

No. 13122

Supreme Court of Illinois

Smith et al

vs.

People

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 22.

PEOPLE'S CAUSES.

Smith
vs

People

1860

Supreme Court

16

Supreme
IN THE SUPERIOR COURT,

APRIL TERM, A. D. 1860.

SMITH, SCHWAB & ALLEN,

IN ERROR,

VS.

THE PEOPLE.

FOR THE DEFENDANTS.

The Indictment does not set forth an indictable offense.

The English Law upon conspiracy is too loose, indefinite and uncertain, to be applied in our country. See 3 Archb. Cr. pl. 616—2, note. Com'th v. Hunt. 4 Met. III. 3 Greenl. on Ev. § 90 a. 91. 3 Chit's Cr. L. 1140.

SECOND. Either the end, the object aimed at, or the means used, must be unlawful. 3 Greenl. Ev. § 90 a. 91. 3 Archb. Cr. pl. 617. Wharton Am. Cr. L. § 2291 and note 9 Cow. 587—597. Lambert v. People, (Spencer.)

Here the word "unlawful" means in some degree *criminal*. 3 Greenl. Ev. § 90 a. 91. Starkie on Crim. Law 170. 9 Cow. 587.

The act must be unlawful in a legal sense—positively unlawful. Mere *immorality* is not sufficient.

THIRD. When the end is not illegal—criminal; but the means are relied upon, then the means must be set out. So, if neither end nor means are relied upon as unlawful, *per se*, the means must be set out. 1 Ad. & El. 706. Rex. v. Fowler. 2 Rus: on Cr. 1812. S. C. 1 East P. C. 461. Starkie on Crim. Law, 170. 9 Cow. 588—590—597 (Spencer) in Lambert v. People.

And a distinction is made between a conspiracy to commit an indictable offense, in which case the means need not be set out; and a conspiracy to commit an act "unindictable," when the means must be set out. Wharton Am. Cr. Law, § 2300. Starkie on Crim. Law 170. 9 Cow. 587.

Or, it should at least be averred, that the means were not disclosed, as a reason for not setting them out. Wharton, § 2298.

When the act has been accomplished, or there has been an *attempt*, which discloses the means, as in the present case, there can be no reason for not setting them forth.

The means which profess to be set forth, are stated in broad, indefinite terms—in a manner which is quite insufficient. They point to nothing.

FOURTH. But regarding the averments as they are. The evidence does not support the indictment. It alleges *false* pretences and *false* representations. None such were shown. Nor were any *pretences* proven.

FIFTH. We contend that the second instruction on the part of the State, is erroneous. It is that "it was not necessary for the People to prove any concert of action between the defendants, before the witness Engles was introduced into the store by Mrs. Allen."

Abstractly, the sense of the instruction may be correct, but as applied to evidence, was it so? There should have been a distinction made in relation to Smith, at least. As there was no proof of his doing any thing to implicate himself, after they came to the store, it was necessary that something previous to that should be shown.

And again, if even the acts of Schwab, after they came to the store, were the first that he had to do with the transaction, they do not prove a *conspiracy* between him and Allen, and there was need of proof of something prior to that time, in order to inculcate him under this indictment.

SIXTH. In this connection we refer to the alleged error in the refusal of a new trial, because the verdict was against evidence as it regards Smith.

The suggestions under this head necessarily connect with those under the preceding.

There was no evidence upon which to convict Smith. He *did* nothing; and he *said* nothing, which should implicate him. All that he said was, what related to the wine, and the proposition to go up stairs. Then he left them and went to dinner. To hold him implicated, the jury must have made inferences—such as were not logically nor legally warranted by the testimony. The charge is, of an attempt to cause her to have connection with Schwab.

SEVENTH. There was error in the Fourth Instruction—given for the People. That "the soliciting of a female to have illicit carnal connection with a male person, by two or more, constitutes an indictable conspiracy."

This cannot be correct—especially when applied to the person seeking the connection. There should be enough to form a conspiracy, *beside* the person *with whom* the act is sought to be done.

And still more, as a legal proposition, this is too broad. It is unqualified as to the circumstances whether the Defendants solicited the Prosecutrix conjointly or separately—whether at the same time, or on different occasions. There is no discrimination, but any solicitation, by two or more, for that object, is declared an indictable conspiracy. The instruction must be presumed to have had its legitimate influence on the minds of the jury, and that unfavorable to the Defendants.

We come to the instructions asked by the Defendants.

EIGHTH. The Court gave the first and second.

Then, the first being good law, the verdict is not supported by the proof. "Unlawful," means, partaking of criminality, 3 Greenl. Ev. § 90 a. 91. There was no proof of any *criminal* acts.

NINTH. There was error in the third instruction asked by defendant.

TENTH. The refusal of the fourth was also error; and so of the fifth.

ELEVENTH. There was error in the refusal of the sixth of defendants' instructions, which was, That the false representations must have been of such a character as were calculated to deceive the Prosecutrix, and against which she could not, by reasonable and ordinary prudence, guard, &c. 9 Cow. 607, citing Rex v. Turner. 13 East 228. 9 Cow. 614, citing Rex v. Wheatly. 3 Burr, 1125. 2 Russ. 1380.

TWELFTH. So, we contend there was error in the refusal of the seventh and eighth of defendants' instructions.

Which is respectfully submitted.

WOODWARD, LULL & ABBOTT, AND
E. VAN BUREN,

FOR DEFENDANTS.

Smith et al. vs People
Pepps. brief

Filed May 24. 1860.
J. Seland
Clk.

Sup Court
 Charles A. Schaub, John
 B. Smith, & Mary Allen
 vs Prof. W. W.
 The People of the State of Illinois

Record The Indictment alleges that the defend-
 page 3 ants are "unlawfully conspire combine
 4 and confederate & after together wickedly
 4 knowingly & designedly to procure by
 6 false representations & other fraudulent
 4 means one Lizzie M. Engels to have illicit
 4 carnal ~~connection~~ connection with a
 7 man to wit with the said Charles
 8 Schaub one of the defendants.

The testimony show that Lizzie
 Engels about fifteen years of age
 was found on an island for her mother
 12 & the daughter of the defendant Mrs Allen
 asked her to go in her mother's house
 & Mrs Allen also asked her in, that
 she went in, while there Mrs Allen
 asked her to write a letter to Lawyer
 Jones, the State's Attorney then put
 the following question "What did
 she tell you to write to Lawyer Jones?"
 13 the question was ~~also~~ objected to on
 the ground that the letter should be pro-
 duced, & the objection was overruled

p 13 & the witness testified as to the contents -

" 14 That after this Lizzie Dyer at the request of Mrs Allen put on her black silk dress, and went with her to the store of the defendants, ^{L. B.} Smith & Schaub. She went into the office, Smith was at his desk reading a newspaper. Schaub gave her a seat - she had a veil on, & Schaub raised it. She started to go out of the office, she got up & stood in the office door & told him to take her seat, he turned the catch of the door & she took her seat.

p 15 Mrs Allen then looked at Schaub & winked at him & asked him to fetch a glass of wine, he brought two glasses of wine, she drank one & Mrs Allen the other - She did not drink it all, she spilled some, Smith then said that ladies who called there did not treat him as she did, they did not waste their wine - Then Schaub went to the desk and wrote a little note & held it up & \$10 gold piece & asked her (Mrs Allen) to take it to a lady & get her brown pin.

Mrs Allen said there was a diamond chain & she wanted to buy it for her daughter.

- Smith said he would go to school; but
15 Schwaab did not want Smith to go
but said he'd go. Schwaab then asked with
16 to 17 whether to go - ~~whether~~ she (Lizzie Engle) ~~asked~~
and go, that she played upon it
Mrs Allen went down stairs & left
18 her & Schwaab in the room. Remained
there some time, & Schwaab tried to seduce
her. She did not consent - Afterward
Mrs Allen came in & said "have you
committed your purpose" Schwaab said
18 no she pretended to be too much of a lady
- They then started to go down, & when
on their way, she was asked to go
19 up stairs to see them "Cultivate" Lizzie
she did go up, & then returned down
stairs - When they got down stairs
Schwaab was told that Smith had
20 gone to dinner & taken a couple bot-
tles of Champagne with him
She then left & went home & on
her way was arrested for disorderly
conduct in the car

On her Cross Examination
22 she stated that she had never before
seen either Schwaab or Smith
- When arrested she gave her name Emma
Green, at the suggestion of Mrs Allen

26

That in going from the office up
~~the~~ stairs, & from there to the
 room above, the others went
 first, and they followed them
 There was no fastening to the door
 in the upper room
 - This was all the testimony on the part
 of the People

27628 Smith -

28 to 30 The Court gave the instructions
 as stated in the Bill of Exception, and
 refused the instructions asked by the
 31-32 Defendants

The jury found ^{all} the defendants
 guilty & the Court passed sentence
 upon

Chas W Lunt
 & Chas Brown
 Atty for Dept
 Schwab & Smith

Supreme Court -
 John B. Smith
 Charles H. Schwab &
 Mary C. Allen
 Jeffs in Error
 The People -
 Abstract -

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E. VAN BUREN,

FOR DEFENDANTS.

Smith et al. vs People
Plffs. Brief

Filed May 24. 1860.
S. Leland Clk.

Supreme Court

Charles H Schwab

Mary C Allen

res ~~Pratt~~ in ~~the~~
The People

And now comes the

Saml John B. Smith & son

Charles H Schramm & R
W Lull, & E Van Tassan

Attorney moves the Court
for a writ of error in this
case, & for a Surpetituer
in the above case

O. W. Lull

2 Edward Turner

Notes for Shaw.

Smith

Supreme
Court & Schaefer
is

The People
Justice

State of Illinois.
Supreme Court.
April Term 1840.
Smith, Schwab et al
v.

The People -

Now come
the said plaintiffs in Error
& move that the continuance
of the above cause may be set
aside, & that the same may
be set down for hearing.

By

Woodward, Lull
& Abbott

Their Attys.

22 P.D.

State

v

Smith et al.

Motion to set
aside verdict

Filed May 18, 1860

L. Leland

clerk.

Supreme Court
 Charles A. Schwab
 John P. Smith &
 Mary C. Allen Jeff in Error
 vs
 The People

II

The Indictment does not set out the unlawful means used.

In a conspiracy to accomplish a purpose not criminal, the means used to accomplish the act must be criminal -
 9 Cowen R. p. 548.
 586. 7. to 593.
 The offence is the conspiracy. In a conspiracy to accomplish a criminal act the means used need not be criminal, but not so when the conspiracy is to accomplish an act not criminal in itself - the means used must be set out in the Indictment
 3^d Greene E. S. 195.

