in half an hour, sometimes in three or four hours; but if its expulsion were long delayed, putrefaction would occur. The after-birth would come away slowly, in a putrefied, offensive state, or there might be flooding, which would terminate in coagula. The female might have this dribbling—draining of blood—for months and months, and then it would destroy her at last, if proper medical means were not used to arrest it. Q. If the after-birth were so long retained, how would it at last be disposed of? A. It would come away in a liquid state, as I have said, wasted; a deciduous membrane, something like wet blotting paper, is sometimes thrown off in difficult menstruation.

By Hoffman.—Q. Would the facility of entering the vagina, or the womb, increase according to the advance in pregnancy? A. Certainly—but the danger would increase too. A. Supposing the hand were introduced and worked round and round, so, as has been described, what would be the effects? A. The most horrible.—Q. Could a wire be under the finger at the time of such an operation? A. Undoubtedly, *that's the way the thing is done!* (Great sensation throughout the Court.) Q. Doctor, at what period in gestation does a woman's size begin to alter?—Truth is our object, and we must endeavor to attain it, by every inquiry. We are all groping in the dark—

Graham—interrupting.—Yes, Mr. Hoffman, but we must grope according to law.

Answer by Dr. Bedford.—Very soon after pregnancy. Some females will have the appearance of pregnancy as early as three months.—It depends upon the make, the conformation, and general physical causes.

Graham.—According, of course, as the clothes fit.

By Hoffman.—At what period, then, does the rotundity of the figure increase, so as to require a female to unhook her dress.

A. That does not fall exactly under my de-

partment. But there is undoubtedly a change in rotundity so early as the third month.

This long examination, crossing, and re-examination, was now concluded, and then

John McCann was sworn, and examined in chief by Mr. McKeon.

Mr. Graham excepted against him as being an accessory, an accomplice, one originally included under the same indictment.

The objection was overruled by the Court.

In reply to questions put by the District Attorney, the witness answered as follows:

A. I know Maria Bodine. I saw her in June and July, 1846, at Ramapo. I came down from Ramapo to Piermont in the same conveyance—the cars: I came on in the same boat from Piermont, in July, 1846, to New York. It was after the 4th of July. I afterwards saw her in Greenwich street, at the house of—

Mr. Brady, suddenly rising.—Stop—he has a right to know and be advised as a participator in this offence.

Mr. McKeon.—He is advised: his counsel is Mr. Tucker.

Statement resumed.

A. I saw Maria Bodine in Greenwich street, as No. 148, Restell's house, a few doors from Courtlandt, south of it. I did not see her go into the house, but towards it. I went on down towards the Piermont boat, and saw her after on the Piermont boat. She had come on Thursday. I returned from New York to Ramapo.—I obtained money when I went up, and again came to the city on the following Saturday.—Q. Whom did you obtain the money from? A. I received it from Mr. Cooke.

[The question was answered so rapidly that Mr. Brady had not time to say—"We except to anything done at Ramapo, in the absence of the prisoner," when the reply had been rendered, and the

Recorder said he must answer the question.

Witness.—I obtained it from Cook. I came back on Saturday with the money, a little over \$40, which Mr. Cook gave me to deliver to Maria Bodine. Q. Where and when did you see her? A. At Madame Restell's house; I saw the lady of the house at the door. That's the lady there. I enquired for Miss Bodine. Mad. Restell said she was in the house, and she would call her. I saw Maria. I gave the money to Maria in the front room. I had seen the prisoner before. I saw her the first day I was in the city, on the Thursday. I had some conversation—a little with Madame Restell. I asked her if there was a young lady who had been at her house from the country. She said the young woman who had been there was unwell, and she said she could be of some help to her, but when she called again she would know whether she would be of use to her or not.—There was not much more said after that. Q. What made you go up to Ramapo for money?

Messrs. Brady and Graham object and the question was altered.

Q. How long did you stay on Sunday morning?

A. But a short time. I went on Sunday morning to Paterson by the cars, at 9 o'clock, from New York. It was about 8 o'clock when I saw Madame Restell. I went up home from Paterson, inland. I did not see the girl afterwards.

Cross-examined by Mr. Brady.

Q. I have only one question to ask you, Mr. M'Cann. When did Maria Bodine first come to live at Ramapo?

A. Sometime in the spring—I cannot fix the date more nearly.

The Court adjourned at this stage of the proceedings until the next morning at the usual hour.

NINTH DAY.

After the usual proclamation had been made and the jurors had answered to their names, the District Attorney, McKeon, rose and said, "May it please the Court, the case is now with the defence."

James T. Brady, Esq., Counsel for the prisoner, then opened the case for defence.

May the Court please, and gentlemen of the jury! the time, I am happy to find, has at length arrived, when the prisoner, for the first moment, can be heard in this case by Counsel for her defence.

This is absolutely the first moment when my client, the accused, has been permitted to be heard. But before I go into the details of this most protracted case, or unfold to you our line of defence—a defence which I feel conscious, gentlemen, will be irresistible to you—I beg to tender my acknowledgements to that most respectable and intelligent jury which I see before me. The learned District Attorney has said, that you were actually a "jury of our own selection;" however that may be, he had an equal share in your appointment, and so satisfied am I with our mutual choice, that I sincerely offer you my humble, but most cordial thanks, for the zealous attention, the patient assiduity, with which you have accompanied counsel on both sides, "*pari passu*" in this most intricate and laborious inquiry. I feel entire confidence, gentlemen, in your integrity, I repose a full reliance on your pure, and honorable, and upright minds, and whatever your decision be, though there can be but one decision, but whether my client, the prisoner before you, by some inconceivable misfortune be found guilty of the offence alleged in this most singular and irregular indictment, or she walk forth out of this hall, as she ought to do, innocent, perfectly innocent, with repute unstained, and character unblemished—I shall bow with due respect, and full submission to the mature opinion of twelve upright and enlightened jurors.

Without reference to public opinion against her, never had a prisoner more legal obstacles thrown in the way of her defence.—No papers, no information, no affidavits had been afforded her. It was more an attempt to sacrifice an individual to the bad passions of the multitude, than the administration of pure justice. His client had been hunted down like a poor deer by ravenous wolves; and a portion of that mighty, but misused power, the press, had pronounced a verdict of guilty against her, before the trial of her cause. He paid a just and well deserved tribute to Mr. Phillips, for the frank, just, and liberal manner, in which he had presented the case to the jury, without arraigning their passions against the defendant.—But I again repeat, said he, that this good feeling has been outrageously interfered with, by that tremendous power, than which there is

nothing higher, nothing superior. But the public press has infamously desecrated its office and its strength. Both the "*SUN*" paper, and the "*TRUE SUN*," have falsely and unwarrantably assumed that the prisoner was guilty, and the editorial article in the "*Sun*" this morning, tries to ensure the conviction of the prisoner, whether right or wrong, and by the most industrious efforts, endeavors to destroy her at all hazards—and if she cannot be found guilty of murder, like a Yorkshire jury, to convict her of horse-stealing. The prisoner's Counsel, too, have come in for their share of abuse, through the columns of some of the city papers, as having acted rudely and inhumanly towards the first witness called by the prosecution, merely because we have faithfully endeavored to discharge our duties to our client. For such attacks upon myself, I care not, personally, one straw: they pass by me "as the idle wind which man regards not." But they cannot fail to prejudice my client's case; and for that unworthy purpose, I protest against and denounce them. Such attacks will have no effect upon my mind in causing me to vary from my course. I am accustomed to such assaults from a low portion of the press, and I am used to such witnesses and such scenes in court.

I have seen females brought out of that green-room, as it were, or rehearsal chamber, veiled and modestly attired, and prepared even with more labor for dramatic show than has been employed on this occasion, and denunciations have been heaped and piled up against us by certain of the press, yet the jurors swerved not from their duty, the counsel did not quail, and *that very female*, elaborately trimmed up for a witness as she was, turned out the veriest harlot, the foulest trull that infests our streets or emerges from the perlieus of the Points,—she proved a thief, a vagrant, and the lowest prostitute who draggles her dank wet skirts through the mud, on a rainy night, and offers her loathsome person for hire, to the cheapest bidder!

As regards the performance of my duty to those who confide to me the defence of their freedom, property, or reputation, I at once and without hesitation say, that as Counsel, I make the case my own. Their interests, their success, are incorporated, identified with mine.—My client is myself. This is no new doctrine for Counsel to advance, no new principle for the bar to defend.

In the language of that great and distinguished lawyer, Lord Brougham a man whose equal the world has seldom seen as regards profound sagacity, and lofty universal talent, I believe that counsel when retained, and a case is committed to their trust, know then that but one person in the world; and the only office, the sole single duty they have to perform, is to protect that person at all risks, all sacrifices, all hazards. In that celebrated case, the trial of Queen Caroline, (from which Mr. Brady quoted a splendid passage,) that is the language employed by the greatest man of the age, as scholar, jurist, and universal genius. His doctrine I adopt, and with him (though treading in his footsteps at an immeasurable distance,) I am content to err. According to my feeble capacity, I will defend that lady with the whole of my energies, and at all hazards. I am here as

the advocate and friend of that woman in the hour of her misfortune and the day of her adversity, to secure for my client a fair and impartial trial, and to obtain for her that acquittal to which she is undoubtedly entitled. For what cause is the accused put on her trial this day? It is not for one crime, it seems, but for a series of crimes. She is in fact dragged here to answer for all the past transgressions of her life: and the jury are called to pass not upon this single indictment, but upon other alleged iniquities, and to give a verdict not upon any one individual act, but upon her deeds and actions for the last ten years.

In the course of his general remarks, the counsel observed, "as to bringing suits for libel against newspapers for defamation, the thing is preposterous. The fate of Fennimore Cooper, in endeavoring to prosecute such a suit, is a landmark, a monument, to warn the unwary from such a forlorn hope, as it is now established that libel suits against newspapers, neither vindicate character, exalt the reputation, nor swell the purse." This is, or ought to be, a trial for a specific offence, which consists of several counts, that the defendant, by drugs, instruments, or her hand alone, effected an abortion on the person of Maria Bodine. It is an indictment for manslaughter, whereas, if it were anything, it ought to be for misdemeanor. I assert most decidedly and in the strongest possible terms, that her alleged pregnancy with a quick child, is a palpable absurdity, and a most manifest impossible occurrence. We do not ask or beg for what we have not a right to demand; we will not have the morsel of cheese from a legal mouse-trap; we ask from the opposite counsel for no favors, no compromises, no bargains; we wish for no division, no separation of the two crimes or cases, but will meet it boldly as it is presented.

Mr. Brady here detailed the leading particulars of the case for the defence, and adverted particularly to the absence of some parties whose testimony he had been unable to procure. "Luther Miller and Horace Armstrong were required by us, but the Court, though earnestly applied to, refused to grant us a commission to obtain their evidence. We now, therefore, come before you, gentlemen, crippled by the want of those men's testimony, to the most important facts. Maria Bodine, the leading witness in the cause, in fact, the cause itself, disappeared, could no where be seen, or heard of, mysteriously vanished, after once her name had been heard, and her simulated complaint been casually mentioned." The counsel graphically described Mr. Bowyer's Quixotic journey to look up Maria. And then our worthy Mayor, with the same patronymic as himself, with his lynx-eyed sagacity, aided Mr. Bowyer, who needed no assistance, such was his zeal in this most momentous affair. And now comes upon the stage our sagacious friend, Doctor Samuel Smith the sapient father of this suit. But for him, as a midwife, the case would never have been born, though I fear, like some other of his labors, this case will prove a still-born foetus. Though Dr. Samuel Smith promised himself some profit, as you will presently hear, if his merits as a witness are to be considered, they are valueless, and the account should remain unpaid or be at once rejected.

Whilst all these proceedings were going on we were in mystery; all was obscurity, darkness; we durst not ask to see any one witness, lest they should say we were tampering with them, and Maria herself, the origin of all, was unapproachable, for if you had only glanced at her, the prosecution would have said we had spirited her away.

And this woman, the prosecutrix, it will be our solemn duty to prove, and we have facts to sustain us in the assertion, that that woman is as foul, corrupt, loathsome, guilty thing, as ever polluted God's blessed earth by her pestilential presence.

It shall be our effort neither to injure nor to disparage Mr. Cook—his reputation shall not be jeopardized by any insinuation of ours. This girl was ill of a disease about which there ought to be no mawkish sensibility in giving it its right name. I have the physician to produce who attended her for it, and the messenger who carried the medicine. Mr. Cook inquired what the medical man was doing around the house; he was told the truth, the truth came out, the doctor continued his attendance; and we will not do Mr. Cook so much discredit to his *taste* as to suppose that he associated with a female so afflicted. She was then laboring under the effects of the malady. She had ulcers in her throat, and sores upon her person. She utters in this Court a direct and brazen falsehood. She has upon that stand committed a deliberate perjury, when declaring her freedom from foul disease. I am instructed to say and to prove, that at an early period of her life, she gave herself up to this licentious course of general and promiscuous concubinage, and so precocious was she, that at a very early term of comparative youth, so thoroughly corrupt and abandoned had this girl become, that she had destroyed her health, her character, and family reputation.

Our evidence will be abundant and overwhelming. Every material fact in her statements will be contradicted by the most respectable, the most irrefragable testimony: and I will hold her up before you, on the sternest testimony, begrimed and blackened with every enormity that can degrade or vilify woman.