II

An Indictment cannot be maintained for a conspiracy merely to induce a female to have connexion with a man unless the means used are criminal - The actual connexion
 3^d Greene E. S. 89.
 " " S. 91
 4. Met' R. p. 111.

although immoral is not criminal. In this case no criminal means were used.

III.

The court erred in over-ruling the objection to the testimony of the girl Lizzie W. Engles & permitting parol evidence of the contents of the letter - 12 - 13.

IV.

The court erred in permitting evidence to go to the jury of the statements of Mrs Allen one of the Defendants in relation to what Smith had said to her. ^{Smith} in the absence of any proof sufficient, during the case of Smith's connexion with ~~xx~~ ~~xxx~~ ^{matter or} the circumstances charged in the Indictment - Page 19. of Record.

V

There is no evidence to sustain the conviction because there were no false representations or pretences or any fraudulent means used & nothing done calculated to deceive the Prosecutors.

VII

Record
P. 29.

It is submitted that the 3^d Instruction is ~~most~~ ~~clearly~~ erroneous, because it instructed the jury to convict without any evidence of an unlawful combination or confederacy, without which a conspiracy can not exist.

Record
P. 29.

The 4th Instruction is most clearly wrong, It is in these words. "That the soliciting of a female to have illicit carnal connection with a male person by two or more persons constitutes an indictable conspiracy."

This authorizes the jury to convict without any combination or confederacy, or concert of action, or the use of any unlawful means, but authorizes the jury to convict upon evidence of the mere fact, that two or more persons had at separate and distinct times solicited a female to have carnal connection with a male person.

Record
P. 29.

The Court also erred in giving the 5th & 6th Instructions for the reasons stated as to the 3^d Instruction.

The Court also erred in refusing the 3^d, 4th, 5th, 6th, 7th & 8th Instructions asked by defendants.

In Supreme Court.
John P. Smith -
Charles H. Schwab -
Mary C. Allen -
Jeffs in Error.

^{or}
The People -
Points of Jeffs in Error

SUPREME COURT, STATE OF ILLINOIS,

APRIL TERM, A. D. 1860.

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CHARLES H. SCHWAB, AND
MARY C. ALLEN,

Plaintiffs in Error,

vs.

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Defendants in Error.

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BRIEF AND POINTS OF THE DEFENDANTS IN ERROR.

POINT FIRST.

This is an Indictment at *Common Law* for a conspiracy to cause a young girl of the age of 16 to have illicit carnal intercourse with one of the Defendants.

This Court has decided that an indictment for conspiracy at Common Law will lie in this State. And. J. Johnson et. al. vs. The People. 22 Ill. R., p. 314.

POINT SECOND.

An indictment for conspiracy will lie when two or more persons combine to accomplish by concerted action some criminal or *unlawful purpose*. And it is not essential that the end sought, or act intended to be done should be punishable by indictment. Nor is it material by *what means* such criminal or *unlawful purpose* is sought. 3 Green. Ev., Sec. 89. Com. vs. Hunt, 4 Met. III. Muffin vs. Com., 5 Wats & S. 461. Anderson vs. Com. 5 Rand, 627. The State vs. Murphy, 6 Alab. 765. State vs. Buchanan, 5 Har. and John 317. Regina vs. Mears and Chalk.

1 Leading crim. Cases, 462.—Precedent for this Indictment.

POINT THIRD.

The People's instructions were properly given. And the Defendants' properly refused for the following reasons: The third, because where the object of the conspiracy is unlawful, the means need not be "unlawful and criminal."

The Fourth, for reasons apparent.

The 5th, 6th, 7th and 8th being liable to the same objection as the 3d.

POINT FOURTH.

The importance of this case as affecting the welfare of society in an age in which the moral agencies are so powerless to restrain the passions and vices of men, can hardly be estimated. If the child of the widow can find no adequate protection in the law, and no sufficient punishment for those who would allure her from the paths of virtue to a life of infamy—a life, one hour of which is worse than death. Then will the law cease to deserve that beautiful tribute of Hooker, that her seat is the bosom of God, and her voice the harmony of the world.

CARLOS HAVEN,

ATT'Y FOR PEOPLE.

²²
Supreme Court
John P. Smith
Att. Peffs in Error

The People ^{defendants}
Briefs of

Filed May 24. 1860
L. Leonard
Clerk

SUPREME COURT, STATE OF ILLINOIS,

APRIL TERM, A. D. 1860.

JOHN B. SMITH,
CHARLES H. SCHWAB, AND
MARY C. ALLEN,

Plaintiffs in Error,

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^{22.}
Supreme Court:
John B. Smith
Et al vs Effin Error

ⁱⁿ
The People
vs Effin Error.

.. Brief Points of Dft.

Filed May 24, 1860.
A. Seland
Clerk

STATE OF ILLINOIS, }
SUPREME COURT, } ss.

To the Clerk of the Recorder of the City of Chicago, }
Court for the County of Cook } Greeting:

Because, In the record and proceedings, as also in the rendition of the judgments of a plea which was in the Recorder's Court of the City of Chicago, Cook County, before the Judge thereof, between The People of the State of Illinois —

plaintiffs and Charles H. Schwab, John B. Smith
and Mary C. Allen —

defendants, it is said manifest error hath intervened, to the injury of the aforesaid Charles H. Schwab and John B. Smith

as we are informed by their complainant — and we being willing that error should be corrected, if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the first Tuesday after the third Monday in April next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 27th day of April — in the Year of Our Lord One Thousand Eight Hundred and Sixty —

L. Leland

Clerk of the Supreme Court.

by J. B. Rice Deputy

John B. Smith
vs.

No.

vs.

The People

WRIT OF ERROR.

This Writ of Error is made a
Supersedeas, and as such is to be
obeyed by all concerned.

L. Leland

Clerk.

H. B. Rice Deputy

FILED

April

A. D. 1860

L. Leland

Clerk.

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Brief & Points of Law

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The act must be unlawful in a legal sense—positively unlawful. Mere *immorality* is not sufficient.

THIRD. When the end is not illegal—criminal; but the means are relied upon, then the means must be set out. So, if neither end nor means are relied upon as unlawful, *per se*, the means must be set out. 1 Ad. & El. 706. Rex. v. Fowler. 2 Rus: on Cr. 1812. S. C. 1 East P. C. 461. Starkie on Crim. Law, 170. 9 Cow. 588—590—597 (Spencer) in Lambert v. People.

And a distinction is made between a conspiracy to commit an indictable offense, in which case the means need not be set out; and a conspiracy to commit an act "unindictable," when the means must be set out. Wharton Am. Cr. Law, § 2300. Starkie on Crim. Law 170. 9 Cow. 587.

Or, it should at least be averred, that the means were not disclosed, as a reason for not setting them out. Wharton, § 2298.

When the act has been accomplished, or there has been an *attempt*, which discloses the means, as in the present case, there can be no reason for not setting them forth.

The means which profess to be set forth, are stated in broad, indefinite terms—in a manner which is quite insufficient. They point to nothing.

FOURTH. But regarding the averments as they are. The evidence does not support the indictment. It alleges *false* pretences and *false* representations. None such were shown. Nor were any *pretences* proven.

FIFTH. We contend that the second instruction on the part of the State, is erroneous. It is that "it was not necessary for the People to prove any concert of action between the defendants, before the witness Engles was introduced into the store by Mrs. Allen."

Abstractly, the sense of the instruction may be correct, but as applied to evidence, was it so? There should have been a distinction made in relation to Smith, at least. As there was no proof of his doing any thing to implicate himself, after they came to the store, it was necessary that something previous to that should be shown.

And again, if even the acts of Schwab, after they came to the store, were the first that he had to do with the transaction, they do not prove a *conspiracy* between him and Allen, and there was need of proof of something prior to that time, in order to inculcate him under this indictment.

SIXTH. In this connection we refer to the alleged error in the refusal of a new trial, because the verdict was against evidence as it regards Smith.

The suggestions under this head necessarily connect with those under the preceding.

There was no evidence upon which to convict Smith. He *did* nothing; and he *said* nothing, which should implicate him. All that he said was, what related to the wine, and the proposition to go up stairs. Then he left them and went to dinner. To hold him implicated, the jury must have made inferences—such as were not logically nor legally warranted by the testimony. The charge is, of an attempt to cause her to have connection with Schwab.

SEVENTH. There was error in the Fourth Instruction—given for the People. That "the soliciting of a female to have illicit carnal connection with a male person, by two or more, constitutes an indictable conspiracy."

This cannot be correct—especially when applied to the person seeking the connection. There should be enough to form a conspiracy, *beside* the person *with whom* the act is sought to be done.

And still more, as a legal proposition, this is too broad. It is unqualified as to the circumstances whether the Defendants solicited the Prosecutrix conjointly or separately—whether at the same time, or on different occasions. There is no discrimination, but any solicitation, by two or more, for that object, is declared an indictable conspiracy. The instruction must be presumed to have had its legitimate influence on the minds of the jury, and that unfavorable to the Defendants.

We come to the instructions asked by the Defendants.

EIGHTH. The Court gave the first and second.

Then, the first being good law, the verdict is not supported by the proof. "Unlawful," means, partaking of criminality, 3 Greenl. Ev. § 90 a. 91. There was no proof of any *criminal* acts.

NINTH. There was error in the third instruction asked by defendant.

TENTH. The refusal of the fourth was also error; and so of the fifth.

ELEVENTH. There was error in the refusal of the sixth of defendants' instructions, which was, That the false representations must have been of such a character as were calculated to deceive the Prosecutrix, and against which she could not, by reasonable and ordinary prudence, guard, &c. 9 Cow. 607, citing Rex v. Turner. 13 East 228. 9 Cow. 614, citing Rex v. Wheatly. 3 Burr, 1125. 2 Russ. 1380.

TWELFTH. So, we contend there was error in the refusal of the seventh and eighth of defendants' instructions.

Which is respectfully submitted.

WOODWARD, LULL & ABBOTT, AND
E. VAN BUREN,

FOR DEFENDANTS.

22
Smith Isl. & Peper
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Fish May 24. 1860
L. Island Ch.

Supreme
IN THE ~~SUPERIOR~~ COURT,

APRIL TERM, A. D. 1860.

SMITH, SCHWAB & ALLEN,

IN ERROR,

VS.