As regards some points dwelt upon by my eloquent friend, who, as I have said, opened the prosecution in a very fair and gentlemanly spirit, he pathetically said, towards the last scene of the 5th act of this new tragedy, that when Maria was going home, Madame Restell gave her a parting kiss, and the salutary counsel, "Go, and sin no more." But then she gave her simply six shillings for her passage by the cars, and only two shillings for refreshments on the road. Only two shillings for refreshments on a journey of about 60 miles, occupying, it may be, only three hours, or scarcely! Only two shillings for so distant a journey. Why, I have seen old matrons, nice country-women, go to Bridgeport, 60 miles, with only two cents worth of doughnuts in their pocket, and three cents of ginger cake in a reticule; they have never thought of any thing more; and I myself have travelled through that country, and so little was the demand for luxuries on the road, that I have seen a pile of oysters which had died from consumption, and perished from want of excitement.

As regards her alleged travelling companion, Mr. McCann, he has been nursed into life as a witness by my good friend Mr. Bowyer, there, with his rosy smiling face, *wet-nursed* into life as a witness; and as far as his multifarious duties will permit, my learned friend, the District Attorney, has taught him to lisp and talk.

I beg also to draw your particular attention, once more, to that distinguished, pure, and close-headed witness, Dr. Samuel Smith.—He means, as I shall clearly prove, and as he himself has almost admitted, to make a good thing out of this trial; and his intellect being about equal to his integrity, he vainly proposes to obtain through this Court, what he could not extort by letter from Mr. Cook.

After an impassioned appeal to the good sense, the enlightened understanding, the hearts and affections of the Jurors, as sons, husbands and fathers, upon whose verdict in this case, the entire community, were looking with most intense interest, Mr. Brady concluded as follows:

"Such may it please the Court, and gentlemen of the Jury, such is the alleged offence, such the indictment, such the evidence, such the pretended proofs, and such our clear and absolute refutation of the whole.

I solemnly adjure you, gentlemen, to do your duty to your country and to my client, the prisoner now before you, strictly, firmly and impartially, as I have endeavored to discharge mine.

And if there be any truth in that sacred prayer which we all address to Almighty God, in our last parting hour; if there be any truth in the forms of earthly justice, the overwhelming conviction on my mind is, and I most solemnly believe, that my client must be acquitted by your verdict."

On closing, Mr. Brady called

Mrs. Deborah Tiers, who was sworn and examined for the defence.

Q. Where do you reside, and how long have you lived there?

A. I reside at Walden, in Orange County, and have lived there twenty-two years.

Q. Are you married?

A. Yes, sir; and my husband lives there also.

Q. Do you know Maria Bodine?

A. Yes, sir; I have known her for twelve years.

Q. Where did she live, generally?

A. Most of her time she resided at her sister's and her own mother's.

Q. Was Maria ever absent from her usual place, often and frequently?

A. I have often known her to be absent from her sister's, two months at a time, about a couple of months, more than once, frequently. She was absent from home just before she went to Mr. Cooke's.

Q. When was this?

A. In the spring of 1845.

Q. What was her general character amongst her neighbors?

A. With most of people, very bad.

Q. Do you recollect her going from Walden?

A. I remember when she went from Wal-

den to Ramapo, last spring. It was in April, about the first of April. She did not go at the same time as Mr. Cook, but about a fortnight afterwards. I saw her after she came back from Ramapo. It was the morning after her return; she was at her sister's, Mrs. Youngblood's; she was up, sitting in a chair; I think it was on a Thursday: I heard her say that she liked Mr. Cook's very much, as to work.

Q. Well, what more?

A. She told me she had not been *well*, quite sick, and that she had come down to the city of New York, and had seen there an old lady who had helped her very much.

Q. You know what she meant by her not being *well*, what was it?

A. She did not have her monthly turns as she ought to, and the old lady had restored her. She said, she was now very bad.

Q. Have you a daughter, Mrs. Tiers?

A. Yes, sir, grown up; she is here.

Q. Was there not some difficulty about her and Maria?

A. Yes, I would not allow my daughter to associate with her, and Maria Bodine told me that she was as good as my daughter.

Q. When was this?

A. The difficulty was about a week after she came down to the city the last time. I think about the first or fourth of August, Maria told me the neighbors need not be talking about her, and if they did not quit it, that Sammy Smith would clear up her character. There was no other Samuel Smith living there but Dr. Smith. She was then walking out and around.

Q. Well, for how long has her character been held bad generally, I mean by the voice of the people?

M^r Keon, (smiling,) yes by the voice of The People?

A. For five years it has been bad by *the voice of the people*. This has been her general reputation.

Q. Could you, Mrs. Tiers, believe Maria Bodine on her oath?

A. I *could* not believe her under oath.

Cross-examined by Mr. M^r Keon.—Q. Why would you not believe her on oath?

A. Because she has told me many things which I knew to be false, untrue.

Q. Was she not, or you thought so, very impudent in her manner—rude to you and your daughter?

A. Yes, sir.

Q. There was a quarrel, a sort of fight or spat, was there not, between you and your daughter, and her—is that made up?

A. I never did make it up, and I don't wish to.

Q. When was the last quarrel between you and her?

A. About a fortnight before she came to the city.

Q. Had you any quarrel before?

A. She said that I had told bad stories about her, and if she heard any one say so again, she would have them taken up. She said the neighbors had reported that she had been in the family way, and been delivered of a child.

Q. Well, did you, or did you not, believe this?

A. I did not believe the story, because I had never seen any thing to make me think she was with child. I had never seen any thing

Q. What did you expect to see, Mrs. Tiers? Could she not have been so, without your knowing it?

A. She might have been in the family way without my seeing it. She might have been so, and I not know it.

Q. Well, what further took place?

A. When she came back from New York, she said she had been relieved in some way.

Q. Did you see her often, and how, and where was she?

A. I saw her in bed sometimes, and sometimes setting up, but quite a good deal in bed. She was one, two, three, four months in bed.

Q. What physician then generally attended her?

A. Dr. Evans attended her, and the neighbors talked.

Q. There was a good deal of gossip, I suppose; who were the persons?

A. Mrs. Hatch, Mrs. Dowling, and I thought it very strange, to us: we consulted together, we talked, we did not know what *ailded* her. I did not say she had been delivered of a child. Some individuals said she had been—but we never saw any thing to make us think so.

Q. What did you expect to see?

A. We never saw any thing about her, to make us think so.

Q. Well, and did you keep up still your acquaintance with her?

A. Yes, my daughter and I heard all the rumors, but I continued for three or four months to speak and converse with her.

Q. Being intimate so long, and you and your daughter going to see her so often, how is it you left off your intimacy; was it because she was sick and low?

Witness declined to answer, and the question was varied.

A. I have no sympathy for her now, because I think her character is very bad. It is not because she is sick.

Q. Mrs. Tiers, what stranger was that around, who was at your house?

A. There was a person came—it was Mr. Mink, an officer from Newburgh.

Q. Who pays your expenses down, and here?

A. I don't know who pays them. I came down from Newburgh to New York.

Q. Yes, I know. Who paid your fare?

A. You are asking me too much.

Q. That is nothing to what I shall ask

Where are you now staying? Who are with you?

A. At John Daley's, an hotel or boarding-house near where the boat stops: Mrs. Dowling, Mrs. Hatch, Miss Ann Tiers, my daughter, are all staying there.

Q. Who pays your expenses there?

A. You ask me too much, I don't know. Mr. Mink directed us to go, and took us there.

Mr. Brady.—It is nonsense. We avow it. We, the prosecution, pay the expenses, or how could they be expected to go there, or any where else?

[Considerable excitement in court, and some suppressed laughter. The Recorder checked this indecorous expression of feeling, and one juror loudly stated his dissatisfaction—"his being sick," both at the conversation and the laughter.]

Mrs. Tiers' examination was then resumed. I was not visited by any one before Mr. Mink. I remember the departure of Mr. Cook from Walden, from her coming to her sister's.

Q. At this time what was thought about her character?

A. It was bad, openly, notoriously bad, before she went to Cook's.

Q. But Mr. Cook is a man of character, is he not?

A. Yes, he is a person of respectable character and good standing, and has children. It was the first of the month, the first of April, she came and said she should stay a fortnight at her sister's, to get her clothes ready to go and live at Mr. Cook's.

Q. How do you *fix* a fortnight? How do you recollect the circumstance of its being a fortnight?

A. It might have been ten days, but I say a fortnight.

Q. How do you know it was the first of April?

A. There was no circumstance to fix it, but I think it was.

Q. What physician attended?

A. Dr. Evans.

Q. Any one else, and who?

A. Dr. Millspauh. I have heard Dr. Thomas and Gouverneur Millspaguh speak about it. This conversation was at my house, the first visit he paid Maria Bodine. I have not had any conversation with him since about this case.

Q. Did you see any person in particular inquiring about this matter?

A. I saw an individual, who they said was a police officer. He inquired, at my stoop, where Mrs. Dowling lived, and my old man said, it was an officer about Maria Bodine's case.

Q. Are you, Mrs. Tiers a woman of family?

A. I am: I have five children, the youngest two years old, and a grown-up daughter.

Witness re-examined by Mr. Brady

Q. Why did you not believe she was in the family way, when she said so to you?

A. Because I heard her say before, about four years ago, that she was in the same way.

Q. Whom did she say it was by?

A. She told me then she was with child by Morris Vernoy who was bar-keeper to Willet Titus, who is now in this city.

Mr. Brady.—We have Mr. Titus here as a witness.

Q. Was Maria ill, sick, at Mr. Cook's?

A. She was ailing at Mr. Cooke's, and Dr. Thomas Millspaugh attended her.

Q. What was her trouble?

A. She had a sore right under her arm. I don't know the cause, as she never told me. She showed me the sores. She was unable to work for two or three days; I cannot say that it looked like a boil. The doctor was openly attending her. She had formerly told me herself that it was the case she was pregnant by Morris Vernoy and I told her she had better get married.

Q. How did she come to tell you this?

A. I think she asked me *confidentially* about it, and I told her that she had better get married. I told my husband about it, but not Dr. Millspaugh. I always treated her with respect but I thought she was a light character.

Mrs. Dowling was now called and appeared, but

The Court adjourned to precisely twelve o'clock on Monday, and directed the jurors, and witnesses on both sides, to attend with promptness and punctuality.

TENTH DAY.

Mrs. Catherine Dowling was next examined by Mr. Brady, Counsel for Defence.—I reside at Walden, and have so lived three years this coming winter. I have known Maria Bodine three years, about—when I first became acquainted with her, she resided at her sister's, Mrs. Youngblood. I was a near neighbor. I resided two years ago in the same house as they. Maria left Walden for Ramapo about the 20th of April, and Mr. Cook left about the 1st of April. I knew him by sight, but was not intimate with him. Mr. Cook was often absent going from Walden to Ramapo. Maria did not go to the latter place until after Cook. She came to me to borrow money to take her to Goshen, as she was going by the cars from Walden to Ramapo. She came back from Ramapo to Walden sick: this was in the latter part of August last year: she came back on a Thursday. When I saw her on Monday after her return, she was setting up. Dr. Evans was called in that same day, Monday: she told me herself that she had taken cold, and had lost her monthly turns, and she had been advised to come down to some old lady in the city, who could help her. She said the old lady had given her medicine, and it had helped her.

Q. How often did you see her during her sickness whilst ill at Walden?

A. Every day. It was a month or more after I began to attend her, before Dr. Evans cupped and leeched her, but I never saw him blister her.

Q. Mrs. Dowling, what has been her general character?

A. It was the voice of the people, that her character was very bad. I never saw her after she left for Ramapo. When Mr. Cook lived on the farm, I saw her at least twice a week. She was once *unwell* in particular, that I remember, very *unwell*, whilst she was living there, but I do not recollect the exact time, but it was in the fall of the year. She was at her sister's the best part of a week. I saw Thomas Millspaugh come there as her physician, but I never saw him give her any medicine. She had a very large gathering under her arm, and she was much distressed in her back. I saw the gathering.

Brady.—That's all. Oh! I want to ask you one question:—From what you have heard of her, could you believe Maria Bodine under her oath?

A. No, I would no.

Juror Cortelyou.—Was that sore you speak of like a boil, or an ulcer?

A. It was not like a boil, but I have never seen an ulcer.

Cross-examined by McKeon, Dist Attorney.

Q. How long before this had Maria had these large gatherings you speak of?

A. She had had them for years. She was at her sister's, Mrs. Youngblood's, most of the winter of 1844. She lived at Mr. Cook's afterwards, until he left.

Q. Did you not miss Mr. Cook from Walden when he went away?

A. I did not know much of him.

Q. Do you recollect that vendue when he broke up house?

A. I cannot say particularly. I did not buy anything. I cannot say what month he had his vendue. I cannot say how long after that Mr. Cook left, but I know that it was on the 1st of April.

McKeon.—Be kind enough to let me know, ma'm, by what means you can recollect that fact, the 1st of April?

A. I cannot. Maria was there the whole time that Cook was at Walden. Mr. Cook was a man I was not personally acquainted with, but I knew him by sight. I did not see him go. I don't know that he went at all. It was either Tuesday, or Wednesday, or Thursday, that Maria left for Ramapo.

Q. Who moved into Cook's house?

A. Mr. Steward, on the 1st of April I think, but I could not say exactly what day he moved in. I saw her come that evening to her sister's, at sunset. She came in a team. Mr. Sears, a young man about twenty years old, who keeps a tavern, found the team. I did

not see the money paid for going down in the team. She asked me, but I did not lend her any money. I never saw her at Ramapo—I have only her word for it that she was going. She was in bed when Dr. Evans came to see her; he came every day. He said the spine of her back was affected. I saw the issues along with her sister, Mrs. Youngblood, who asked me. I did not know anything else was the matter with her. I saw nothing else from my observation.

Q. From seeing her, could you see anything else was the matter with her.

A. No. I am a married woman, and have six children. I never saw anything about her that would make me believe she was ever pregnant. She had once, erysipelas in her face. The doctor said it came from her disease. I never saw her out of her mind.

Q. Have you seen any person up in your neighborhood to speak to you on this matter, about six weeks since?

A. I have seen a police officer. He overtook me on the road, after I got over the hill near Walden; he talked to me about the case. He offered me no money, no compensation for coming down to New York.

McKeon.—The Court will remark, she was met by a policeman who I suspect was sent from New York to approach her, and bring her down to York. I am rightly instructed, I find in my information, and I know the witness has been seen, if not tampered with.

By the Court.—Was the answer you have given, as to character, the general public sentiment?

A. It was the voice of the people, the general talk of one and all, that she was a bad character. It did not hurt her character that she lived with Cooke.

Examination closed. Mrs. Dowling is a person about forty-eight.

Mrs. Chrissy June Hatch was now sworn. I have lived in Walden two years this last spring. I am married, and have a husband and nine children. I have known Maria Bodine by sight since she was quite a small girl; she lived home to her mother's, about a half a mile from our place. I have always lived near Walden. During the time I have known her, which is quite a while, her character has been bad. I can remember that for five years.

I know Maria Bodine asked Mrs. Dowling for money to go to Mr. Cook's. It was along about the 20th of April. I remember it by my having a child then sick, very sick, and I went in there for some castor oil, and Maria was then asking her for it—the money. I saw her in Mr. Sears' wagon to start for Ramapo. It was along the latter end of August she came back. I saw her that very afternoon; she jumped out of the carriage at Mrs. Youngblood's door. I saw her out, round in the road, and in the rear. I went in the house to see her a so, and her sister, Mrs. Y. asked me

to look at the sores. Mrs. Y. opened her back, and there were a great many holes and sores in the back, she had been leeches, and she had issue peas there. This was about a month after her return. I did not go into her room very often, as my husband would not allow me. I assisted once in dressing her back, as her sister Mrs. Youngblood requested me. I held the plasters, and her sister put them on. Every time I saw Maria during her illness, I spoke to her, and I was in the house half a dozen or a dozen times.

I don't know that I could believe her under oath, from the character she bore in that community.

Cross-examined by O. Hoffman.—I have been married nineteen years. I lived before that with Mr. Decker. I lived altogether in his house three years. I was not married then, and I lived with Mr. Decker a short time after I was married. My husband is a wagon maker in Walden. I don't know anything about the vendue at Mr. Cook's. I remember nothing whatever about it. My child was sick two months. I know it was about the date I have fixed, for my brother (the minister) had written to me that he was coming about the 20th, and I had made preparations to receive him. His letter said he would be there about the 20th, and from that circumstance I know the date. Maria asked for money the day I went in for the castor oil. I have never talked with Mrs. Dowling nor Mrs. Tiers about what we were to say. I never asked them what they were to prove, nor what I was. We have met often, we have tea'd together once or twice, but nothing was said amongst us women as to what we were each to say in court.

To the best of my knowledge Maria's character was notoriously bad, all over the place, for five years. Mr. Cook had a factory where there were some other young girls. Mrs. Tiers had a daughter in that factory: but Maria had the household work to do.

I one day happened to say to Mrs. Youngblood that her sister Maria was *grunting* a little too much,—and Mrs. Youngblood said if Mrs. Tiers and myself did not hold our tongues, she would get a Bench warrant upon us. Mrs. Y. and T. were not very good friends after that.

Q. by a Juror.

State the reasons why you would not believe Maria Bodine on her oath?

A. Because she has told a great many lies, she has told me that she has never had anything the matter with her, when we know that it has been so oftener than once.

George C. Maclean, was now examined.

I have resided in Walden over twenty years, working on a farm off and on since a boy; I was in the employment of Cook, and after that up to the spring of 1840. The auction at Cook's must have been about March.—Mr.

Cook first went down from Walden to Ramapo in the fall. He returned several times backwards and forwards off and on; he would come in the afternoon, and go back in the morning. He finally left in April, for the last load of goods I took for him to Goshen was in the middle of that month. I know Maria Bodine. She left Walden after the 21st.—She wanted me to get her some way to go for a dollar, as she had but one: it was either on the 23d or the 22d. Maria was ill during the fall and winter of 1845. She was complaining about a week or a fortnight. Thomas Mills-paugh was there as her physician. I saw him. I don't know that he *prescribed*, but I carried medicine myself from him to Maria: this I did only once. I also saw her get medicine in the road from him.

Cross Examined.—I was living at Cook's at the time she was. Mr. Cook's mother and daughter lived there, and Maria had charge of the house under Cook's mother. Cook went after her, and brought her to the house as help from her sister's. Maria and I remained in the house after the sale, and left on April 1st. She was packing up her things, and went to stay at her sister's, and I arranged about her going to Ramapo.

I have known Mrs. Hatch in Walden. Her general character is that she makes herself very busy, and has a great deal to say amongst her neighbors.

Mr. Burnett Truesdale. Resides in Ulster county. I never resided at Walden. I have known Maria Bodine eight or nine years: she lived at or near Walden. During that period I have known her go from Walden to New York, Newburgh, and other places for a month or two at a time: but I did not know for what purpose. Her character has been bad for four or five years. I should not believe her on oath, from what she told me. I never spoke to Mr. Cook before this morning, and that was to pass the time of day.

Cross Examined by M'Keon. I was at a ball, a party or dance with Maria in Galeville, call it what you like. There was some little difficulty about her.

Q. put by Jurors Benedict and Cortelyou.

In what respect was her character bad?

A. She had doings with men, she had a bad name for chastity.

Question by Alderman Feels. Was it bad in other respect?

A. She would lie,—has lied to me,—but I never knew her to tell a lie under oath.

By Jurors Benedict and Cortelyou.

A. Her general character was, she would lie. I never knew her to be a thief, or any thing of that sort.

Willard Titus, examined. I reside in Newburgh. I am a pedlar of segars and tobacco by occupation. I have resided in Newburgh since last May; before that I lived at Walden where I kept a public house. Morris Ver-

noy was bar keeper for me, and he has kept out of way for fear of being subpoenaed on this trial. I have known Maria Bodine by reputation for five or six years; her general moral character has been bad, and where she was personally concerned or interested, I would not believe her under oath. She was frequently absent from Walden. She often came down by the stage which I run, from Newburgh to New York, for three or four weeks at a time, and would return back by my stage.

Cross Examined by M'Keon.

I once only saw her in New-York in the street. A gentleman from New-York overtook me on the Walden road near the "Half-way House," and talked about this. He had on a white hat, and a light sack coat. I am now staying at 145 Washington-st, about this trial. I have been once or twice in public houses with Maria. I recollect something of a fight about her, near a wagon or shed. She has borne a bad name for truth in places where she has worked, but I know only from hearsay.

The Court here adjourned until Wednesday, Tuesday being election day.

ELEVENTH DAY.

The Court opened this morning, Wednesday, with the usual crowded auditory, and the excitement in and about its precincts, appeared not the least abated.

The defence then called

John Tiers, who was sworn.—Am a shoemaker by trade, and have resided in Walden for twenty years past. I know Maria Bodine, and have known her by sight for fifteen years. Her general character is bad. Q. From what you know of her would you believe her under oath? A. I would not, where I thought she was interested.

Cross-examined by M'Keon.—Q. What does people say of her? A. That she was a loose character—men said so. I would have to have other good evidence to believe her. I never knew her to swear to an untruth. Q. Why would you not believe her on oath? A. She got me to do some shoemaking work; about fifty cents worth; I sent for the money, and a little girl told me she said she would pay it; she also told me she would pay it herself, but she did not. I know of myself, and have seen nothing else bad about her, but have heard people speak ill of her.

Dr. Peter A. Millspaugh called and sworn.—Is a physician, and resides in the village of Montgometry, Orange County; have practised forty-three years; I received my diploma in 1805, and my practice in midwifery has been extensive.—Q. What are the signs of pregnancy, and are the signs as stated here, always certain. A. I know areola, with papillae, distended bowels, &c., are not infallible signs of pregnancy. I have had them all presented with a patient and yet she was not pregnant; she was a married woman and had no reason to conceal the truth; this was recently—within three weeks; the signs of suppression of menses, hardness of breasts, and something like milk came from them; one was the wife of the Rev. Robert Lee, and the other the wife of Charles Miller; I did not see

the milk nor the areola on their breasts; they told me so; they had had children; the cause of the appearance of one was a mole; the other a suspension of menses for two or three months. Q. What importance would you attach to the mark of areola? A. That alone, as a symptom, is not infallible, but along with other symptoms it must have great weight. Q. Can all the usual symptoms result from any disease or condition of the uterus? A. Yes sir, from suppression of menses and hydatids, and authors do say scirrhus or cancer—these authorities are Denman and Esquirol. Q. Now, doctor, at what period does a woman quicken? A. There is a great diversity of opinion, but the result of my experience and judgment is at from the 16th or 20th week.

Q. What reliance is to be placed on a woman's mentioning the sensation of fluttering?—A. I should have no regard to it before the 16th week; I have had many cases of abortion, and the natural and ordinary symptoms are varied. Mr. Brady here read the testimony of Dr. Evans, as reported in another page.

Witness.—The opinions of Dr. Evans I do not coincide with; I should not consider the symptoms he gives in the case of Maria Bodine, as conclusive, after the lapse of the time of the alleged abortion. Q. Now, sir, what disease would produce this state of things? A. Amenorrhœa would be the cause of flooding; I think the enlargement of the breasts would have subsided, at the time he speaks of, and the appearance of milk would have ceased; Q. Do you know Maria Bodine? A. I do not think I should know Maria Bodine if I saw her.

Cross examined by Hoffman for prosecution.—I have never had any but natural abortions in my practice. Q. Do you know Montgomery, Gooch, Dewees, Dr. Bull's, or Spratt's works on midwifery? A. No, I do not. (Much smiling among the medical men present.) Q. What importance do you attach to all the symptoms named, and the well defined areola, in a clearly darkened state? A. I would attach little importance to it alone, but should take it for granted if she showed all these signs, that it was so, until the contrary was proved; I am sure, however, I have seen all these signs and yet there was no pregnancy; I had a recent case in which the woman was delivered of hydatids, when she supposed she was pregnant. Q. Did you ever find the areola in an unmarried woman distinctly marked in the way described? A.—No, I never did; I believe menstruation is not possible after conception; amenorrhœa after conception would produce abortion; I have never known a case where a woman had had her monthly turns, and went through the period of gestation, and had a child.

By Brady.—I have not the recollection of any case where I ever examined the areola critically; I was not in the habit of doing it; I could not from external examination form a confident belief or opinion whether a woman was pregnant—except from feeling for the child; I have no experience of abortion produced by violence, or the introduction of an instrument; none, whatever, and I beg you won't ask me about it; the discharge after pregnancy has been mistaken by doctors and called menstruation, out of it can not exist after pregnancy is well established.

Thomas Millspaugh called for defence.—I am a physician, and the son of the previous witness; I live at Walden, and have practised there four or five years; I know Maria Bodine and have attended her as a physician; she told me she was in the family way or thought she was, and she also told me the young man's name—but I shall not tell it unless counsel directs me.

The answer was not insisted on.

Witness.—I examined her, and found an enlargement of the breasts and a discoloration around the nipple called the areola; she had the appearance of a pregnant woman; I attended her at Mr. Cook's until she left for Ramapo; she said she had the gonorrhœa, and I attended her for that and no other disease.

By a Juror.—Q. Did you believe it to be that disease? A. She told me she had connexion with some men who had given it to her; she was not quite well when she left Walden for Ramapo; Dr. Evans had attended her then; I did not then, in fact, nor could not form an opinion; I'll tell you the reason—she went on to tell me of an officer who had followed her from the house of a noted character in New York, one Madame Restell; I consulted my father and he warned me; I afterwards examined her with my brother, Dr. Gouverneur Millspaugh; we found swellings in her groins, &c.; she was ulcerated and her back was sore from blisters and issues, and cuppings. Q. From this examination had you any doubts as to her disease? A. I supposed it to be syphilis; I think I did not communicate my opinion to her. (Sensation among the medical men present.) My brother and myself agreed as to the complaint; I took great interest in her case, and advised her very often.

The Court here adjourned until 5 o'clock.

EVENING SESSION.

Dr. Millspaugh recalled.—I removed the issues; I should not have used them in miscarriage; her condition when I left I pronounced well; the syphilis was cured, but she feigned other illness, but I could not discover what was the matter with her; she was able to go round the house before I left her.

Cross-examined by McKeon.—Q. Were not you and this young woman pretty intimate? A. I think we were not. Q. Did you ever tell anyone that she had venereal? A. I cannot say; I never examined any discharges more than her clothes; the stains had resemblance to whites; the whites are periodical and gonorrhœa is continuous. Q. Did you take five dollars from her for your services? A. I took four. Q. Did you lance her under her arm? A. I don't recollect, I may have done it; I don't recollect saying my own sister had had a swelling under her arm; the ulcers in her throat were like a putrid sore throat. Q. Did you see ulcers in the vagina? A. I did not examine them particularly, but they were similar to those in her throat; they resembled small boils full of matter; I don't know much difference. Q. Does gonorrhœa run into venereal? A. Yes, (smiling among the doctors present). Q. Had she both when at Cook's? A. I am not capable of answering that question. Q. Was there not some statement made by Maria to you in writing or otherwise, and for what purpose? A. She said it was to get funds for her support from Madame

Restell or Joseph Cook. Q. Who made the application for this money? A. I cannot say. Q. Did you not come down in a hurry to Mrs. Youngbloods' when you heard Cook was at Walden, and tell her not to let Cook see Maria, as if she did no money could be got from him?

Defence objected, as the question had not been produced by any direct examination on their part.