THE PEOPLE.

FOR THE DEFENDANTS.

The Indictment does not set forth an indictable offense.

The English Law upon conspiracy is too loose, indefinite and uncertain, to be applied in our country. See 3 Archb. Cr. pl. 616—2, note. Com'th v. Hunt. 4 Met. III. 3 Greenl. on Ev. § 90 a. 91. 3 Chit's Cr. L. 1140.

SECOND. Either the end, the object aimed at, or the means used, must be unlawful. 3 Greenl. Ev. § 90 a. 91. 3 Archb. Cr. pl. 617. Wharton Am. Cr. L. § 2291 and note 9 Cow. 587—597. Lambert v. People, (Spencer.)

Here the word "unlawful" means in some degree *criminal*. 3 Greenl. Ev. § 90 a. 91. Starkie on Crim. Law 170. 9 Cow. 587.

The act must be unlawful in a legal sense—positively unlawful. Mere *immorality* is not sufficient.

THIRD. When the end is not illegal—criminal; but the means are relied upon, then the means must be set out. So, if neither end nor means are relied upon as unlawful, *per se*, the means must be set out. 1 Ad. & El. 706. Rex. v. Fowler. 2 Rus: on Cr. 1812. S. C. 1 East P. C. 461. Starkie on Crim. Law, 170. 9 Cow. 588—590—597 (Spencer) in Lambert v. People.

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FIFTH. We contend that the second instruction on the part of the State, is erroneous. It is that "it was not necessary for the People to prove any concert of action between the defendants, before the witness Engles was introduced into the store by Mrs. Allen."

Abstractly, the sense of the instruction may be correct, but as applied to evidence, was it so? There should have been a distinction made in relation to Smith, at least. As there was no proof of his doing any thing to implicate himself, after they came to the store, it was necessary that something previous to that should be shown.

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SEVENTH. There was error in the Fourth Instruction—given for the People. That "the soliciting of a female to have illicit carnal connection with a male person, by two or more, constitutes an indictable conspiracy."

This cannot be correct—especially when applied to the person seeking the connection. There should be enough to form a conspiracy, *beside* the person *with whom* the act is sought to be done.

And still more, as a legal proposition, this is too broad. It is unqualified as to the circumstances whether the Defendants solicited the Prosecutrix conjointly or separately—whether at the same time, or on different occasions. There is no discrimination, but any solicitation, by two or more, for that object, is declared an indictable conspiracy. The instruction must be presumed to have had its legitimate influence on the minds of the jury, and that unfavorable to the Defendants.

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NINTH. There was error in the third instruction asked by defendant.

TENTH. The refusal of the fourth was also error; and so of the fifth.

ELEVENTH. There was error in the refusal of the sixth of defendants' instructions, which was, That the false representations must have been of such a character as were calculated to deceive the Prosecutrix, and against which she could not, by reasonable and ordinary prudence, guard, &c. 9 Cow. 607, citing Rex v. Turner. 13 East 228. 9 Cow. 614, citing Rex v. Wheatly. 3 Burr, 1125. 2 Russ. 1380.

TWELFTH. So, we contend there was error in the refusal of the seventh and eighth of defendants' instructions.

Which is respectfully submitted.

WOODWARD, LULL & ABBOTT, AND
E. VAN BUREN,

FOR DEFENDANTS.

Smith et al. vs People
Plffs. Resp

Filed May 24. 1860
L. Keland
Clk.

Supreme Court, State of Illinois
April Term A D 1860

John B. Smith
Charles H. Schenck &
Mary C. Allen

vs
The People
Plffs in Error
Defts in Error

Error from the
Rec Court of
Chgo -

And now Come The said People
of the State of Illinois and say that
there is no Error in the record
& proceedings aforesaid & pray that
the said Judgment of the Court
below be affirmed & that the said
People have judgment for costs &c

Carlos Hearn
Atty for the People

It is hereby stipulated that the
foregoing Cause may be submitted
on the briefs of the said Plffs & Defts
with the right that the attorney for the
said Defts in Error may submit a
written argument and also argue the
Cause orally with the consent of the
said Supreme Court -

Carlos Hearn
Atty for People

Plffs in Error may
sign any errors not
heretofore signed with same effect as if originally signed

State
v
Smith & Schwab
found in error
()

1
State of Illinois
Supreme Court.
April Term A.D. 1860.
Smith, Schwab et al.
In Error
v.
The People.

Argument of defendant

We do not advocate the
morality of the acts shown in the
evidence. Our duty is with the
law. The State's attorney cannot
exceed us in the severity with
which he views the act of
seduction & its kindred moral
offenses. In our opinion, this
offense ought to be punished
criminally. But it has never
been so punished, until some
of our newer States placed it
in their penal codes. We
need not inquire what has
been the policy or the wisdom
of the law in this. Many immo-
ral acts are not punished. We

may think the law ought to
punish fornication crim-
inally, yet few States do so; &
some have not so punished
even adultery.

However strong, therefore,
may be the moral sentiment
of the court, we trust they will
see the importance of not
punishing one criminally, on
that account; & of not extending
the criminal code by judicial
legislation.

The depts. moved in arrest of
judgment, & for cause assign
that the indictment sets forth
no indictable offense — no
crime known to the law of
this State —

The law on the subject of
conspiracy, as administered
in England, has run into
indiscretions & uncertainty.
It has been pressed to extremes,

as well as that on Treason. It has become constructive, as it were - or, at least, refined to excess.

And so it is in some of the old States which follow the English cases, & the English common law, more closely.

Indication of the state of the law, in this respect, two or three quotations are here made.

Mr. Bulfinch, in his edition of Dickinson's ~~Principles~~, says, "The offense of conspiracy is more difficult to be ascertained precisely, than any other for which an indictment lies; & is, indeed, rather to be considered as governed by positive decisions, than by any consistent intelligible principles of law" 3. Archb. Cr. Pl. p. 515-2. note, & 517. note, & 517-1

The Ch. J. in Comm'th v. Hunt. 4. Mees. 111. says - "But the great

difficulty is, in framing any definition or description, to be drawn from the decided cases, which shall specifically identify this offense! And he says he will not attempt to reconcile the cases —

3. Grant. on Cr. 540. a. says — "without attempting to reconcile all the cases, a task nearly hopeless, in the present undefined state of the law of conspiracy, a general rule may be deduced from the current of well considered cases" &c. And he says there is a disposition not to extend the law.

And Ch. J. Savage, in *Lumbert v. People*, 9. Cow. 580 — "The point at which the combination of several persons in the same object becomes illegal, is left doubtful" — as is conceded by writers on criminal law."

Even in the older books & Statutes, not all unlawful acts were made the subject of conspiracy — nor even all acts partaking of the nature of this one —

In England first were Statutes against enticing away women of substance, with intent to compel their marriage. Afterward against enticing females from their father's house, & to live in fornication — & the like. Such were 3. Hen. 7. & 39. Eliz.: See 1. East's Cr. L. 453-456. So Stat. 4 & 5 Ph. & M. against abducting children under sixteen years, from their parents' houses, with design to marry.

It was under some of these Statutes that some of the cases, often cited to support conspiracy, arose, & they are not fairly cited as common law cases.

Under them, & the like statutes, it was, of course, indictable to conspire to accomplish their purpose. Since then the law of conspiracy has been run to extremes. It has become refined even to include nitro.

We urge upon the consideration of the court, that several of the cases were based upon the Statutes above referred to, or others. Such was Lord Grey's Case - sometimes called Lady Henrietta Berkeley's case - 9. Harz. State W. & 1. D. P.C.

~~It is Reg. v. Delaval et al. 3. Burr. 1434.
1. Leach. Cr. Cases. 457.~~

It is Reg. v. Mears et al. 1. Leach. Cr. Cases. 462. on which the prosecutor bases his indictment in this case and so are some others.

These statutes have insensibly pervaded the common law, & they, with others, such as 12 & 13 Vict. ch. 76. are often quoted & referred to as common law authority. This we protest against,

& pray the court to make the distinction. In the books themselves, there is much recognition of this dependence of the cases on statute.

But even in New York, where the English law is followed in many things, the acts & objects to which this law of conspiracy is made applicable, are defined & enumerated, & it is declared that ~~the Statute~~ it shall apply only to those enumerated. See substance of the Rev. Stat. in Mount. Cr. L. § 2288. And so it is in some of the old States — But most of the new States hold that there are no crimes, punishable by law, save those enumerated in their penal codes,

Perhaps it is true that § 169, Chap. 30, Rev. Stat. (Ill.) is understood to preserve the cognizance of common law offenses, not named. Johnson v. People, 22 Ill. 314. But this case does not

go to that extent. No one doubts that, when the statute makes an act an offense, a conspiracy to do that act is indictable, & the case itself ~~is~~ says that obtaining goods by false pretences is a statutory misdemeanor. Therefore a conspiracy to effect that object was here held indictable.

But this court has not held that the criminal law of this state extends to, & embraces, the entire catalogue of offenses recognized by the English courts as common law offenses, & we trust they will not so decide.

Even if the statute of Ills. is regarded as leaving the door open to entertain some common law offenses, still, is there no limit? Can we not, fairly, ~~therefore~~ confine ourselves to those which are clear, well-defined, & well-founded? Is it necessary to accept the ultimate refinement

of reasoning, or of construction, of the English bench — or even of those older states whose law is nearly identical with the English.

Many of the states have adopted the rule & policy, that there shall be no crimes, but those named in their statutes. And this is surely good sense & justice.

If we cannot have the acts for which we may be fined or imprisoned, specified & defined in the statute book, let us at least, hold to those only which are well defined at common law, & let us not be subject to those which are obnoxious to the charge of being "indefinite", or "difficult to be ascertained."

I appeal to this court against a system of crimes which is to be "considered as governed by positive decisions, rather than

by any consistent & intelligible principles of law." Talford, supra.

In behalf of every individual in the community, I appeal against the charge of a crime that cannot be defined or identified, & on which the cases are in hopeless confusion, & which, nevertheless, stands solely on adjudicated cases, & not on rule or principle.

It is inconsistent with the spirit & tone of our institutions & of public sentiment, especially in this portion of our country, that men should be held accountable for offenses not clearly specified & perhaps too, for those not named in the code. We are aware to men being punishable for crimes which they never heard of, & never dreamed of committing. If a man's moral sense is to be his guide, why are not all immoral acts punishable?

But immorality is not, & cannot be, the criterion. And this leads to the question, how fair & legal must the ~~act~~ act be. This question is not settled definitively.