The prosecution contended that their object was to contradict the witness if he denied it, but the Court overruled the question.

Q. Had you anything to do with Maria about getting money from any one? A. I don't think I did sir. Q. What conversation did you have with Mr. Clearwater, about getting money from Cook? A. Clearwater asked me if Cook was worth any thing; I told him I thought he was; he said he had an old grudge against Cook from the time he had failed, as he owed him \$40; he said he would go to Cook in the official character of poor-master, and what we could get from him over the \$40 he would divide with me; I then told him that I wouldn't mind going down to Ramapo with him when the sleighing came, and I would take my horse and sleigh. Q. What were you to go for? A. Clearwater was to go officially as poor-master, to state the situation of Maria. Q. What were you to get for this swindling operation? A. Clearwater was to do the business. Q. Did you tell Squire Hill that Maria had an operation performed on her? A. I don't remember; I had some conversation with Dr. Cameron in New-York about Maria.

By Brady.—Did Maria ever tell you whether that statement she made to you was true or not? A. She said it was not true.

The Court here adjourned.

TWELFTH DAY.

The proceedings were retarded until nearly half-past 12 o'clock, for the purpose of allowing counsel to take the testimony of Amelia Morgan and Maria Walden, sisters-in-law of Joseph P. Cook, residing at 29 St. Mark's Place in this city. By consent of counsel this course was adopted, as these ladies hesitated about appearing before the court as witnesses.

On the opening of the Court, the defence called *George W. Millspaugh*, who was sworn.—I reside in Montgomery, Orange county; I know Dr. Samuel Smith; he wished me to come to New-York as a witness in this case; I told him I did not wish to come, but I would like to hear the trial; I asked him if he was coming; he said "O, yes, I shall make something good out of it."

Cross-examined by *McKeon*.—He did not say how he was to make a good thing out of it; I know Mr. Decker; I don't recollect saying to him that Dr. Smith would make a good thing out of it.

Peter Sears was called for defence.—Mr. Cook's auction sale was on the 16th of February, 1846, at Walden; Miss Bodine went to Goshen with my waggon on the 21st of April I believe; I have a memorandum book here with an entry.

On cross-examination, witness said the memorandum book did not appear exactly as it ought to because he had another in which he made entries.

Mr. Brady for defence here read the testi-

mony of *Amelia Morgan*, a sister-in-law of Joseph P. Cook—resides at 29 St. Mark's Place, and visited Mr. Cook at Walden, while Maria was there; Maria was complaining of being ill then; asked her if she was taking medicine and she said no—witness found a box of pills in the house marked "Velpeau," and took them to Maria; she said they were hers; witness would not have known what the pills were for, but there was a newspaper in the house which mentioned them; witness asked her if she was taking that medicine and she said yes; she was then told to get her clothes and go; she was an excellent servant, a good dairy woman; during August she was continually on her feet and complaining; we told her she might lie by and nurse; she went to church very regularly; she was industrious and honest.

The testimony of *Maria Waldron* was also read by Mr. Brady.—Witness is over 21, and unmarried, and a sister-in-law to Mr. Cook; knows Maria; she had boils on her side at Walden, and was attended by Dr. Thomas Millspaugh; he lanced one under her arm while I was present; she was a good servant; her complaint was nothing but cold; I repeatedly offered to nurse and attend her in her room; my sister showed me the box of pills; when spoken to about her health, she would rally and work better and then fall off again, but she was a good domestic.

Mr. Brady.—We rest our testimony for the defence.

The prosecution then called

Peter T. Clearwater, who was sworn.—I reside in Montgomery; I have held the office of Overseer of the Poor in that county; I know Thomas Millspaugh.

Q. Had you ever any conversation with him about going down to see Mr. Cook in relation to Maria Bodine?

The defence objected, but the Court admitted the question to be put.

A. Yes I had; it happened last winter at the County Poor House that Dr. Thomas Millspaugh had a bill which he was very anxious should be audited; it was for his attendance on Maria Bodine; he wanted it audited by the superintendents of poor house for his attendance and medicine during her sickness.

This conversation was during a ride to the poor house, it was poor sleighing and we got a waggon; Millspaugh then said "if you have a mind we'll go down and see Mr. Cook at Ramapo." Says he "you are poor master, and I've been attending this girl for a complaint brought on by Mr. Cook, who has knocked her up and sent her to Madame Restell and an abortion has been effected on her person." I think he said "we might probably get the sum, we might extort out of him \$500, and we will divide the spoils." I rather laughed at that, as I thought it was a novel idea; this was the amount of his talk; when we returned to my residence he said "Well, will you go down with me?" I answered I will consider, I don't know but what it is likely I will, as it is considerable of an operation. "Well," says he, "you're poor master, and have granted this girl supplies, and you have a right to go down and make a charge." I had no knowledge, particularly, of Maria, but had relieved her as being sick and poor, in my situation as overseer of the poor.

Q. Was the money you was to receive from Cook to go into your own pocket, or was it to go into the funds of the town?

Mr. Brady objects, but the Court said, "Let the witness go on, and state what occurred?—What did Millspaugh say?"

A. Well, he said we might get \$500, and we would as I understood him, personally divide it:

Q. Did you accede to this? A. I did not acquiesce in the proposition and I never went to Cook's.

Q. How long have you known Maria? A. Since last November—I know nothing against her character.

By Brady—I have known Millspaugh since a boy and Cook for 15 years; I have had no conversation with Cook for a number of years; my intercourse and conversation with Millspaugh had been as usual up to last April; I was subpoenaed by Dr. Smith as poor master; I had a claim against Cook when the ride with Millspaugh occurred, of about \$100, which he had owed me for a number of years; Dr. Thomas Millspaugh said in this conversation if the sleighing got to be pretty good we would go down to Ramapo, but I made no particular answer, and I don't think we had anything more to say about it.

G. C. Maclean re-called by prosecution;—Q. Is this the book of Mr. Sears to which you had reference. A. I think it is—I am sure it is.

Q. When did you take the last load to Goshen?

A. By that book, the 3d of April; when I stated the 21st I was mistaken. Q. Would you believe Maria under oath. A. I would; she never told me a lie that I know; I would believe her as quickly as any one I know. She never told a lie to my recollection. I never caught her in a lie.

Cross-examined by Brady.—I knew her from the time she came to Cook's. She had the reputation of not being an honest girl in one sense of speech; I mean a little too much inclined for company of men. Q. Had she any general character? A. She had a good moral character, except with some people who said she was a little loose; I never heard her character spoken against as respects truth, or her not being to be believed. I would believe her as quick as any other person.

The Court here took a recess till 5 P. M.

EVENING SESSION.

John B. Hendricks was sworn and examined for prosecution;—I live at Ramapo and I am a carpenter. I know Mr. Cook; I was called upon on the 14th of April, 1846, to do some work at Mr. Cook's house,—carpenter's work. I saw Maria Bodine at Ramapo at Cook's house; he called her his housekeeper and he introduced me to her, and he told me to act by her instructions as to work, her character was good, all the neighbors gave her a good recommendation.

Cross-examined by Brady for defence.—I came from Sullivan county formerly; before I lived in that village I lived in Neversink: I first became acquainted with Cook the last day but one in January, 1846; I had a little conversation concerning a small affair. The first work I did for him was in March. I saw him almost every day; he then employed me to repair the cotton mill he was running at Ramapo; I kept the mill in repair till the summer of 1846; he was seldom absent more than one evening to go down to York

one night and come back next morning. He was never absent but once, more than 3 days; on the 14th of April; I saw Mr. Cook take his breakfast home; I had an account then against him for work done in the house and mill on that day.

Q. Who subpoenaed you? A. Mr. Bowyer, a police officer, but he did not tell me to bring my account book with me; my book is kept like a check roll, I have kept it in this manner over 20 years; I looked at it Saturday night last and every day since; I was subpoenaed at Ramapo by Mr. Bowyer, but he did not tell me particularly what he wanted me to prove about the girl; I am certain that the 14th day of April was the first day I ever worked in Mr. Cook's house.

Q. Had you ever known Maria Bodine before?

A. No, sir: she was going about the house. Q. Did she look well or look ill? A. That's going a little beyond my practice, sir, (laughter).

Q. I repeat the question. A. She looked well and healthy with one exception, and that was that

she looked from her face and eyes in a pregnant state, and I was never mistaken about such signs.

Q. Are you married; and how many children?

A. I am sir, and there was 12 living when I left last night (great laughter). I did not form an

opinion as to how far she was gone; that's beyond my province; I am on middling terms with Mr. Cook; I have no unfriendly feeling towards him.

By Hoffman.—Mr. Cook introduced Maria Bodine as housekeeper; he said Hendricks, my housekeeper is come down, and he introduced me, and said I must attend to her orders; on the 14th of April she looked like a pregnant woman, and I have no doubt she was so.

Q. When was the first time you heard about the necessity of dates? A. Last Saturday and for my own satisfaction I looked it up.

D. Jonathan Acres, called by prosecution.—

I live at Ramapo, am there 23 years, and I follow milling business, and attend horses &c.; I saw Maria Bodine in April, about the middle;

I saw her before she came to Ramapo, at Walden; she came to my house with a small pitcher for milk in April, May and June, and she kept the account; in July another person, the boy or

some other person came for milk, and Maria Bodine was absent; I myself say her character was good in the neighborhood; I never saw a blemish, in her, and among the people her

character in Ramapo was perfectly good and respectable; I breakfasted with her myself, about the 1st of April in Mr. Cook's house, and that fixes the date; I went up there to fetch a

pair of horses for Mr. Cook. Q. Who breakfasted there besides you and Maria? A. An oldish lady, another girl, and a little boy; I had never before seen Maria.

Q. What was her general character and reputation? A. I do not know.

Mrs. Catharine Youngblood, called by prosecution.—I live in Walden; I am the sister of

Maria Bodine; she came to my house in the spring of 1846, from Mr. Cook's, where she had been living from 1845; she came when Cook

gave up housekeeping; about or on the 1st of April, for the purpose of repairing her clothes;

she went to Ramapo after fixing these clothes; she came back the 1st of September, 1846; she

was then very bad, in exceeding ill health; Dr. Evans attended her, for some time; after Evans

quit, Dr. Millspaugh came. Q. What was the difficulty she labored under; A. While Evans attended her I did not hear exactly, but when Millspaugh came, I heard something about the real difficulty of the cause. Q. Did you hear what Dr. Thomas Millspaugh said to your sister on his first visit, in relation to her pregnancy and abortion?

Mr. Brady.—We object.

Recorder.—The truth must come out, and I want the witness to answer this question; they have a right to introduce this, and the Court is in favor of putting this question.

The question was again repeated by Mr. McKeon, and objected to as illegal and inadmissible in evidence, as assuming a fact not proven.

Recorder.—Answer that.

A. I did. Q. What was it he said? A. He told her she had had an abortion produced on her, and she must tell him all about it, or he would do nothing for her. Q. Did he give any directions as to what manner she should be attended to?

Defence objected and excepted.

A. He ordered me to make yeast poultices to apply to her bowels, and I did so for a week.

Witness.—I never sent for Mrs. Hatch to dress my sister's wounds, or to help to dress them—never; It was about the first week in September Maria came to my house; she did no washing, could do no work, and was unable to do anything; I have had seven children; Mrs. Hatch at no time assisted to dress my sister's back; nor did Mrs. Tiers, nor Mrs. Dowling; I never threatened a prosecution against any of these females; and Maria my sister never did, to my knowledge; I have seen my sister here three times in New York.

Abel Millspaugh was called, but he did not answer.

Dr. Evans was called again and appeared.

Mr. Brady objected to the re-examination, as he had been most thoroughly sifted already; he had been perfectly exhausted (to use a legal phrase) of his knowledge on this subject.

By McKeon.—Q. Do you know Thos. Millspaugh? A. Yes sir. Q. What do you know that people say of him—is his character good or bad? A. His general reputation—his moral character is not very good, it is bad. Q. Would you believe him under oath from all you have known and heard of him. [The witness hesitated a long time.] Q. Would you believe him under oath, sir? A. I think not.

Cornelius Neafie was called and examined by prosecution.—I live in Walden, Orange County; 8 years I have resided there; I have been a Justice of Peace; I know Dr. Thomas Millspaugh; his general moral character is not good; I would not believe him on oath where interest or professional prejudice was concerned; I would in these cases take his oath with very great caution; I know Maria Bodine. Q. What is her character? A. For virtue it is not good; as regards other things I never heard anything against her, and I should have no reason to disbelieve her on oath.

Cross-examined by Brady.—I was elected Justice of Peace in 1840 and re-elected; I have been out of office some years; as my acquaintance with Dr. Thomas Millspaugh increased, my opinion of him has got worse and worse; I

have no unfriendly feeling towards him; I have had no altercation or difficulty with him; no bandying of words or difference; he is a very troublesome, meddling man throughout the neighborhood; he has latterly not had a very good character for chastity, for one thing; I know he makes improper statements—that is, lies, untruths; I could mention a good many persons who have said the same, as well as myself, beginning with my nearest neighbors; Mr. George Tiers, Mr. Abel Millspaugh, and others whom I cannot name.

By a Juror.—Be so good as to tell us some untruth he has told you, that proves him to be a common liar. A. I have heard many: the thing is quite general in public; and Justice S. Covell knows as well as myself that his general character is that he is a troublesome fellow; in his pecuniary transactions he is not to be relied on; he has shaken a roll of bills under his creditors nose, and said, damn you, get it if you can; it was \$18 he owed for harness. I should not believe Maria Bodine as quick as I would another person, whose character for chastity was not impeached.

The Court here adjourned.

THIRTEENTH DAY.

Abel Millspaugh was called by prosecution.—Lives in Montgomery, Orange County; have been Superintendent of the Poor; knows Thos. Millspaugh. Q. Have you any knowledge that Millspaugh had any knowledge that Cook had promised money to any one, in reference to Maria Bodine's affairs, or abortion?

Defence objected to the question.

An argument here ensued between Counsel, relative to a letter alleged by prosecution to be in the hands of the defence, written by Mr. Cook to Dr. T. Millspaugh. The defence denied the possession of any such letter.

Q. Did you ever see a letter from Cook to Thomas Millspaugh? A. Never, sir.

Jacob T. Decker, an elderly gentleman, was called by prosecution.—Lives near Walden; has lived thirty years there; have known Maria Bodine from a child up; have always considered her character good, and would believe her on oath.

Cross-examined by Brady.—I have heard more about her character since I came to New York than I ever heard in Walden; my wife is sister to Maria Bodine's father.

Wm. P. Decker, called by prosecution.—Resides in Montgomery, and has so lived there 16 years; I know Maria Bodine. Q. What is her general character. A. I never heard anything against her virtuous character, till within a year or two back, and I have no reason to disbelieve her under oath.

By Defence.—I am brother to last witness.—Maria worked occasionally at my house; she is no relation of mine; I have not seen much of her lately; I have heard little against her, except what I have heard in this city.

Sylvanus Clyman, called by prosecution.—Lives about a mile from Walden; knows Maria Bodine; during the last three or four years her character for virtue has been rather bad; but I would believe her on oath.

Cross-examined by defence.—I have known Dr. Thomas Millspaugh from a boy; he was rather wild in his youthful days, but I have

never heard much against his moral character, and I would believe him on oath; his character is about as good as the general run in Walden, and they are as good as the generality of people.

Moses Smith, called by prosecution.—I live in Montgomery; I have always known Maria Bodine; her general character as a virgin is not very good of late.

Cross-examined.—I am the father of Doctor Samuel Smith; Maria's character has been rather bad over two years; she resided three years with my eldest son and his wife; but my son Samuel lived at that time with me; I kept a boarding house, and I also farmed.

Dr. Covell re-called by prosecution.—I have recently examined the person of Maria Bodine, I examined her externally with my eyes and hands, and internally with an instrument called a speculum. Q. Did you observe any traces of syphilis? A. There were no traces in her groin; in the arm pits there had been a small trace of a former swelling of some kind. There was no appearance of chancre or any venereal sore on her private parts. I have had considerable experience in these cases, and see them every day; if venereal had ever existed, there would have been marks; her skin was perfectly free from any appearance, whatever, of disease in either groin; if there ever had been a chancre in the vagina, or a bubo in the groin, there would have been some traces left, whether the bubo had burst or been opened by a lancet; there was no scar whatever; her throat is perfectly free from disease, both in the palate and the tonsils, and there is no trace of any disease ever existing which there would have been if ever ulceration had occurred.

Cross-examined by Mr. Brady.—I have seldom seen a bubo dispersed or scattered, but it leaves behind it a hardened state of the gland, and generally a small string of indurated beads, like, remain as an effect; an inflamed gland will leave a thickening behind it, I mean a proper venereal bubo—I don't believe that Maria Bodine ever had a venereal bubo at all; a venereal sore in the vagina is depressed, there is an excavation, a hollowness in the centre, with elevated and somewhat hard edges, and at the bottom of the circle appears an ashy colored kind of matter, or suppuration; I allude to a primary chancre; these chancres always exist in beginning of syphilis, and leave a small scar or pit, somewhat like the small pox, when very severe; ordinarily these traces exist and continue during a man's or woman's life.

By Hoffman.—Gonorrhœa is a distinct disease completely from pure syphilis, and is merely an inflammation of the mucus membrane, and will sometimes wear itself out. If leucorrhœa exists in a woman, and she neglect it and become unclean, it will sometimes become so acrid as to communicate painful symptoms, and discharge and soreness, to a man, or particularly to the husband, who, of course, has frequent intercourse with her. Gonorrhœa is more likely to wear itself out in females than in men. Whites, or leucorrhœa, may produce excoriation of the parts, and the female will complain of "ardor urinae."

By the Court.—This woman could have had no disease of the kind, any how, within a year

and a half or two years but I think and I made a very close examination, never.

McKeon.—The case rests with you Mr. Brady. *Andrew J. Millspaugh*, a young man, called by defence.—I reside in New-York, I know Dr. Thomas Millspaugh; he is a distant relation, his moral character is good, and I would believe him under oath. I never heard anything said against his character nor in favor of it; I have heard him make use of profane language, so profane as to attract my attention.

Albert F. Smith, was called by prosecution. I have known Dr. T. M. for 12 years; I am a farmer and drover; I consider his character good, but he is wild, that is lively, and from what I know of his moral character I would believe him on oath.

Cross-examined by prosecution.—I am not intimate with him; he is wild; he uses considerable profane language; I never was on a spree with him.

George Millspaugh, recalled by defence.—Dr. Thomas Millspaugh is a relative of mine; his character is very good; I would believe him under oath.

John E. Gooches, called by defence.—Knows Thomas Millspaugh; his general character is good.

Several of the Jurors here expressed a decided opinion that they had heard sufficient of this line of testimony.

Mr. Sears was recalled by defence.—Thomas Millspaugh talks considerable, but I would believe him on oath.

Cross-examined.—He swears a little, and is called "a wild boy," and goes about with the girls a little too much; so people say, considering he is a widower. He does not always pay his debts, and people have expressed a good deal of dissatisfaction; I have heard of his borrowing money and refusing to pay it back, and he will tell stories, lies, so the neighbors all say.

Moses Yerks, was sworn by the defence.—It was along about the 21st of April that Mr. Cook went to Goshen, and I afterwards took Maria on her way to Ramapo a short time after.

Cross-examined by prosecution.—I am not certain from any particular circumstance about the exact date, as I have nothing to fix any one day in my mind, except I left Peter Sears before April was through or expired.

Dr. Millspaugh, sen., was called by defence, and the Court then adjourned until 5½ o'clock.

EVENING SESSION.

At the assembling of the Court at half past 5 o'clock, Juror Job Chandler complained of illness, and the Court adjourned.

FOURTEENTH DAY.

The defence called Dr. Millspaugh, sen., who testified that he believed that a bubo might be dispersed without leaving any trace; but that he had never examined a female with venereal in his life.

Dr. Samuel M. Watson also stated that he believed that venereal bubo, chancre, and ulcers, could all be dispersed without leaving a trace.

Dr. Cornelius B. Archer, *Dr. Pratt*, and *Dr. Chas. D. Smith*, concurred with the last witness.

The testimony was then all closed, by consent of counsel, on both sides, and the Court adjourned to Monday.

FIFTEENTH DAY.

MONDAY, NOV. 8.—The testimony having been entirely closed on Saturday night, JAMES T. BRADY, Esq., by previous agreement among all the counsel, proceeded to address the Court and Jury on the part of the defence. On rising, he proceeded as follows:

May it please the Court and Gentlemen of the Jury. I wish you to give me credit for sincerity, when I say that it was neither my wish, nor my intention in the first place, to address any remarks to you in this case. I would have been glad of being excused doing so, although it might have been ungenerous in me to impose the whole of the duty on the gentleman who is associated with me in the defence. As far as I am concerned, as counsel in the case, I consider it my duty to state, that I have never known gentlemen to continue their attention so unremittingly to a case as you have done in this, from its commencement to the present time. I am persuaded that in the remarks which I shall be called upon to make to you, and which shall be made with no other purpose than to refresh your recollection, and throw some light on the case, that you will think it is with that view, and that alone that I address you—with no desire to make a display. I, therefore, beg of you, gentlemen, that if in the course of my remarks you think me to be guilty of error, you will have no hesitation in correcting me; and I will take the liberty, on the other hand, if I do not see the jury give me their attention, to say I shall have no hesitation in informing them of the fact. Now what is the charge against the defendant in this case? This is the point to which I shall first direct your attention. I shall not read to you the indictment in the case—suffice to say that it contains a number of counts, each of which is for manslaughter—that the accused committed abortion on the person of Maria Bodine, she being at the time pregnant with a quick child. It is on a charge of manslaughter in the first degree that the defendant in this case is being tried, the penalty of which, in case it should be substantiated, is punishment in the State prison for not less than four years and not more than seven. Having thus called your attention to what is the charge in this case, which you are sworn to try, and relying with confidence on the fact that you will confine your attention to the special charge before you, and nothing else, and will not allow your minds to be swayed by anything which does not directly bear on the charge, I shall proceed to the points which are necessary to be established in the case. The first of these is pregnancy. It is to this branch of the case that I have given my attention, and when I present you an analysis of the testimony on this point, I will leave the counsel for the prosecution to show to you the mistakes into which I have fallen, or I must fail. It will be necessary, in the first place, for the prosecution, before they can hope for a verdict, for them to prove—first, that the principal witness in this case was pregnant; second, that the child was quick; third, that there was an abortion by unlawful means; and, fourth, that the abortion was produced by the defendant; that it was an abortion not produced in the course of nature, not by the act of Maria Bodine herself, but by the defendant, who is charged with so doing in the indictment; and in the last place, the prosecution must prove and establish, that the defendant committed the abortion with the unlawful intent to do so. It is necessary to have all those points established, before the jury can render a verdict of guilty in the case. Having seen what are the charges in the case—what points it is necessary for the prosecution to prove, I will inquire, in the next place, by what kind of testimony must these points be established? The proof on each and all of these points must be so conclusive as to exclude any reasonable idea that the defendant is guilty. The prosecution present themselves here to establish a crime against the accused. They come in armed to the teeth—they come here invested with full power to produce such testimony as in their opinion they may require to prove the offense in such manner as to leave no doubt

in the minds of the jury. And if afterwards the jury entertain a reasonable doubt on any branch of the case, as a matter of course, law and justice require that they should render a verdict of acquittal. Now, gentlemen of the jury, the rule applies in civil as well as criminal cases, but in the latter particularly, and it is laid down by the best writers, and recognized by the highest authorities, it is not enough that the proof be consistent with the idea of guilt, but it must be inconsistent with the idea of innocence, and if there be any doubt, the jury are bound to render a verdict of not guilty. If there ever was a case of this kind, it is the one now before this jury—if there was a case where this principle should be adhered to, this is the case. The prosecution have had here all the powers they desired to prove their case. They have had the Chief of Police—they have the District Attorney—they have had the whole Police force of the City and County of New York to aid them in this case. It is not often that such great zeal is manifested; but in this case, because it was supposed some great object was to be attained in procuring a conviction, the whole power of the State, of the city, and the power of Orange county, were all enlisted in an attempt to procure a conviction. Therefore there was no doubt of the power of the prosecution to sustain the allegations in the case, if they could do so; they must be held to the performance of it to the strict letter. How has the defence stood in this case? How different has it not been to the case of defendants ordinarily brought here? Have you, gentlemen of the jury, not known that until the time we came into court, we knew not what we would be called upon to answer? We had the indictment, to be sure. We were told in the mystic language of the law, that the defendant produced an abortion on the person of Maria Bodine, in the month of July, 1846; but on what day, how, at whose instigation, or of anything of the history of the offence, we were not informed. There was no preliminary examination. No opportunity offered us to confront the witness who swore to the charge. No, she was quietly reposing in the arms of the prosecution, weak and debilitated as it said she was, both in body and mind. They had her in the house of Mr. Nevins, and in the house of Mr. Smith, so secluded that no one was permitted to see her, or get a glance even at her, except some person connected with the prosecution. Doctor Smith, who is destined to figure somewhat extensively in this case, had, however, an opportunity to see her. Dr. Bedford made a visit there, and other persons interested in sustaining the case of the prosecution, were permitted to see her; but the first time that we could look on her, was when she was present in court. Even when we looked for the defendant, we found her locked up in prison. Mr. Cooke (her alleged seducer) was arrested on the same proof on which the indictment was framed, but on what proof it was, the prosecution have not yet shown. We had to grope about in the dark for the purpose of discovering under what circumstances the prosecution intended to charge us; but don't want to detain you with them; we have only to tell you that the prosecution are bound to make out their case, and that in defending herself, the defendant has not had all the means which the law intends. I will now ask by what kind of proof must the accusations in the case be sustained? by what kind of proof in civil cases, and in this case? I suppose it will not be denied, as an ordinary rule, that no witness shall be placed on the stand whose character is not pure and spotless. Yet to this rule there must be exceptions, and I admit that in proceedings of this kind such an exception becomes necessary. It is admitted, however, to be the last resort of the law, and is never used when the same testimony can be obtained in the ordinary way. And in such cases, the jury are always instructed to receive such evidence with allowance.