Perhaps the act should be criminal by law - indictable - or, at least, forbidden by statute.

But, for our present purpose, we need not attempt to settle the question. It is ~~well~~ ^{clear} that

Second - Either the object aimed at, or the means used, must be unlawful.

3. Grand. Ev. § 40. u. 91.

3. Crab. Cr. Pl. p. 616-3. 617.

Whart. Cr. Law. § 2291. note.

9. Low. 579. 587-8. Lambert v. People.
And is admitted even by Stebbins, Senator, in 9. Low. 610. same case.

And here the word "unlawful", or "illegal", means criminal, in some degree. Mr. Greenleaf, 3. Ev. & go. n. y. is explicit on this point, & states it in his comment of the general rule which he says "may be deduced from the current of well considered cases". He is emphatic upon the word "criminal", & makes the distinction between that & "unlawful." Undoubtedly there is a disposition in the courts to stop here.

And we ^{submit} ~~appeal~~ to the court whether it is not important to stop here; & make this the definition & the line of distinction. Any other rule runs into indefiniteness & uncertainty. Both the age & the country in which we live, require that the crimes for which men are to be punished, shall be definite & known. If any thing short of criminality in the object, or the means, of a conspiracy, is required,

Rule, It is often remarked, that the con-
 (+) viction or conspiracy is the gist;
 But this does not mean that the
 mere conspiracy is indictable,
 without reference to the means
 or the end. Nor is it true that it is
 not necessary that anything should
 be done - In every case cited, there
 was something done - It is not
 necessary that the object should
 be accomplished - But without
 something done, there is nothing
 but intent - & the law does not
 punish for intention.

We avail ourselves of this Rule, to
 remark that in the case of Regina v
Mearns (1. Leach. Cr. Ca. 452) the indictment
 sets out the false pretenses & concludes
 "Contra Formam Statuti." It is
 must be set out.

3 Leach: 618-1.

1. Leach. & El. 706.

9. Cow. 579. 592-35. Lambert v. People.

The means are not set out in this
 indictment, save in general terms,

founded on 12 & 13th Vict.
and so we find that many of the
English cases are on Statute, or
the law given out of them.

8
we are left in the wide field of
immorality.

Indictment does not lie
against a conspiracy merely, without
reference to the end or the means.
As in the case of trespass in hunting
a hare.

and the rule of an unsworn horse.
3. Greenl. Dr. 900. 91. (See Riddle +)
There

Thence When the end is not illegal
that is, unlawful; but the means
are relied upon, those means
must be set out.

3. Archb. 618-1.

1. Ad. & El. 706.

9. Cow. 579. 592-3. 5. Lambert v. People.

The means are not set out in this
indictment, save in general terms.

conveying to the party receiving information
such as would enable him to
defend.

A distinction is drawn between
a conspiracy to commit an indict-
able offense - in which case the
means ^{need} need not be set out; & a
conspiracy to commit an act unin-
dictable - in which case the means
must be set forth.

Wharton § 2300

The case at bar comes under
the latter description. When the
indictment charges that false &
fraudulent means were used,
not to set them out is a violation
of every rule of law on the
subject.

If the means are not shown,
it should be averred that they were
not disclosed, as a reason or
excuse for not setting them out.
Wharton § 2298

Whether act has been accomplished, or there has been an attempt which discloses the means, as in this case, there can be no reason for not setting them forth.

Wharton, § 2300.

Admitting that a case might be stated in an indictment without showing the means, yet, if the prosecutor charges the use of any means, he must set them out particularly, & the ^{general} ~~same~~ terms "false" or "fraudulent" pretences & representations, will not do. Here they are named in the most general terms.

Fourth. But, regarding the averments as they are - they are not supported by the evidence. The indictment alleges false pretences, & false representations, ~~etc~~

Look at the history of the transaction, & it is perfectly

manifest that the meeting of Allen with the prosecuting witness, was accidental, & that Smith & Schumb had no concert with ~~her~~^{Allen} before she & Eagles came to the store. The jury has no right to jump the conclusion that they had a previous understanding with her, of which there is no tittle of proof.

Their first connection with the matter, then, was when Allen & Eagles came to the store. And what false pretences or representations are shown to have been made there? I admit that there was an attempt to seduce her, but not by a false pretence of any nature. And, as before remarked, however much we may condemn this act, regarding it in a moral point of view, this is a different thing from that of punishing it criminally. The law does not punish mere immorality. When the legislature sees fit to make seduction a crime, then a

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conspiracy to effect it will be
indictable.

We come to the instructions —

We contend that the second instruction on the part of the state, is erroneous. So far as it means only that it was not necessary to show that a combination began at any particular time, — as, before they came to the store — it may be correct. But, as applied to the evidence in the particular case, is it correct?

There was no action on the part of either Smith or Schwab, until Ellen & the girl came to the store. After they came there, there was nothing on the part of Smith, tending to induce or cause the girl to consent to Schwab, as is charged. The most that can be said is, that each wished to be the actor — as she says Smith offered to go up stairs.

We trust & believe the court
will not look at the case in a
broad, loose, indiscriminating
manner, though the socialist's
eye alone, but will remem-
ber the specific charge. There
must have been concert either
before or after they went there. There
is no pretense of any before, &
what was there after? Surely there
was none by the three, together.

Here we take the ground
that the verdict was against
the evidence, as it regards
Smith. He is charged with a
conspiracy to cause the girl to
consent to Schwab! There was
no evidence upon which to
convict him. He did nothing.
And all he said, was what
related to spitting the wine.
Perhaps he wished to go up stairs
himself, but he certainly did
not help Schwab. So far as
he was concerned, the transaction
was momentary - transitory -
while the others were up stairs

he went to dinner.

The suggestion about going up stairs may have been in jest, or merely in levity, as was, undoubtedly, the remark about the wine. We have no right to infer that he intended any evil, since he did nothing indicating such intent. It would be a mere assumption.

Now we respectfully, but gravely, protest to the court, against a person being convicted upon such evidence — such facts as these! If he may be, Heaven defend us all! Whom is one safe if he may be caught in this manner? How can he be secure? Is it said, he should leave them? He did leave them. He is in the place of his business when they come. He makes a passing & jocose remark, & goes away, & yet he is guilty of a conspiracy! Who is safe?

The only explanation of such a verdict, is that of a jury, made oftentimes — "Oh, we

thought we would put them all together, & let the court fix it."

Continuing the same connection of thought in relation to the conceit of action, we come to the

Fourth Instruction given for the State, That "the soliciting of a female to have illicit carnal connection with a male person, by two or more persons, constitutes an indictable conspiracy."

This cannot be correct. Here is no discrimination whether it is done jointly or severally - at the same or different times - on one or several occasions. It is not made to depend on concurrent action.

It cannot be true (under this charge) when the person seeking the connection is one of the two charged. There being nothing against Smith, there are but two, & the person with whom &c. is one of them. Under a charge of causing her

(6)

to have connection with S. there
must be two or more, besides
S.

If I were a female, &
another eye her conduct, can
it be conspiracy? It is a dan-
gerous doctrine, & people are
already alarmed at it.

There is nothing to show
that Smith & Schwebel knew
this girl before that time, but
the contrary is apparent in her
testimony. They might very
well, have supposed
her a poor girl, when she
came to the store? It would
be natural that any one should
think so.

The foregoing remarks
apply to the first instruction given,
together with the second.

The instructions asked by the
defendants. The first two
were given.

The third, refused, stands on
the authority of Mr. Greenleaf,

The fourth should have been
given. This is the point &
meaning of the indictment.
It means, & means to charge,
that there was a combination
before they came to the store.

The fifth. The remarks before
made apply to this, as well as
the others.

Sixth. Under a charge like
this, not only must the prose-
cutor prove false pretenses &
representations — but, we
seriously urge, they must be
such as were calculated to
deceive the object.

9. Cow. 507. citing Rex v. Russ, 13. East
228. — 9. Cow. 514, citing Rex v.
Wheatley. 3. Burr. 1125. 2. Russ. 1380.

The case at bar, in this respect,

comes within the same principle & reasoning, with those above cited. There is no virtue in calling the pretenses false, unless they were calculated to deceive & this is the essence of the word false - not simply that they were not in fact, but were so to the mind. Common reason & common sense require this construction.

Seventh & Eighth. We have nothing to add, upon these, unless to say that we do not comprehend how the eighth could have been refused.

In conclusion, permit us to repeat the hope that the cause will not be adjudicated upon sweeping & indiscriminating views, either of law or of morality, but that the court will apply the proofs to the charges; & that no broad hiatus will be bridged by any unsupported inference.

It is also to be borne in mind,

That English precedents are
not of course precedents, even
in old Massachusetts - & still
less are they so, here.

If, however, the court
should be of opinion against
us, upon the whole case, we
pray that the time that the
defendants have been in prison,
(since the 17th of April last) ⁱⁿ
may be ordered to be counted ~~in~~
the completion of their sentence.

Woodward, Lull & Abbott

& E. Benson Attys for Defts.

In the Pros. Attys remarks, heretofore,
we did not impeach the girl & we
answer. The time was too short to
find out her history & we cannot, but
if there were another trial, it would
be proved that she is known under
four or five different names - is a
fragment of bad woman, & is a
loose character.

M. L. & A. for Defts.

22
Smith's ed. 17 People
Pp's. argt. -

Edw. May 24. 1860

J. S. Deland Clk.

State of Illinois
Supreme Court
April Term A D 1860
Smith & Schwab & Allen
The People

Argument of the People de fto
in Error—

It is believed that the principles of
Law relied upon to sustain the Indictment
in this case and the Conviction thereon;
are neither novel or doubtful; but
on the contrary are too well settled and
too simple to require any elaboration.

In Connection with the ~~abstract~~ brief
filed herein, the following proposition
is confidently but respectfully sub-
mitted as containing the whole of the
Law applicable to this case viz

An Indictment for conspiracy
will lie when two or more persons
combine to accomplish by con-
certed action some criminal or unlaw-
ful purpose, or some purpose not
in itself criminal or unlawful, by crim-
=inal or unlawful means—

And when the object of the con-
=spiracy is either criminal or unlawful
the means are wholly immaterial
and need not be set out;
But when the object of the

Conspiracy is neither Criminal nor un-
lawful in itself, then the Means must
be either unlawful or Criminal and
must be set out in the Indictment.

It is obvious that this Indictment
falls under the Class of Conspiracies
where the end or object sought
is unlawful (though in this case not in-
dictable). The end or object sought
was the defilement of the prosecutrix
a young girl of sixteen - an act, to
her unlawful, and some gross Criminal,
being the highest injury that could
be inflicted upon her and a gross wrong
to Society and good Morals.

The case of Regina vs Mears & Chalm
/ Leading Crim Cases 462, is referred
to as being very analogous to the
case at Bar and as furnishing the
precedent for the Indictment in
this case.

The Conviction was sustained
on the 3^d Count as being good at
Common Law.

If the foregoing positions
on the law. The only remaining
questions on the sufficiency of
the evidence and instructions

As to the evidence no any means
said. The simple uncontradicted
narrative of the Witness Lizzie M
Eugels, makes its own appeal.

A young girl of sixteen
as the evidence shows, was set upon
by two men & one woman all 5 ft
tall & 140 lbs. It was plain

As to the Evidence. Nothing need be said. The simple uncontradicted narrative of the Witness Lizzie Hughes, makes its own appeal.

A young girl of sixteen as the evidence shows, was set upon by two men & one woman all Skins in the acts of defilement, was plied with wine, with presents, was restrained of her personal liberty. She was locked up & even violence was used upon her person to induce, coerce & force her to yield her virtue. And that she did not, is no merit of the defendants. The truthfulness of her story is not questioned for a moment. No attempt was made to contradict or discredit her. It is fair to presume that with the means in the hands of the Suits such an attempt would have been made if it could have been successfully done.

The Jury were the best judges of her credibility and they gave her implicit credit.

Instructions

If the proposition that when the object of the Conspiracy is unlawful the means are immaterial, is correct, then there was no error

in refusing the 3^d & 4th & 8th Instructions asked by the Plffs in error - because they all imply that criminal or unlawful means must have been proved -

The 6th Instruction involves the same principle and was rightly refused and again even if the girl was a consenting party the defts would be liable -

The (Bth) fifth Instruction as given by the People was correct - The words "or some purpose" in the first part of the latter Clause is omitted in the printed instruction in abstract - See original of this Instruction -

Wm. C. Cavan
Atty for People

22
Supreme Court
Smith & Schenck et al
17
The People

Argument
of
the People

Filed May 24. 1860
J. Deland

SUPREME COURT, STATE OF ILLINOIS,

APRIL TERM, A. D. 1860.

JOHN B. SMITH,
CHARLES H. SCHWAB, AND
MARY C. ALLEN,

Plaintiffs in Error,

vs.

THE PEOPLE,

Defendants in Error.

ERROR FROM THE RECORDER'S COURT OF THE CITY OF CHICAGO.

BRIEF AND POINTS OF THE DEFENDANTS IN ERROR.

POINT FIRST.

This is an Indictment at *Common Law* for a conspiracy to cause a young girl of the age of 16 to have illicit carnal intercourse with one of the Defendants.

This Court has decided that an indictment for conspiracy at *Common Law* will lie in this State. *And. J. Johnson et. al. vs. The People.* 22 Ill. R., p. 314.

POINT SECOND.

An indictment for conspiracy will lie when two or more persons combine to accomplish by concerted action some criminal or *unlawful purpose*. And it is not essential that the end sought, or act intended to be done should be punishable by indictment. Nor is it material by *what means* such criminal or *unlawful purpose* is sought. 3 Green. Ev., Sec. 89. *Com. vs. Hunt*, 4 Met. III. *Muffin vs. Com.*, 5 Wats & S. 461. *Anderson vs. Com.* 5 Rand, 627. *The State vs. Murphy*, 6 Alab. 765. *State vs. Buchanan*, 5 Har. and John 317. *Regina vs. Mears and Chalk*.

1. Leading crim. Cases, 462.—Precedent for this Indictment.

POINT THIRD.

The People's instructions were properly given. And the Defendants' properly refused for the following reasons: The third, because where the object of the conspiracy is unlawful, the means need not be "unlawful and criminal."

The Fourth, for reasons apparent.

The 5th, 6th, 7th and 8th being liable to the same objection as the 3d.

POINT FOURTH.

The importance of this case as affecting the welfare of society in an age in which the moral agencies are so powerless to restrain the passions and vices of men, can hardly be estimated. If the child of the widow can find no adequate protection in the law, and no sufficient punishment for those who would allure her from the paths of virtue to a life of infamy—a life, one hour of which is worse than death. Then will the law cease to deserve that beautiful tribute of Hooker, that her seat is the bosom of God, and her voice the harmony of the world.

CARLOS HAVEN,

ATT'Y FOR PEOPLE.

²²
Supreme Court
John W. Smith
Etal - Peffin Error

^r
The People -
defto in Error.

Briefs Points off

Filed May 24, 1860
S. Leland
Clerk

SUPREME COURT,

STATE OF ILLINOIS,

April Term, A. D. 1860.

JOHN B. SMITH,
CHAS. H. SCHWAB, AND
MARY C. ALLEN,

Plaintiffs in Error,

vs.

THE PEOPLE OF THE STATE
OF ILLINOIS,

Defendants in Error.

ABSTRACT.

1 The indictment was filed April 6th, A. D. 1860, at the April Term of the Recorder's Court of the City of Chicago, and contains two counts for conspiracy.

2 The first count charges that CHARLES H. SCHWAB, JOHN B. SMITH and MARY C. ALLEN, on the first day of March, A. D. 1860, at Chicago, did, between themselves, unlawfully conspire, combine, confederate and agree together, wickedly, knowingly and designedly, to procure by false pretences, false representations and other fraudulent means, one LIZZIE M. ENGLER, to have illicit carnal connection with a man, to wit: with the said CHARLES H. SCHWAB, one of the defendants aforesaid.

3 The second count charges that the defendants did then and there (on the same day,) unlawfully between themselves, combine, confederate and agree together wickedly, knowingly and designedly to cause and procure by false pretences, false representations, and other fraudulent means, one LIZZIE M. ENGLER, then and there a minor female child, of the age of sixteen, to have illicit carnal connection with a man, to wit: with the aforesaid CHARLES H. SCHWAB.

To this indictment, the Plaintiffs in Error pleaded not guilty, in proper person

On the

4 a Jury was impaneled to try the said cause, and the following testimony was given; and there was no other evidence in the cause, namely:

LIZZIE M. ENGLER testified:

5 I reside at No, 325 Chicago Avenue. I am fifteen years old the 18th July last; I have been in the city about three years; but have not lived here all the time; have been at Rockford and Kenosha at school; I see Mr. SCHWAB and Mr. SMITH and Mrs. ALLEN (referring to persons in Court,) that I know; I was going on an errand for my mother about ten weeks ago; was going on by Van Buren street, and met Mrs. Allen's daughter; she said her mother was sick, and she wanted me to go in and see her; I said I had not time, but would call some other time; then her mother came to the door and asked me to come in and write a letter for her to Lawyer Jones; I said I had not time then; she then asked me to come the next Monday; I said I would if I got time; then I was going to the Post Office; I went in then, and she asked me to write the letter; said she would sit by the side of me and tell me what to write; this was the next Monday; I wrote it to Lawyer Jones.

6 The prosecution here asked the witness, What did she tell you to write to Lawyer Jones? The question was objected to; 1st, because the letter should be produced; 2d, because it was irrelevant and inadmissible as against the other defendants. The objection was overruled, and the witness answered:

7 She wanted me to write to Lawyer Jones to call up there to pay her doctor's bill to Dr. Hitchcock; that Dr. Hitchcock was going to take all her furniture; she told me to tell him she had got rid of his baby, and if he was a gentleman he would pay the doctor's bill; that she hoped his wife would be as true a wife to him as she was a fancy woman; she said Jones was just married; he had married a wealthy lady on the Avenue; I wrote it and gave it to her; I directed it to J. W. Jones; she said she would show it to Dr. Hitchcock; then after that, she said she was going on South Water Street to collect a bill at a wholesale liquor store, and did not like to go alone; I said I did not like to go; she said she did not like to go alone; then she took down her black silk dress and asked me if I would put that on and go with her; I asked her why I should put that on? she said if I put that on, I would go in with her, and if I put my own on I would not go in with her; I put it on over my dress; she said I would not see any one but an old gentleman; I thought it would be no harm; she went to J. B. Smith & Co., South Water street; she took a decanter along from the house; I went to the store door, and she said, come in; I went in the office; Schwab was reading a book, and Smith was reading a newspaper by the desk; Schwab gave me a chair, and I sat down; Schwab came to me and said, will you allow me to raise your veil; I said I did not like to; then he came to me the second time and said, I will take it off; I said it was not being very polite for a stranger to act in that way; I got up to go out of the office, and he got up and turned a catch over the door, and told me to go and take my seat; I went and took my seat; Mrs. Allen looked at Schwab and winked at him; she asked him if he would get a couple of glasses of wine; he got two tumblers; was gone about five minutes; came back and gave one tumbler to me and one to Mrs. Allen; after handing the wine to me, I said I could not drink it all; my glass was lighter colored than hers; Mrs. Allen said I might look at hers; I told Schwab I could not drink it; I spilt some, and Smith said that ladies that called there did not treat them as I did; did not waste their wine; I wasted part of it, and drank the rest.

10 Mrs. Allen said there was a piano up stairs. Before that Schwab went to the desk and took out a \$10 gold piece, wrote a note, and said if she would take that and go and get his ring of a lady he was offended with, he would give her the gold piece. She then said there was a piano up stairs she was going to buy for her daughter. Schwab said he would go up, and show it to me. Smith said he would go. Schwab did not want Smith to go. Schwab asked me if I did not want to go and see it. I said I had seen a great many and did not care about going. She asked me if I could not play, and said she wanted me to see it before she bought it. Mr. Schwab and Mrs. Allen went up stairs with me, and there was an old one there and a bureau, and a bedstead with a tick on it—a lounge, lamp and chairs in it—some shades up by the window. I looked at the piano. Mrs. Allen said she must go down stairs and stay with Smith, and wanted me to stay till she came back. I tried to open the door, but could not. I then went to the windows and he pulled down the curtains or shades. I asked him why he did that. He said he did not want the men from the other side the street looking in there. I tried to open the door and he asked me to come and sit on the lounge with him. He took hold of me and I went and sat on the lounge with him. He said, This is Mrs. Allen's dress, he was well acquainted with ~~her~~ He asked me if I would stay with him a little while. He said, if I would, he would buy me a nice silk dress, as nice as Chicago could afford. I said I did not want his silk dress; If I wanted one my mother would get one. He asked me if I heard him tell Mrs. Allen to get a ring. I said, yes. He said it was a diamond ring, and he would give that to me. I asked him if he could tell me the time. He took out his watch and said it was half-past twelve. I told him it was later than that when we called at the office. He said he had just come from New York, and had New York time. He asked me if I did not want the little watch and chain. I said, no. I said, I must go home; I had to be at school at half-past one. He said I had plenty of time, and would not let me out of the room. He showed me a ring on his finger, and asked me if I wanted that. I told him I did not want any of his presents.