I think I mentioned to you in my opening, the extent to which the courts of England went in this respect. I showed you a case when a witness was not called by the prosecution, and Lord Denham called the

prosecutor to swear such witness. The prosecutor said in reply to the judge that the witness was subpoenaed for the defendant. But, said the judge, his name is on the prosecutors papers. The witness was not in court, and for want of his testimony, the judge directed a *nolle prosequi* to be entered in the case. Although I would be the last man to disparage the adjudication of law and justice in my own country, yet I will say, without the slightest fear of contradiction, and as the result of my reading, that although juries are the same in every country, if in a criminal case I was to be tried for my life, and wanted to be guarded against improper influences, or against public feeling or prejudices, I would be tried in England in preference to any other country. It is supposed that when a jury take their oath, they are to look to the evidence on which to render their verdict, and not on what they hear out of doors. There is another rule or evidence applicable to all witnesses, to which I will direct the attention of the court, and in respect to which my associate will ask the judge to charge. It is a rule which, applied to this case, will admit in its full force. It is comprised in the Latin words, *falsus in uno, falsus in omnes*, that a witness who comes into a court of justice and in any point wilfully states a falsehood, is not to be believed at all. This is a rule of law and justice, for I will ask you if you find a witness lying to you, to what portion of her statements will you give credit? How can you discriminate between the truth and the falsehood? It is impossible; and I ask that the rule shall be applied here; and if so, when we come to examine we shall find that there will not be much difficulty in adapting it to the principal witness in this case. Again, there is no rule of evidence not applicable to Dr. Mott, or any other distinguished man, which is not applicable to this case and to the defendant—the rules of evidence adapt themselves to everything, except the exigencies of the case. Moreover, it is necessary to adapt them with great exactness. I take for example a case of rape, or bastardy, (or that very case which is now on trial here,) which is a common case.—The woman goes before a magistrate and swears she is pregnant by one of you, and yet if you will search the records of our courts in New York, you will find a number of instances of this kind, where in the cross-examination of the witness, so much has been found wanting, and so much contradictory, that the person would not be put on trial. I would ask to what test could you submit a witness in such a case? You can't disprove the charge, except by the witness herself, and she would not be guilty of the insanity of denying what she before swore to. So in a case of abortion, the witness will swear to the fact, and unless her testimony can be shaken in some parts of it, you cannot disprove it. This was remarked in a case in 3d Hill, which I referred you to—a case which would amaze you, and you would wonder how the jury could convict the party in it. The witness swore that a captain had attempted to have intercourse with her, on an excursion, several times—that when she arrived at the captain's house, she went in and saw his family, and spoke of the pleasant time she enjoyed; but afterwards swore that the same man had committed violence on her. Now Chief Justice Bronson, in that case, said that, it, or similar cases do not call for a relaxation of the rule of evidence, on the contrary, the court and the jury cannot be too particular to guard themselves against the feelings which generally influence people's minds in such cases. There is much greater danger that injustice may be done—that there may occur cases in which jurors may think themselves bound to credit that which should not be credited, more particularly if such is unsupported by good character. In the next place, having seen what are the rules of evidence which control your deliberations in this case, and I now ask what kind of proof has been given? What has been the testimony of Maria Bodine? What has been her character, or her disposition to tell the truth at all? I admit at the onset that she is the individual at whose solicitation the operation was committed, and swears, in point of fact, that she was pregnant with a

quick child, when she never could have believed so. Now, it will not be denied that, if the testimony of the witness is applied to the rules of evidence I have laid down, that it is not enough to warrant a conviction. I ask the gentlemen of the jury if, on the testimony of this witness, they would be willing to have their reputation or their property taken from them? Would they be willing that, in a civil action, it should be taken from them by testimony of this character? Nor could they for a moment think of a conviction in this case. The proof must carry conviction with it. Now what does the law require in regard to witnesses who admit guilt of any crime?

It is not enough that there must be a corroboration of the main facts in the case, or the circumstances from which guilt or innocence may be inferred, but of facts, the presence of which exclude the idea of innocence. Mr. Brady then referred to a case in 263 Barber, where an accomplice to the commission of burglary stated in evidence the particular manner of the burglary, yet subsequently it was found that although the means indicated were used yet a conviction could not be had; and in this case, the prosecution, continued he, think that because the details sworn to by Maria Bodine are evidences of abortion, that therefore as a necessary consequence, the abortion was produced by the person on trial. I remember many years ago, when I was a boy, present at a trial at the old Court of Sessions, and listened to the remarks made by my learned friend (Mr. Hoffman) on this very subject of corroboration. I recollect his telling the jury an anecdote forcibly illustrating it. It was to this effect. An Indian sold a deer, which he represented as being in a boat on a stream far distant. He described the manner in which the boat could be found—how you were to go through a field, then through a wood—how you were to enter the wood, how to pass through it, how to reach the stream where the boat was. He was corroborated in every particular except the deer—the part of Hamlet was omitted. (Laughter.) So in this case. Maria Bodine is corroborated in going into the defendant's house, in coming out of it, and in the other details, but in the abortion she fails, as the Indian did in the other case. Now, gentlemen of the jury, I will put this question to you: Is Maria Bodine's testimony so credible? I say it is not, and I shall give you my reasons. In the first place she convicts herself in refusing to answer the questions we put to her, or by the facts which she testified to in regard to her connection with Cook. In the first place we put the question to her, whether she had the venereal disease when she was living with Mr. Cook, and she refused to answer; and for what purpose I will explain. The prosecution, however, asked her whether she had the whites. "Yes," she says, "for three years;" and Dr. Smith was asked whether he did not attend her for it. "Yes," he replied, "he attended her for a disease which he thought was the whites." I know that very frequently, as in this case, a woman who declines to answer questions of this nature—I know that ingenious counsel do make cases which the witness herself never heard of. In the next place, and in anticipation of remarks which I expect to hear at the close of this case, about women being seduced. I will remark that although perhaps you may have heard intimations some time or other to the contrary, there is an idea prevailing that I don't hold the character of woman in as high an estimate as my fellow men. I beg permission to set myself right by asserting the contrary, and if a strict investigation was made, it would perhaps be found that I like them too much. I believe that woman and Christianity are the only things that keep men from devouring each other like wolves. I believe if there be anything humanizing on the face of the earth—anything which prevents men from becoming wolves and tigers and preying on each other, it is woman; but I say this—there is an essential difference between women and men—in this respect, that woman may be destroyed for ever in that in which a man may be good.

Mr. Brady then proceeded to show the manner in which the character of man and that of woman is

formed. The man has to devote himself to business of some kind to obtain a living; day after day his interests come in conflict with those of his fellow-men, and his moral character is tested by his general conduct. In inquiring into the character of a man, the questions are asked—Does he discharge his obligations? is he a man who states the truth? is he a man who has regard to his obligations? is he a man who is disposed more or less to religion? All these things indicate a man's moral character. But how is it with women? Within what sphere of influence, I would ask, is the character of woman formed? There are women engaged in business, and their character must be tested in the same manner as that of men; but the character of other women must be decided by chastity, and those traits which manifest themselves in private life. There is no man who has lived even to my time, but who will admit that the temptations that lie in the paths of men are infinitely greater than those of women. There are men who stumble frequently, and they will perform what is right rather than be shamed among their fellows. You know there is among men what is considered a sense of honor, that leads them to do their duty—that will not allow them to do a mean action; and if you put those men on the stand in a court of justice, they will shrink from the cowardice of stating what would deprive his fellow-man of his rights. Much as is stated about men committing perjury, I assert that such instances are uncommonly scarce. Take a bad man, put him on the stand, and as long as he has one feeling of a man, ask him if he is willing to immure you in a State prison, and he will say no. He will lie to take your money from you, but he will not do. That as regards women, when they part with their chastity, disgrace and infamy follow them through life. If she should be false to her marriage vows, she will have her paramour by her side, and will pollute the presence of her lord and master by him. Such is not the character of man. However false he may be, he will never do this. In this respect they differ, because chastity is the basis of character in one instance; and when that departs, no reliance can be placed in her that loses it. Mr. Brady then went into a further and thorough analysis of the testimony of the witness Maria Bodine, and after having spoken for four hours, concluded; whereupon the Court took a recess till 5 o'clock.

EVENING SESSION.

The DISTRICT ATTORNEY, on the meeting of the Court, arose, and proceeded to address the jury in substance as follows:

Gentlemen of the Jury—It becomes my duty, as counsel in behalf of the people, to present to your consideration the circumstances connected with this case, and grounds upon which I intend to ask for a conviction of the prisoner; in doing which, it may be proper to remark, in the first place, that I am apprehensive, from the powerful appeal made by the eloquent counsel engaged for the defence, that your minds may have been diverted from the real matter we have in issue, and presented to you a variety of questions, when, in this drama, there is but one, in which you are called upon to render your decision. The name of Caroline alias Ann Lohman, alias Madame Restell, the person now on trial, in some unaccountable manner, appears to have been abstracted from your sight, and that of another victim, Maria Bodine, substituted. The counsel for accused, who has just addressed you, at the conclusion of his remarks, made an able appeal to you on the propriety, yea, even the necessity, of steeling yourselves against public opinion, and charges were made by him against every officer of justice who has had anything to do with this case, and against the police generally, and allusion especially to the intense anxiety manifested, and the desire to be distinguished in the conviction of this woman, and entreated you not to allow the influence of public opinion to enter the jury box. The District Attorney, after making a few other remarks relative to the anxiety manifested by the counsel for the defence, proceeded to give a detailed

statement of the manner in which the offence in question was brought to the notice of the authorities here, and the course public officers had pursued in conducting the prosecution; in the course of which he remarked, that in the month of August last, a communication was received from Walden, Orange county, in relation to the case, whereupon an officer was despatched to attend to it, which resulted in Maria Bodine coming to this city, and being placed in the house of Mrs. Horton, so that she could not be approached by any one; that after remaining there a short time, she was removed to the residence of a Mr. Nevins, with a view of allowing no one to reach her; that the public authorities were right in placing her in a situation where she could not be seen by any except a few honest persons, who were endeavoring to bring the prisoner to public justice; that while at Mrs. Horton's, the witness, Maria Bodine, was brought before the Grand Jury; neither the District Attorney, the Mayor, nor any public officer, had any interview with her at that time, and she was thus allowed to go before the Grand Jury and tell her own story. She did tell it, and it resulted in Madame Restell being indicted on the 7th of September last. On the 10th she was arraigned, and plead not guilty, and then notified that she must prepare for trial, as it was the intention of the prosecution to try her in the course of a few days. When the day set down for the trial arrived, the prisoner's counsel made an application for a commission to procure the testimony of Luther Maillard and wife, then residing in Massachusetts; also, one Horace Armstrong, represented to be living in New Orleans, which application was denied; and the cause was finally set down and brought to trial. The indictment, charging the accused, Ann Lohman, alias Madame Restell, with having, on the 19th of July, 1846, by means not clearly known, produced an abortion upon the person of Maria Bodine, then pregnant with a quick child, was then read by the District Attorney, who next proceeded to state to the jury that it was their duty, first, to find whether Maria Bodine was pregnant or not; secondly, if pregnant, whether she was pregnant with a quick child; thirdly, whether an abortion had been produced upon her; and last, if so, whether the prisoner had produced that abortion. Gentlemen, if you shall be convinced, from the evidence adduced and the remarks which I may present for your serious consideration, that the prisoner is guilty of having produced an abortion upon the person of Maria Bodine, while pregnant of a quick child, then she is guilty of manslaughter in the second degree. If, on the other hand, you have doubts as to Maria Bodine having quickened with child, then we fall back on the common law, which makes the offence a misdemeanor. Now, let us look at the aspect of the present case. In the first place, the law allows you, in arriving at such a conclusion, either to take the evidence of Maria Bodine or not. Well, without her testimony, I contend that the case is clearly made out—but there can be no doubt, gentlemen, but that she is a competent witness, notwithstanding the circumstances that she comes before you as an accomplice; and as a precedent, I will take the authority of Justice Beardsley in the case of Madame Costello; and according to that decision, the uncorroborated testimony of Maria Bodine may be received in evidence—it requires no evidence to support it; but I adduce such additional testimony and deduce the fact of the commission of this crime; but I presume I shall be told that our witness, Maria Bodine, is a woman of bad character. The counsel begins by requiring of me, a pure and unsullied female, to go on that stand to testify against the prisoner. This, I know, you know, we all know, cannot be done. He then assails the woman who has lost her virtue, and asks me as public prosecutor, to bring corroborative testimony of a positive character. How am I to do this? Will others, who have been subjected to the same treatment as herself voluntarily come forward and testify against her? Am I to go down to that den in Greenwich street, to find other fiend-like beings for this purpose? Am I to take inmates of

worse than a brothel, to prove what I desire? Is it to be Madame Restell's servants that I must take for that purpose? Why, gentlemen, do you for a moment suppose that Madame Restell is the woman who would allow any of her servants to be present and witness her operations? Not she; I say there is not a human heart who could stand by, and see the writhing agonies of those who are operated upon. Who is there but Restell and her victim in the room at the time of the operation? No one. We are not to believe that she allows any being to witness it. She who knows the law so well, takes good care to manage this part of the business, and when the poor victims leave her den, mark what she says to them by way of caution. "Speak not of it to any one; be silent; be quiet; for the act will consign us both to the State prison; me for performing the operation, and you for submitting and causing to have it done." Now, if you say by your verdict that you will not believe Maria Bodine, Restell and each one of those wretches engaged in similar infamous pursuits will thank you for your decision, for it makes them safe; because they well know that this girl or any other victim cannot, or rather would not be believed. The District Attorney after offering some remarks to the jury relative to their duties, proceeded to read the testimony of Maria Bodine, so far as regarded her first acquaintance with Mr. Cook—her residence in his family—her intimacy and criminal intercourse with him—the period at which she discovered herself to be pregnant—the symptoms attending it—her visit to Madame Restell—Dr. Coles—her return to Ramapo—her second visit to this city accompanied by McGann—her second interview with Madame Restell—the amount of money alleged to have been paid for producing the abortion—the manner in which the operation is alleged to have been performed, &c. After which he resumed his remarks as follows: Now, gentlemen, if this girl, Maria Bodine, had been the worst woman living, if she had been rotten, as it were, with disease, and completely abandoned, it is utterly impossible for any human being to invent such a story as has been told by her. Let us for a moment suppose a country girl coming here and describing all that is to be seen in the interior of Madame Restell's, with more minuteness than the most successful clairvoyant; and as regards the object of her visits there, she introduces so many persons and so many circumstances, that their occurrence cannot for a moment be doubted. Again, the counsel for the defence contend that the girl, Maria Bodine was not pregnant. To settle this point, we have the signs of pregnancy as they existed and are described by Maria Bodine as well as by Dr. Coles. Several medical works were next referred to for the purpose of proving the probability of the child with which she was then pregnant having quickened. The testimony of Drs. Gilman, Bedford, and others was also introduced for the same object; the character and extent of the disease with which Maria Bodine had been afflicted prior, and during and subsequent to her residence with Mr. Cook. The District Attorney next alluded to the fact that notwithstanding the extraordinary efforts that had been made, regardless of expense, to impeach the testimony of Maria Bodine, but five persons had come forward from Orange county and say that they would not believe her when under oath. Under these circumstances, as they have been presented before you for your consideration, I ask for a conviction of the prisoner.