13 I went and pulled up one of the shades, and he pulled it down. Then I started for the door; he came to the door and I could not get out. Then I said, if my brother was in your place and your sister should call here, and he should treat her as you treat me, what would you say? He said he had sisters, and they were highly respectable, and his sisters did such things, and all girls would do so, and it would not be known. I went to the door and got it open, and he pushed me back and took me to a chair and pulled me on his lap, and said, you are a nice looking little girl, can't you afford to give me a kiss? I said I could not. Then he tried to put his hands under my clothes. I said he had better look out how he was acting around me.

14 Mrs. Allen came up and asked if he had committed his purpose. He said, No, she pretends to be too much of a lady. She pulled me off his lap and pushed me against the bedstead and told me to stay there till she got back; she was going out of the room to fix her skirts; told me to stay till she came back; she was gone but a minute or two, or two or three minutes. Schwab said the wine was too strong for me—shall I not give you another glass? When she pushed the door open Schwab said, If you will meet me at the house of Mrs. Allen to-morrow, I will let you go; if not I must stay there with him. I said I would, but did not go.

15 After we started to leave, Mrs. Allen wanted me to go further up stairs to see where they cultivate liquor. We started to go up, and a man came up, and Schwab pulled me back; he said he did not want the man to see me. I said, I am not afraid of the man. He pushed me out of sight of the man. We went up stairs. There was a stove and some pipes connected with it. Schwab said, there was where they cultivated liquor. Then I went down. Mrs. Allen said, as we were going down, Smith is damned mad I did not let him go up with you.

16 After we got down Schwab took up a couple bottles of champagne and asked his porter in German, if Smith had taken a couple of bottles of champagne to his dinner. He said, Yes.

17 Mrs. Allen asked me, by the office down stairs, where I was going. I said, On the North side cars. She said she must go and ride in the cars—had never rode in them, and would like to see them. Schwab asked me if I had change. I said, Yes. He then handed Mrs. Allen twenty cents to ride both ways. She took a decanter of wine. I had on her dress. We went to a second-hand dress store on Clark street, between Water and Kinzie, and I took off the dress and gave it to her. I then got into the cars, and she did so too. She was noisy and the conductor had her arrested. She said something to the conductor and I was arrested too. My mother came and got me out, and she was shut up till Monday. I told my mother as soon as I got home. My mother sent Lieut. Davis and gave bail for me. Mrs. Allen told me, to go to the bank of Forrest and get bail for her.

When I met the parties, it was in the city of Chicago, between LaSalle and Wells streets.

On her cross-examination the said witness testified:

18 That she was arrested in Company with Mrs. Allen at request of Charles Currier, conductor of the cars on the North Side; that she had started to go down on Chicago Avenue, having left the cars and Mrs. Allen and had started to go up Clark street, and had got opposite the barn of the Company, when a policeman came up and arrested her, because she had not behaved properly on the cars; that she had got out to go home; that she didn't come back to the car, but the policeman met her; that her mother lived in Elm street, above Division; had not seen her mother from the time she was at Smith and Schwab's until she was locked up in the Armory; was taken to the Armory between 3 and 4; cannot tell time she was bailed out; was not there long when Lieutenant of Police came for her; knew Currier before then by sight, not personally; had rode with him; learned his name from the papers; was bailed out by Dr. White; was not taken before magistrate; don't know when he gave bail; gave her name as Emma Green; was told by Mrs. Allen to do so; was not her right name.

20 That she had never seen Smith and Schwab before she was at their store; had on a brown veil when she went there; it was not her own; had on a black silk dress; it was too large for her.

- 21 Had been to see about renting a house on the morning mentioned at request of mother; left home at about 11. Requested her also to go to Mr. Grey's; he lives on Edina Place; also to Post Office, took a note from her mother to Mr. Grey's; went first to P. O. and then to Mr. Grey's, and then met Mrs. Allen; could not tell how long she stopped at Grey's.
- 22 That she didn't know the time when she put on the black silk dress; thought it was past 12. Went from Mrs. Allen's directly to Smith and Schwab's; didn't stop on the way; didn't see any time piece on the way nor there, it was after twelve; could hear the bells ring; they rang when she left Mrs. Allen's house; cannot tell where she was at the time she heard the bell; it struck 12; it was the Court House bell; was attending school at that time; school on North Clark street; walked through Clark street with colored woman's dress on; It kept tripping her up; didn't wear a veil all of the time; couldn't tell when she first put veil down; put it down whenever she took a notion to; it was down when she first went into Smith and Schwab's; was in Smith and Schwab's $\frac{3}{4}$ of an hour, possibly
- 23 longer; office is near front door; Mrs. Allen walked in first, and she followed; both entered the office side by side; Schwab got up and gave a chair, and she sat down; didn't know how long she staid in the office, about 10 or 15 minutes; the door was open when she entered; first thing Mr. Schwab came to her to take up her veil; she told him the second time it was not very polite; the first time he offered to raise it, she told him she didn't like it very well, and then he stopped and stood back; he didn't stop a minute, but said he'd take it off; the first time he asked her if he shouldn't raise her veil; said "sha'nt I raise your veil;" she told him "she didn't like it very well, or very much;" this was in answer to his first attempt; the second time he said "I'll take it entirely off;" she didn't recollect that he said "allow me to remove your veil," nor that she swore so on direct examination.
- 24 That she didn't appear before the Magistrate. Mr. Davis, the Lieut. of Police, said he'd call at 8 o'clock. Didn't know whether Mrs. Allen went before the Justice or not. She had commenced going with her brother to school about a week before she was arrested; didn't go every day; went about three days. School kept by French Lady. Don't know her name certainly; think it was Rube. The Omnibus Barn is on Clark street. Mr. Lapping lives 325 Chicago Avenue; couldn't tell the distance between the places; didn't count the blocks; it is three or four blocks. Mr. Schwab didn't untie the veil, nor did he take it off, nor throw it up. She didn't recollect whether she threw it up or off or not. He didn't. Didn't recollect whether she threw it up over her head or not; thought she did. Didn't
- 25 think she sat with it over her face. Mr. Schwab went up stairs first; Mrs. Allen next, and she (witness) next. Schwab unketched or unlocked the door; didn't try to get out; her face was towards the door when he fixed the ketch; she saw him do it; tried to play on the piano up stairs; don't know what time; didn't try it over a minute. Mrs. Allen was standing there while she was playing the piano. The door of the room was shut; didn't know how it was fastened; there was a latch on it which was broken off on the outside. Schwab pushed the door to inside by putting his hand on it. It was not a large room. She
- 26 was right beside him when he pulled down the shade. He pulled it down twice. When she raised them he pulled them down. She didn't observe any men across the street. Schwab did have hold of her when he let the shade down. She could not say how long she'd been there when he got her on his lap; about 10 or 15 minutes. She was standing by the piano before that. She went to the window twice. Piano stood on the East side of the room, behind the door; the door opened by the piano. When he (Schwab) sat on the lounge she did not sit on his lap, but it was when he sat on a chair. She sat on his lap 3 or 4 minutes. Mrs. Allen pulled me off of his lap and pushed her against the bed; it didn't
- 27 hurt me. Mrs. Allen asked some question and then went out. She (witness) didn't sit on his lap except when on the chair. When she sat on his lap he had his arm around her waist. Had his arm hold of her; could not tell how he had hold of her, but knew he didn't have his arm around her; was not sure how Schwab held her when she sat on his lap. Didn't know whether Schwab had hold of her arm. When they went out of the room, witness went first; Mrs. Allen next, and Schwab last. Mrs. Allen suggested their going up to see the manufacture of liquors. Mrs. Allen went first, and Schwab next, and I next. Didn't have hold of arms; walked side by side. When she came down, Mrs. Allen and Schwab came together, and witness followed; didn't go into office again; didn't cry out or halloo in the room; didn't call to the man who was going up stairs; didn't know the woman

where

~~when~~ they went to take off silk dress; Mrs. Allen went in; was not previously acquainted.

28

That she first came from Rockford; 1 or 2 years ago she first became acquainted with Mrs. Allen, who was in the house to have a dress fixed. She was not in the habit of going to Mrs. Allen's house. Saw Mrs. Allen next at her mother's house; she came to pay for a dress. Witness next saw her when she went to have a dress washed, after she had returned from school about a year ago. The next time she saw her she wanted the witness to come and see some canary birds; witness lived in Jackson street. Next time she saw her, her girl wanted to borrow witness's hat; this was over a year ago. Next time witness was standing at her uncle's gate, 35 Edina Place, and she wanted witness to come and see her daughter, who was sick.

29

That she (witness) first came to town 3 years ago; boarded at Doty House 7 months. Lived next on Wells street, No. 90; didn't know how long she staid on Wells street. Next her mother started a shop at 144 South Clark street. She then went away to Rockford to School; was there 6 or 7 months; then came back to Chicago. She then lived on the corner of Illinois and Wells; staid there 1 or 2 months. Lived next on Clark street, at 192, she thought. Stayed there one month. While there her mother sewed for the first families.

30

She next lived on the corner of Superior and Clark streets. Don't know how long—about six weeks. Her mother then went to nurse Mr. Tinkham's wife, and witness went to Mr. Schackford's and staid about 6 weeks. Her mother then moved to the corner of Elm and Wolcott streets; staid there 3 months, and then to Chicago Avenue, where she then resided.

31

That Mrs. Allen washed for her mother, and she became acquainted with her 1 or 2 years ago. The last time witness saw her she lived on Van Buren street. She said she had a bill to collect. Witness went there because her daughter wanted to see her. Going to the P. O. went on Clark street to Randolph street; then to Dearborn street; then to Van Buren street, and then to Edina Place.

32

The Defendants, Smith and Schwab, then called some ten or twelve witnesses to prove character, and all of them testified that they were acquainted with their general character, and that it was good.

But they farther stated that they knew nothing of their character for chastity.