SIXTEENTH DAY.

TUESDAY MORNING.—At the opening of the Court this morning, David Graham, Jr., Esq., of counsel for the defence, commenced his argument in defence of the accused. It consisted principally of points of law quoted from and supported by a number of authorities in England and the United States. He in the first place directed the jury to the charge in the case, and if the jury did not admit that it is something a-piece with the mode in which the evidence has been presented he would acknowledge that he had mistaken their intelli-

gence, for it is as great a legal curiosity as he ever saw. His associate had said that he did not intend to say anything in regard to the legal construction of the offence; as far as he would make his remarks, he would assume it to be a good legal document. The law of eighteen hundred and forty-five he referred to the statute passed on the subject of producing abortions, which, if we judge from its language, made it manslaughter in the second degree to administer anything to destroy a child in its mother's womb. The legislature passed that section of the law, under which it is supposed this indictment was found, and that provides, that any person who administers anything to destroy a child or uses any instrument, shall, in cases of the death of such child or its mother, be deemed guilty of manslaughter in the second degree. The meaning of it is, that if you administer anything with the intent to kill the child, you shall be deemed guilty of manslaughter. At common law it was not manslaughter to take means to destroy a quick child, and this statute was passed with a view to supply the deficiency in the common law. He would assume the common law ground to administer the means to destroy a child, but that it was not a misdemeanor to do so except when the child was quick. The statute of 1846 says it shall be manslaughter in the second degree to administer, &c., with intent to destroy the child; provided that the destruction of the life of the mother or child be effected; and the statute of 1845 makes it a misdemeanor to administer, &c., with the intent to destroy life or not—Let us see, said Mr. Graham, under what statute the defendant in this case is indicted. The indictment contains five counts. It is alleged in it, that the defendant administered to Maria Bodine a large quantity of medicine, with the intent to produce a miscarriage, the said Maria Bodine being pregnant with a quick child, by which it was destroyed. The gauge of the statute is, that the means must be used on a woman pregnant with a quick child, with the intent to destroy it. Now the charge is here that the defendant administered the means, not with the intention of producing the death of the child, but miscarriage of the mother. This is, therefore, not an indictment for manslaughter, for the reason that it does not charge the means used for the purpose of producing miscarriage, to have been used for the purpose of producing the death of the child. Mr. Graham then referred to several authorities as to the allegations which are necessary in an indictment.—The prosecution, he said, have charged that the defendant has administered, &c., to a woman quick with child; but the intent to destroy the child is not charged. The mere allegation of manslaughter on the back of the indictment is nothing. The substance of the indictment is, that the party is guilty of what is a misdemeanor in the second section of the statute. The jury are trying a case of misdemeanor only, and it cannot be made other than an indictment for felony. He then said, that he should ask the court to charge, that whether the indictment is founded upon the statute of 1845 or on the common law, in either case the matter charged amounts only to a misdemeanor. We have the intent appropriate to the crime of misdemeanor alleged, and that only, and he would ask the Court to charge the jury that they cannot convict the accused of a misdemeanor under an indictment for a felony, because the misdemeanor is merged in the felony; and again because conviction of a misdemeanor would not be a bar to a prosecution for the felony. This was the amount of the gentleman's argument on this point, which took him a long time to explain. He then went over the same ground which was travelled by his associate on the preceding day, and insisted that for want of corroboration in the testimony of the principal witness, the defendant must be acquitted. The counsel went into an elaborate discussion of this point, and contended there was no corroborative testimony. He concluded that the only attempt at corroboration was, by the witness Cook, who himself needed corroboration, being in the same predicament with Maria Bodine, and under indictment in this case. In regard to the medical testimony, he contended it was so conflicting that it was as

favorable to the defence as it was to the prosecution. He then reviewed the points of the prosecution, the matter charged and the proof that should be given, all of which was in his opinion inadequate to convict the defendant. He concluded by appealing to the jury to render a verdict of acquittal, irrespective of every thing but their oaths and their duty.

SEVENTEENTH DAY.

WEDNESDAY, NOV. 10.—At the opening of the court this morning, Ogden Hoffman, counsel for the prosecution, commenced his summing up argument before as many persons as the court could well contain, without being on each other's heads. Mr. Hoffman commenced—May it please the court, gentleman of the jury, I certainly congratulate you and myself, that we are fast approaching the termination of this difficult and protracted case, a case which has been disgusting in its details, however interesting it may have been to the public, or beneficial in its effects on the community. A poor uneducated girl, whose experience of the world is confined to the village in which she was born—poor, uneducated, and inexperienced with courts of justice,—without motive or gain, without any advantage to herself, be the result of this trial what it may—that such a girl should accuse persons of crime and come into a court of justice and narrate the story which she told of her erring so truth-like as to carry conviction to the minds of all, and yet, that such a story, without any motive, should be deemed false from beginning to end, is one of the most miraculous occurrences that ever took place in a court of justice. If on the other hand, this girl has come into court as a victim of brutal violence—if telling the story of her wrong, she knows all her words to come from the fountain of truth, and wished the counsel to place her on the witness stand and submit to the rack of a cross-examination, then I say there never was a stronger case. Before proceeding, however, to examine the testimony, let me direct your attention to the mode in which the defence in this case has been conducted. From the first moment of the trial to the present the prosecution has been assailed, and accused of acting unworthily of themselves. The public prosecutor has been assailed in terms unmerited, in my opinion unjust. What private grievances the counsel who last addressed you: what personal differences may exist between him and the public prosecutor, I will only say to him in sorrow more than in anger, that it would be more decorous, and I would add, more manly in him to have settled those differences out of a court of justice, and not bring them here to impede the course of truth and mislead the judgment of the jury. We have already yielded almost every thing—yielded so much, in fact, that it almost considered by the public that we desire to yield even our claim to a conviction in the case. We have done so from no fear of consequences, but we believed that it would best subserve the ends of justice; and I may take occasion to say here that the public look to him to perform the duties of the office he holds; and to the gentleman who has made the assault on him and partially on me, I will say, as Daniel Webster said to Mr. Dexter, "You had better endeavor to establish the innocence of your client, than to cavil with the mode in which the prosecution is conducted." Gentlemen, in the whole of the arguments presented to you by the counsel for the defendant, and especially by my friend who first addressed you, you have been told that this case rested entirely on the testimony of the girl, Maria Bodine; and the whole efforts of the defence have been to break it down, and show her to be guilty of being unchaste. I shall, in the first place, endeavor to show the guilt of the accused, independently of the testimony of Maria Bodine; that, if Maria Bodine had passed away from the world—if she had been relieved of her sufferings and her agonies, and carried to the grave, where the "wicked cease from troubling and the weary are at rest," even then, on the other testimony in the case, I should ask a conviction at your hands. Did that girl, who is the chief witness in this case, go to the house of the defendant for the purpose of consulting on diseases to which women are

incident? No. And how is it proved? By her testimony? No: but by the testimony of Dr. Coles, who says she came to him two days after and inquired her situation, and he pronounced her pregnant. If, therefore, she went to Restell's house and Restell demanded more money than she had, as has been sworn to by another witness, that the same motive continued when she went to Dr. Coles and he proves her object was to know her situation, and he pronounced her pregnant. She returned, I will not say when, because that involves her testimony; but she came again to New York, and what is McCann's testimony?

Now, what does he say? He says, he took \$40, went to Restell's house, and inquired for this girl; Restell came to the door, and said she was up stairs; she called her down, and he had a conversation with her. He gave her the \$40, and then left. Where did you get the \$40 from? From Joseph Cook. What, then, does McCann prove? That on that day Maria Bodine was in that house—there for some purpose—recognized by the owner of that house—in the receipt of the \$40 which was to be used for some purpose in that house. Now, we ask, what was she there for? What motive had she in being there, except to be delivered? She was a poor girl; so poor, that she has been a town charge for the last year—so poor, that Dr. Millsbaugh could only wring from her \$4 of the \$5 he charged her—so poor, that when she followed Cook to Ramapo, she had to borrow the dollar to reach her place of destination. And yet we find this poor girl in Restell's splendid house, domiciliated there as one of the family, in a larger house than she ever before resided in. Was she residing there for the purpose of consulting about her monthly turns? Did that woman receive this poor vagrant into her house, and support her, for the purpose of administering medicine to her? Would not one moment's consultation have enabled her to prescribe for her? The gentleman says she staid there for the purpose of consulting about her turns. If she staid there for that, where did the money come from? Did she get it from charity? No one had any motive to give that money, but the father of the child which was destroyed, whoever he was. I say, then, that if Maria Bodine was not here, no reasonable doubt could rest on your mind; but when Maria Bodine's testimony is added, there can be no doubt of the conviction of this woman. She is introduced as a witness in this case, and how is she assaulted? She is declared to be an accomplice, and is therefore unworthy of belief, and the course of the defendant's counsel has been singularly bold throughout the whole defence. They have assaulted, not only the prosecution, but every person who had dared to open his mouth in the cause of justice. Is Maria Bodine an accomplice? An accomplice is one engaged with another for a common purpose and for a common benefit. Is this poor girl engaged with Restell for a common purpose and for a common benefit? Why, it is an abuse of terms to say she is. To call her—poor victim, who is hardly able to drag her trembling form on the stand—to call her the accomplice of the accused, is idle; why, it is like the lamb being the accomplice of the butcher. Let us see how this girl is brought on the stand. Had she any motive to testify falsely? No, the complaint does not come from Maria Bodine; she never dreamt of demanding justice at the hands of this woman. For one long year she bore her sufferings, revealing to each successive physician who attended her, the cause of the pains that she was suffering. She never thought that Restell could be punished. For one whole year stretched on the bed of sickness, and almost dying, like a lamb, she was dumb before her slaughterer. She broached her tale of woe to her physician, and he kept it unrevealed, until Dr. Smith attended her, and to him, in the agony of her sufferings, she divulged the cause of that suffering. It was Dr. Smith, to whose honor be it told, that came forth and made the complaint, as one which required the interference of public justice. He wrote to the mayor, and he sent an officer to inquire into the truth of it, and the girl was taken, drawn, an unwilling witness, to testify to her own

wrong. Is this an accomplice? Does she stand before you with a motive corrupt or otherwise? She is not here willingly. She is brought here by the strong arm of the law, against her will—from reluctant lips her story comes, while she stands surrounded by the emblems and the ministers of the law. What is the story, then, that is told by this girl, who is not a subpoenaed witness—who stands here as a minister in the cause of justice. What is the story this girl told? You all know—I have related it. Every line was marked with truth; and when I saw that poor girl, without a father or a mother, thrown on the cold charity of the world—when I saw her standing as the impersonation of truth—when I heard her answer every question that was put to her on her cross-examination; when I saw her baffling the learning of the learned, and the wisdom of the wise, I felt she was testifying in the cause of truth. But look at her story. Examine each part by itself, and truth is present throughout. She sees Restell, and she says, seventy-five dollars is my price. The gentlemen say, how singular it is Restell never asked her for what purpose she came, and that the witness never told her she wanted an abortion produced, but that Restell at once said, “\$75 is my price.” What does this prove? It proves the truth of this girl’s story. It proves that the house was so notorious, she knew there could have been but one motive in coming there, and her not asking any questions establishes the girl’s story. Does the woman who keeps a house of prostitution ask the girl who goes there what she comes for? But, again, in the midst of this girl’s suffering, Restell tells her to be patient. “You will call me mother for this.” Did the girl invent that expression? Did she put in her own mouth language that she never learned? Why, gentlemen, I know not how it struck you, but when these words were uttered by the witness, they struck a chord in my bosom, which convinced me that it had been touched by the hand of truth. Again, in going away, Restell says, “tell this to no person, or we shall go to State prison. You had no right to come here, and I had no right to do it.” Is that the language of a girl who has passed her whole life in doing the work of a family? who had no acquaintances beyond the homely neighbors who surrounded her?

One word testifying that in March and not in April her courses stopped, and it would have driven them from this part of the defence. Could she be corrupt and not tell it? If she had been a corrupt witness would not the time have fixed it in March, and who could have contradicted her? Who could have gainsayed the fact, that in March her last menstruation was upon her? Had she said it stopped in February, and in July she was quick, and she would have established it beyond all peradventure. Why did she not do it if she was a corrupt witness? From this alone comes the only testimony that could save this woman from the State Prison; and this we say, is conclusive proof that the girl testified honestly in every word she spoke. Gentlemen, she is confirmed in her testimony, by the facts, by human nature, and by all the motives that govern human nature. She is confirmed by facts that followed the event; facts which made Dr. Evans say she was pregnant and miscarried before she related it; facts that carried conviction to Dr. Smith, facts which followed her and attended her in this court of justice; facts which mark her to have been the victim of brutal violence: and can you doubt them? Yet they tell you, while you behold the broken victim issuing from the door, that Madame Restell did not do the deed. Who did it then? Did nobody do it.

“Who finds the heifer dead, and bleeding fresh,
And sees fast by a butcher with an axe,
But will suspect ’twas he that made the slaughter?
Who finds the partridge in the puttocks nest,
But may imagine how the bird was dead,
Although the Kite soar with unbloodied beak?”