And the Court then gave the following

INSTRUCTIONS FOR THE PEOPLE:

33

1. The Jury, in determining whether the Defendants, or any two of them did act in concert to ~~coerce~~ *induce* the said Lizzie M. Engles to have illicit intercourse with said Charles H. Schwab, the Jury should take into their consideration all the facts and circumstances detailed in evidence by the witness, Lizzie M. Engles; the conduct of said Schwab and Smith immediately after the girl, Lizzie M. Engles, and the defendant Allen came into the store, as detailed in evidence; the fastening of the door, if the Jury believe from the evidence the door was fastened; the statement of Defendant Allen about Piano; if the Jury believe from the evidence that Defendant Allen made statements about the Piano; the procuring of wine, if the Jury believe from the evidence wine was procured; the offer of silk dress and ring to Lizzie M. Engles, if the Jury believe from the evidence that such offers were made; in fact, all the acts of the Defendants, as shown by the evidence.

34

2. It is not necessary for the People to prove that there was any concert of action between the Defendants, before the said Lizzie M. Engles was introduced into the store of the Defendants, Schwab & Smith, by the Defendant, Mary C. Allen; if the Jury believe that said Lizzie M. Engles was introduced into the store of the Defendants, Schwab and Smith.

35

3. But it will be sufficient if the People have proved to the satisfaction of the Jury that any two of the Defendants acted in concert and with an understanding; and to the end that the Defendant, Charles H. Schwab, should have illicit carnal connection with the said Lizzie M. Engles, after she was so introduced into the store by the said Mary C. Allen, if she was so introduced.

36 4. The soliciting of a female to have illicit carnal connection with a male person by two or more persons, constitutes an indictable conspiracy.

37 5. A conspiracy is a combination of two or more persons by some concert of action, to accomplish some criminal or unlawful purpose, not in itself criminal, by criminal or unlawful means.

38 6. The evidence in proof of a conspiracy will generally from the nature of the case, be circumstantial. Though the common design is the essence of the charge, it is not necessary to prove that the defendants came together and actually agreed in terms, to have that design, and to pursue it by common means.

39 7. If it is proved that the defendants pursued by their acts, the same object, often by the same means, one performing one part, and another, another part of the same, so as to complete it with a view of the attainment of that same object, the jury will be justified in the conclusion that the Defendants were engaged in a conspiracy to effect that object.

And to the giving the same, the defendants excepted.

And the Defendants then asked the Court to give the following Instructions :

DEFENDANTS' INSTRUCTIONS.

40 1. To convict under an indictment for conspiracy, either the end attempted to be accomplished must be unlawful, or the means used must be unlawful, and under such circumstances the word "unlawful" means partaking of criminality.

41 2. The Defendants are presumed to be innocent, and the Jury cannot convict them unless they are proved to be guilty beyond a reasonable doubt.

42 3. Before the Jury can convict the Defendants, or either of them, they must be satisfied from the evidence, that two or more of the Defendants had agreed or combined by unlawful means to accomplish the act alleged in the indictment. There can be no conspiracy without an agreement, or combination, and the means to be used must be unlawful and criminal.

43 4. Unless the People have expressly proved the fact, or such circumstances as render it reasonably certain, that before the Prosecutrix went to the store of the Defendants, Smith and Schwab, there had been a previous concert and agreement between them and Mrs. Allen, the other Defendant, to bring the Prosecutrix there for the purpose alleged in the indictment, they will acquit the Defendants under this indictment.

44 5. It is not enough that the Defendants, or either of them, endeavored to induce the Prosecutrix to let either of them have connection with her. There must have been an agreement or combination to accomplish the act by unlawful and criminal means.

45 6. To warrant the Jury in convicting the Defendants of conspiracy by false representations in this case, they must have been of such a character as were calculated to deceive the Prosecutrix, and against which she could not, by reasonable and ordinary prudence, guard; and such as were calculated to accomplish the act alluded to in the indictment.

46 7. It is not enough that the Defendants, or either of them, endeavored to induce the Prosecutrix to let them, or either of them, have connection with her. There must have been an agreement or combination to accomplish the act by unlawful means—meaning "Criminal means."

47 8. Unless it shall be expressly proven, that a conspiracy existed, as alleged in the indictment, and that Smith knew that the object of Mrs. Allen and Schwab was to have sexual intercourse with the Prosecutrix, when they visited the upper room, and that he also aided and assisted them by criminal means in the same, they will acquit him.

48 And the Court gave the first two of said Instructions asked for by Defendants, but refused to give the others, and to such refusal said Defendants excepted.

49 And, thereupon, the Jury having retired to consider, returned with a verdict of guilty, as to all of the Defendants.

50

And the said Defendants, Smith and Schwab, then moved in arrest of Judgment, which motion was overruled, and Defendants excepted.

51

And also filed a written motion for a new trial, as to themselves, on the grounds that,

1. The verdict was against the evidence.
2. The Court erred in giving the People's Instructions.
3. The Court erred in refusing Defendants' Instructions,

Which last motion was also overruled, and Defendants excepted.

52.

And the Recorder then proceeded to sentence Defendants, Smith and Schwab, each to the City Bridewell, for the term of 6 months, or to pay a fine of \$100, and one third costs of prosecution, and the Defendant Allen to be imprisoned in the City Bridewell 3 months.

And, thereupon, Defendants Smith and Schwab, tendered their Bill of Exception, which was duly signed, and caused a transcript of the proceedings, to be filed in this Court, and assigned for error that

- 1st. There is no indictable offense set forth in the Indictment.
- 2d. The Court erred in refusing to arrest the judgment.
- 3d. The Court erred in refusing to grant a new trial, upon the ground that the verdict was against the evidence.
- 4th. In refusing to grant a new trial as to Smith, upon the ground that there was no evidence upon which to convict him.
- 5th. The Court erred in giving the second instruction on the part of the State.
- 6th. In giving the fourth and fifth instruction on the part of the People.
- 7th. The Court erred in refusing to give the 3d, 4th, 5th, 6th, 7th and 8th instructions requested on the part of the Defendants.

WOODWARD, LULL & ABBOTT,
AND E. VAN BUREN,

FOR DEFENDANTS.

8th In allowing evidence to be given of the declaration of Mrs. Ellen, in reference to Smith, without evidence connecting him with a prior conspiracy.

Smith vs

vs

The People

Abstract

Filed May 24, 1860

Edmund
Wentz

SUPREME COURT,

STATE OF ILLINOIS,

April Term, A. D. 1860.

JOHN B. SMITH,
CHAS. H. SCHWAB, AND
MARY C. ALLEN,

Plaintiffs in Error,

vs.

THE PEOPLE OF THE STATE
OF ILLINOIS,

Defendants in Error.

ABSTRACT.

1 THE indictment was filed April 6th, A. D. 1860, at the April Term of the Recorder's Court of the City of Chicago, and contains two counts for conspiracy.

2 The first count charges that CHARLES H. SCHWAB, JOHN B. SMITH and MARY C. ALLEN, on the first day of March, A. D. 1860, at Chicago, did, between themselves, unlawfully conspire, combine, confederate and agree together, wickedly, knowingly and designedly, to procure by false pretences, false representations and other fraudulent means, one LIZZIE M. ENGLES, to have illicit carnal connection with a man, to wit: with the said CHARLES H. SCHWAB, one of the defendants aforesaid.

3 The second count charges that the defendants did then and there (on the same day,) unlawfully between themselves, combine, confederate and agree together wickedly, knowingly and designedly to cause and procure by false pretences, false representations, and other fraudulent means, one LIZZIE M. ENGLES, then and there a minor female child, of the age of sixteen, to have illicit carnal connection with a man, to wit: with the aforesaid CHARLES H. SCHWAB.

To this indictment, the Plaintiffs in Error pleaded not guilty, in proper person

On the

4 a Jury was impaneled to try the said cause, and the following testimony was given; and there was no other evidence in the cause, namely:

LIZZIE M. ENGLES testified:

5 I reside at No, 325 Chicago Avenue. I am fifteen years old the 18th July last; I have been in the city about three years; but have not lived here all the time; have been at Rockford and Kenosha at school; I see Mr. SCHWAB and Mr. SMITH and Mrs. ALLEN (referring to persons in Court,) that I know; I was going on an errand for my mother about ten weeks ago; was going on by Van Buren street, and met Mrs. Allen's daughter; she said her mother was sick, and she wanted me to go in and see her; I said I had not time, but would call some other time; then her mother came to the door and asked me to come in and write a letter for her to Lawyer Jones; I said I had not time then; she then asked me to come the next Monday; I said I would if I got time; then I was going to the Post Office; I went in then, and she asked me to write the letter; said she would sit by the side of me and tell me what to write; this was the next Monday; I wrote it to Lawyer Jones.

6 The prosecution here asked the witness, What did she tell you to write to Lawyer Jones? The question was objected to; 1st, because the letter should be produced; 2d, because it was irrelevant and inadmissible as against the other defendants. The objection was overruled, and the witness answered:

7 She wanted me to write to Lawyer Jones to call up there to pay her doctor's bill to Dr. Hitchcock; that Dr. Hitchcock was going to take all her furniture; she told me to tell him she had got rid of his baby, and if he was a gentleman he would pay the doctor's bill; that she hoped his wife would be as true a wife to him as she was a fancy woman; she said Jones was just married; he had married a wealthy lady on the Avenue; I wrote it and gave it to her; I directed it to J. W. Jones; she said she would show it to Dr. Hitchcock; then after that, she said she was going on South Water Street to collect a bill at a wholesale liquor store, and did not like to go alone; I said I did not like to go; she said she did not like to go alone; then she took down her black silk dress and asked me if I would put that on and go with her; I asked her why I should put that on? she said if I put that on, I would go in with her, and if I put my own on I would not go in with her; I put it on over my dress; she said I would not see any one but an old gentleman; I thought it would be no harm; she went to J. B. Smith & Co., South Water street; she took a decanter along from the house; I went to the store door, and she said, come in; I went in the office; Schwab was reading a book, and Smith was reading a newspaper by the desk; Schwab gave me a chair, and I sat down; Schwab came to me and said, will you allow me to raise your veil; I said I did not like to; then he came to me the second time and said, I will take it off; I said it was not being very polite for a stranger to act in that way; I got up to go out of the office, and he got up and turned a catch over the door, and told me to go and take my seat; I went and took my seat; Mrs. Allen looked at Schwab and winked at him; she asked him if he would get a couple of glasses of wine; he got two tumblers; was gone about five minutes; came back and gave one tumbler to me and one to Mrs. Allen; after handing the wine to me, I said I could not drink it all; my glass was lighter colored than hers; Mrs. Allen said I might look at hers; I told Schwab I could not drink it; I spilt some, and Smith said that ladies that called there did not treat them as I did; did not waste their wine; I wasted part of it, and drank the rest.