I will, in connection with this matter, call your attention briefly to decide whether Maria Bodine was

pregnant, whether the abortion was produced, and whether she was quick with child at the time; and before I proceed to argue this question I will make a few remarks from a book which I hold in my hand. The learned gentleman quoted from Montgomery’s *Wifery Practice*. He argued that, as far as the intent was concerned, Madame Restell was morally guilty, whether Maria Bodine was quick or not with child. Upon this part of the case we have, said he, their own testimony that in the middle of May, she became sick and vomited; about the 1st of June her breasts became hard, and the areola appeared. According to the gentleman’s doctrines the areola would not appear until two months after conception, which would make it in the middle of June. I say the fluttering commenced about the 24th, 25th or 26th of June; the girl a few days afterwards, comes to this city and visits Restell’s house. According to the authority of Montgomery, in pregnancy the areola appears in four months after conception, which would make the period of conception about the middle of March. The gentleman then referred particularly to the testimony in the case, and in respect to that given by medical men, and insisted that that given by Professors Gilman and Bedford was of more weight than that given by Dr. P. A. Millsbaugh.

I will not detain you much longer. I have deemed it my duty to present my views in the case, and I now state to you, that quick or not quick, the girl was pregnant by Cook. She was delivered of her child by Restell, as proved by all the testimony and all the circumstances of the case. It is proved by testimony, independent of Maria Bodine, and proved by Maria, independent of the testimony; and I call on you, gentlemen, to discharge your duty. You, gentlemen, have passed through the ordeal. You are here as pure and impartial jurors, you, I am bound to believe, when you took your seats in that box, were influenced by no extraneous feelings. You have been guarded against public opinion but does the counsel arraign the public opinion of this land—that public opinion which flows from the moral sense of the community—does he compare it to the arbitrary acts committed under Henry VIII, the bloody Mary, or the insatiate Elizabeth? Does he liken the despotism of the crown to the public opinion of the free and enlightened people of this land? I tell him I do not fear public opinion from any source. I believe public opinion founded on the morals of our people, founded on their love of virtue, declared if you wish through the public press, is the foundation of all the liberties we enjoy. I tell them that our institutions rest on public opinions. I tell them that public opinion bind men to do their duty. I tell you, it reaches the commander-in-chief of your armies and of your navy, and that your President even bows to public opinion. I tell you that public opinion ought to come into the temple of justice—that it purifies the atmosphere of the temple of justice. I tell you it ought to come, and sit by the judge on the bench—not to control him, but to strengthen him in the administration of justice—not to pervert the law, but to give him confidence to declare the law—not to control his mind, but to make him bold. I tell you public opinion should come into the jury box—not to influence your action, but to hold you to the discharge of your duty according to the law and your own understanding; and if at any time the jury should be found corrupt, and willing to take the price of his corruption, public opinion stands beside him to dash the bribe away. It tells him his motives are known. Gentlemen, we boast of our morals, and of our civilization. We point to our school houses; and yet it is my duty to say, that in no city in the world, but our own, could we find a den like Madame Restell’s. Upon you rests the responsibility of saying whether it shall continue in our midst. You stand like the Jewish prophet, between the living and the dead. By your verdict, it depends whether this pestilence shall be stayed, or whether it shall continue until the first and noblest in the land be stricken down. Acquit the defendant here, and send her forth again, and what will you do? You will break away the very foundations of female virtue—the dread of discovery of crime—you will render the

prayers of the fathers of our land fruitless, and the sighs of our mothers unavailing—you will strew weeds in the path of virtue. Think, in God's name, think of the responsibility of what you are about to do. The public look to you; the eyes of your fellow-citizens are rivetted on you, your motives and your deeds. The eye of outraged humanity is keenly watching you, and on you are centred the hopes and fears of the best and noblest in the land.

[Mr. Hoffman sat down and a loud burst of applause succeeded, which the officers could not quell for some minutes.]

THE RECORDER'S CHARGE.—The Recorder stated in his charge, of which we proceed to give a synopsis, that the case rested partly upon direct, and partly upon circumstantial evidence, and he charged: First, that when a fact cannot be positively proved, that kind of proof which comes nearest the positive proof must be given in evidence, and that kind of proof is circumstantial and must stand as good, until the contrary is proved. A concurrence of well authenticated circumstances composes a strong ground of assurance, if not stronger than positive testimony, when the latter consists of a single witness, standing unconnected with external or collateral circumstances. He charged, secondly, that the burden of proof of the guilt of the accused was on the State. Thirdly, if circumstances induce a strong suspicion of guilt, where the accused might, if innocent, explain these facts consistently with innocence, and yet does not offer such proof as will do so, a strong and natural presumption arises that the accused is guilty. Fourth, it is to be presumed that person's actions correspond with truth. Fifth, the jury should be convinced from a combination of circumstances, as much so as if they had direct proof. Sixth, that the circumstances should necessarily involve the guilt of the prisoner, and point directly to the offence charged. Seventh, the jury cannot bind themselves down to believe or disbelieve, abstractedly, from the principal actors in the scene presented to them—their motives and all the variety of their relations. It is impracticable, he said, to obtain absolute certainty in human affairs. In the nature of things we can only obtain reasonable certainty. In regard to the circumstances of this case, he said, the jury must be satisfied not only that they were consistent with her having committed the act, but they must also be satisfied that the facts of the case were such as to be inconsistent with any conclusion other than that the prisoner was guilty. In relation to the point, the jury had to decide upon, they were first, whether Maria Bodine was pregnant; second, whether an abortion was produced; third, whether the defendant committed the abortion; and, in order to decide whether the defendant was guilty of manslaughter or misdemeanor, they must ascertain whether she was quick with child or not.

These are the points in the charge, and as soon as the Recorder sat down, the District Attorney moved that Madame Restell be committed to the custody of the officers of the court, to await the sentence. The motion was opposed by James T. Brady, Esq., when the prisoner's counsel, and the Court decided that the special bail in the case, he thought was sufficient.

The Court convened at 7 o'clock, and at about 8 o'clock, an officer announced that the Jury had agreed.

They came into Court, and the foreman announced as the verdict, that the Jury found the accused guilty of "the misdemeanor charged" under the following section of the law:

"Every person who shall administer to any pregnant woman, or prescribe for any such woman, or advise or procure any such woman to take any medicine, drug, substance, or thing whatever, or shall use or employ any instruments, or any other means whatever, with intent thereby to procure the miscarriage of any such woman, shall, upon conviction, be punished by imprisonment in a county jail, not less than three months, nor more than one year."

The District Attorney moved for judgment, to which the defence made a motion for arrest of judgment, and proposed to argue the motion at once. The District Attorney then withdrew the motion, and Saturday was fixed to hear the argument.

The District Attorney then moved for the commitment of the accused to prison, to which the defence objected on the ground that her bail was sufficient for her appearance, and pending the discussion of counsel on this point, the defence refused to assent to the agreement to argue the motion for arrest of judgment on Saturday, and asked the Recorder to sign their bill of sealed exceptions, forthwith, in order that their client could be re-bailed, if the Court decided to commit her.

This was denied, and the Court committed the prisoner, and adjourned to 11 o'clock on Thursday morning.

EIGHTEENTH DAY.

TUESDAY, NOV. 11.—The court room was crowded to excess this morning, the rumour having got abroad that the prisoner was to be sentenced. About twelve o'clock she was brought from the prison, to which she had been consigned on the rendition of the verdict, and, accompanied by her husband, entered the court and took her usual seat at the table. She was elegantly dressed in a rich black silk gown, handsomely trimmed black velvet mantilla, white satin bonnet, and wore a large, heavy lace veil. She looked excessively pale, however, and was evidently anxious as to the result of the day's proceedings. Mr. Graham then presented a bill of exceptions, which he was desirous that the court should sign. The District Attorney objected on the ground that the bill of exception, did not contain the whole of the Recorder's charge and that it was also deficient in portions of the testimony. The court declined signing the exceptions, not having had an opportunity to examine them. The District Attorney then repeated his motion that the court pass judgment upon Madame Restell, when Mr. Graham moved for an arrest of judgment, but at the same time intimated that he would withdraw his motion, if the court would direct the sheriff to defer sending the accused to the island for twenty-four hours.

Recorder. "I do not see why any difference should be made in this case: why every day some poor devil is brought up here and sent off to the State Prison without ceremony, probably because he has no counsel, although the Court always assigns counsel if possible; and I have no idea that there should be one law for one individual and another law for another. This woman is the same as any other woman convicted of a similar crime, and we can make no distinction. The Court has decided, that to prevent any difficulty that may arise in this case from delay; so that the whole of their proceedings might have to be gone over again—in view of the vast expense to which the public have been put, and the length of time the trial has occupied to proceed at once and pass sentence. Mr. Clerk, arraign the prisoner."

Graham. "When the Clerk asks what the prisoner has to say why judgment should not be pronounced against her, he will consider her to say, that the Court has no right to pass sentence."

Clerk. "Caroline Lohman, alias Madame Restell, stand up." The usual question was then put, but she made no reply, and again sat down.

Court. "Caroline Lohman, alias Madame Restell; you have been convicted by a jury of the county of a misdemeanor, in procuring a miscarriage, and the Court sentence you to be imprisoned for one year in the penitentiary on Blackwell's Island, that being the extent of the punishment prescribed by the law for the offence of which you have been found guilty."

The audience, upon the delivery of this sentence, commenced applauding, but they were immediately checked by the officers of the Court.

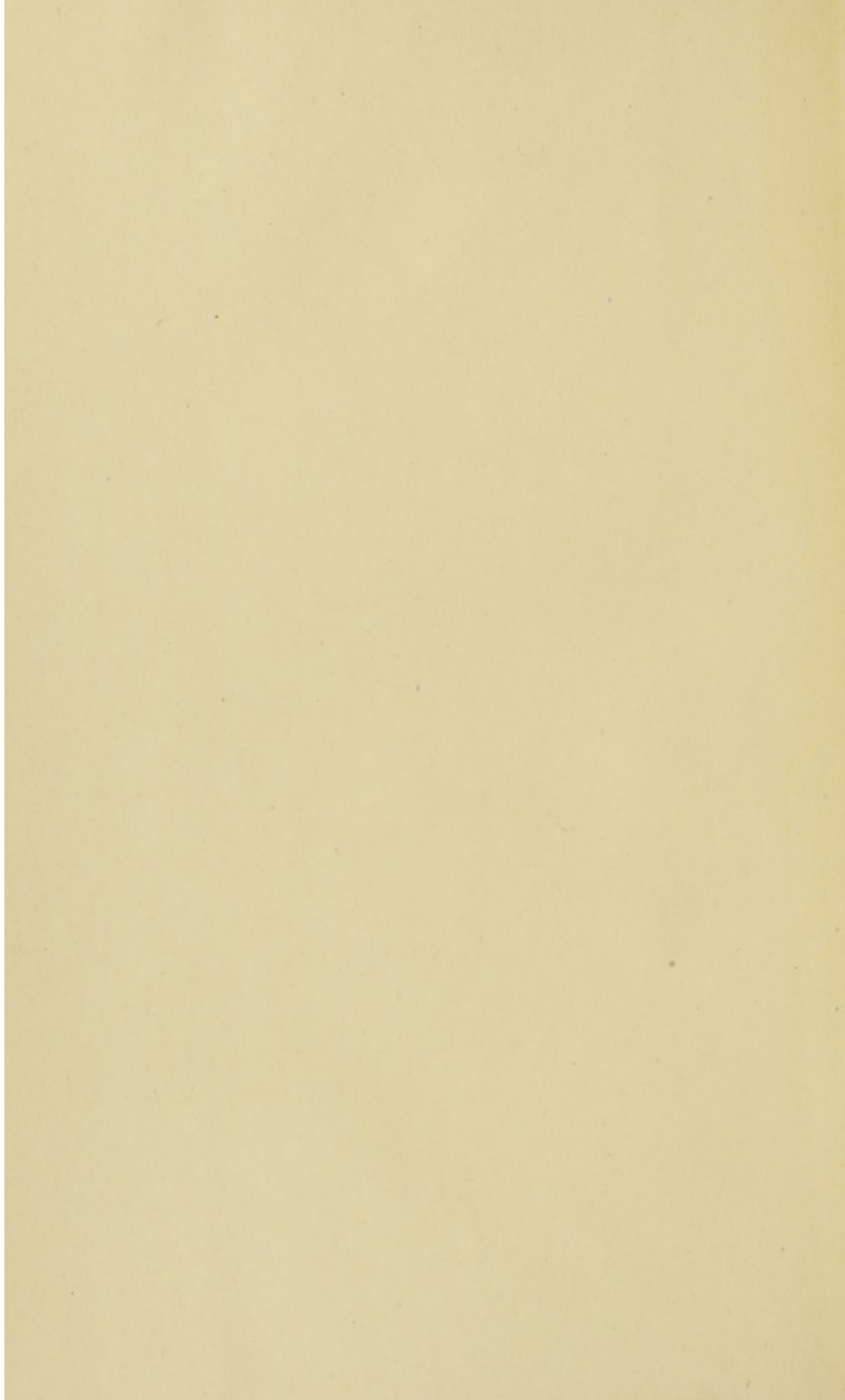
Messrs. Graham and Brady, before leaving the room, intimated that they should ask nothing further of the Court in relation to this matter, and shortly afterwards made an application to Judge Edmonds for a writ of error and stay of execution, which were granted.

On Monday morning, Nov 15th, Judge Edmonds decided that he had power to order a stay of proceedings, and also, on the examination of the exceptions taken by defence, to grant a writ of error, but under the verdict of misdemeanor only, he would not admit the prisoner to bail, and he therefore remanded her to the city prison to be sent to the Penitentiary.





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