10 Mrs. Allen said there was a piano up stairs. Before that Schwab went to the desk and took out a \$10 gold piece, wrote a note, and said if she would take that and go and get his ring of a lady he was offended with, he would give her the gold piece. She then said there was a piano up stairs she was going to buy for her daughter. Schwab said he would go up and show it to me. Smith said he would go. Schwab did not want Smith to go. Schwab asked me if I did not want to go and see it. I said I had seen a great many and did not care about going. She asked me if I could not play, and said she wanted me to see it before she bought it. Mr. Schwab and Mrs. Allen went up stairs with me, and there was an old one there and a bureau, and a bedstead with a tick on it—a lounge, lamp and chairs in it—some shades up by the window. I looked at the piano. Mrs. Allen said she must go down stairs and stay with Smith, and wanted me to stay till she came back. I tried to open the door, but could not. I then went to the windows and he pulled down the curtains or shades. I asked him why he did that. He said he did not want the men from the other side the street looking in there. I tried to open the door and he asked me to come and sit on the lounge with him. He took hold of me and I went and sat on the lounge with him. He said, This is Mrs. Allen's dress, he was well acquainted with. He asked me if I would stay with him a little while. He said, if I would, he would buy me a nice silk dress, as nice as Chicago could afford. I said I did not want his silk dress; If I wanted one my mother would get one. He asked me if I heard him tell Mrs. Allen to get a ring. I said, yes. He said it was a diamond ring, and he would give that to me. I asked him if he could tell me the time. He took out his watch and said it was half-past twelve. I told him it was later than that when we called at the office. He said he had just come from New York, and had New York time. He asked me if I did not want the little watch and chain. I said, no. I said, I must go home; I had to be at school at half-past one. He said I had plenty of time, and would not let me out of the room. He showed me a ring on his finger, and asked me if I wanted that. I told him I did not want any of his presents.

13 I went and pulled up one of the shades, and he pulled it down. Then I started for the door; he came to the door and I could not get out. Then I said, if my brother was in your place and your sister should call here, and he should treat her as you treat me, what would you say? He said he had sisters, and they were highly respectable, and his sisters did such things, and all girls would do so, and it would not be known. I went to the door and got it open, and he pushed me back and took me to a chair and pulled me on his lap, and said, you are a nice looking little girl, can't you afford to give me a kiss? I said I could not. Then he tried to put his hands under my clothes. I said he had better look out how he was acting around me.

14 Mrs. Allen came up and asked if he had committed his purpose. He said, No, she pretends to be too much of a lady. She pulled me off his lap and pushed me against the bedstead and told me to stay there till she got back; she was going out of the room to fix her skirts; told me to stay till she came back; she was gone but a minute or two, or two or three minutes. Schwab said the wine was too strong for me—shall I not give you another glass? When she pushed the door open Schwab said, If you will meet me at the house of Mrs. Allen to-morrow, I will let you go; if not I must stay there with him. I said I would, but did not go.

15 After we started to leave, Mrs. Allen wanted me to go further up stairs to see where they cultivate liquor. We started to go up, and a man came up, and Schwab pulled me back; he said he did not want the man to see me. I said, I am not afraid of the man. He pushed me out of sight of the man. We went up stairs. There was a stove and some pipes connected with it. Schwab said, there was where they cultivated liquor. Then I went down. Mrs. Allen said, as we were going down, Smith is damned mad I did not let him go up with you.

16 After we got down Schwab took up a couple bottles of champagne and asked his porter in German, if Smith had taken a couple of bottles of champagne to his dinner. He said, Yes.

17 Mrs. Allen asked me, by the office down stairs, where I was going. I said, On the North side cars. She said she must go and ride in the cars—had never rode in them, and would like to see them. Schwab asked me if I had change. I said, Yes. He then handed Mrs. Allen twenty cents to ride both ways. She took a decanter of wine. I had on her dress. We went to a second-hand dress store on Clark street, between Water and Kinzie, and I took off the dress and gave it to her. I then got into the cars, and she did so too. She was noisy and the conductor had her arrested. She said something to the conductor and I was arrested too. My mother came and got me out, and she was shut up till Monday. I told my mother as soon as I got home. My mother sent Lieut. Davis and gave bail for me. Mrs. Allen told me, to go to the bank of Forrest and get bail for her.

When I met the parties, it was in the city of Chicago, between LaSalle and Wells streets.

On her cross-examination the said witness testified:

18 That she was arrested in Company with Mrs. Allen at request of Charles Currier, conductor of the cars on the North Side; that she had started to go down on Chicago Avenue, having left the cars and Mrs. Allen and had started to go up Clark street, and had got opposite the barn of the Company, when a policeman came up and arrested her, because she had not behaved properly on the cars; that she had got out to go home; that she didn't come back to the car, but the policeman met her; that her mother lived in Elm street above Division; had not seen her mother from the time she was at Smith and Schwab's

19 until she was locked up in the Armory; was taken to the Armory between 3 and 4; cannot tell time she was bailed out; was not there long when Lieutenant of Police came for her; knew Currier before then by sight, not personally; had rode with him; learned his name from the papers; was bailed out by Dr. White; was not taken before magistrate; don't know when he gave bail; gave her name as Emma Green; was told by Mrs. Allen to do so; was not her right name.

20 That she had never seen Smith and Schwab before she was at their store; had on a brown veil when she went there; it was not her own; had on a black silk dress; it was too large for her.

- 21 Had been to see about renting a house on the morning mentioned at request of mother; left home at about 11. Requested her also to go to Mr. Grey's; he lives on Edina Place; also to Post Office; took a note from her mother to Mr. Grey's; went first to P. O. and then to Mr. Grey's, and then met Mrs. Allen; could not tell how long she stopped at Grey's.
- 22 That she didn't know the time when she put on the black silk dress; thought it was past 12. Went from Mrs. Allen's directly to Smith and Schwab's; didn't stop on the way; didn't see any time piece on the way nor there, it was after twelve; could hear the bells ring; they rang when she left Mrs. Allen's house; cannot tell where she was at the time she heard the bell; it struck 12; it was the Court House bell; was attending school at that time; school on North Clark street; walked through Clark street with colored woman's dress on; It kept tripping her up; didn't wear a veil all of the time; couldn't tell when she first put veil down; put it down whenever she took a notion to; it was down when she first went into Smith and Schwab's; was in Smith and Schwab's $\frac{3}{4}$ of an hour, possibly
- 23 longer; office is near front door; Mrs. Allen walked in first, and she followed; both entered the office side by side; Schwab got up and gave a chair, and she sat down; didn't know how long she staid in the office, about 10 or 15 minutes; the door was open when she entered; first thing Mr. Schwab came to her to take up her veil; she told him the second time it was not very polite; the first time he offered to raise it, she told him she didn't like it very well, and then he stopped and stood back; he didn't stop a minute, but said he'd take it off; the first time he asked her if he shouldn't raise her veil; said "sha'nt I raise your veil;" she told him "she didn't like it very well, or very much;" this was in answer to his first attempt; the second time he said "I'll take it entirely off;" she didn't recollect that he said "allow me to remove your veil," nor that she swore so on direct examination.
- 24 That she didn't appear before the Magistrate. Mr. Davis, the Lieut. of Police, said he'd call at 8 o'clock. Didn't know whether Mrs. Allen went before the Justice or not. She had commenced going with her brother to school about a week before she was arrested; didn't go every day; went about three days. School kept by French Lady. Don't know her name certainly; think it was Rube. The Omnibus Barn is on Clark street. Mr. Lapping lives 325 Chicago Avenue; couldn't tell the distance between the places; didn't count the blocks; it is three or four blocks. Mr. Schwab didn't untie the veil, nor did he take it off, nor throw it up. She didn't recollect whether she threw it up or off or not. He didn't. Didn't recollect whether she threw it up over her head or not; thought she did. Didn't
- 25 think she sat with it over her face. Mr. Schwab went up stairs first; Mrs. Allen next, and she (witness) next. Schwab unlocked or unlatched the door; didn't try to get out; her face was towards the door when he fixed the latch; she saw him do it; tried to play on the piano up stairs; don't know what time; didn't try it over a minute. Mrs. Allen was standing there while she was playing the piano. The door of the room was shut; didn't know how it was fastened; there was a latch on it which was broken off on the outside. Schwab pushed the door to inside by putting his hand on it. It was not a large room. She
- 26 was right beside him when he pulled down the shade. He pulled it down twice. When she raised them he pulled them down. She didn't observe any men across the street. Schwab did have hold of her when he let the shade down. She could not say how long she'd been there when he got her on his lap; about 10 or 15 minutes. She was standing by the piano before that. She went to the window twice. Piano stood on the East side of the room, behind the door; the door opened by the piano. When he (Schwab) sat on the lounge she did not sit on his lap, but it was when he sat on a chair. She sat on his lap 3
- 27 or 4 minutes. Mrs. Allen pulled me off of his lap and pushed her against the bed; it didn't hurt me. Mrs. Allen asked some question and then went out. She (witness) didn't sit on his lap except when on the chair. When she sat on his lap he had his arm around her waist. Had his arm hold of her; could not tell how he had hold of her, but knew he didn't have his arm around her; was not sure how Schwab held her when she sat on his lap. Didn't know whether Schwab had hold of her arm. When they went out of the room, witness went first; Mrs. Allen next, and Schwab last. Mrs. Allen suggested their going up to see the manufacture of liquors. Mrs. Allen went first, and Schwab next, and I next. Didn't have hold of arms; walked side by side. When she came down, Mrs. Allen and Schwab came together, and witness followed; didn't go into office again; didn't cry out or halloo in the room; didn't call to the man who was going up stairs; didn't know the woman

where

~~when~~ they went to take off silk dress; Mrs. Allen went in; was not previously acquainted.

28 That she first came from Rockford; 1 or 2 years ago she first became acquainted with Mrs. Allen, who was in the house to have a dress fixed. She was not in the habit of going to Mrs. Allen's house. Saw Mrs. Allen next at her mother's house; she came to pay for a dress. Witness next saw her when she went to have a dress washed, after she had returned from school about a year ago. The next time she saw her she wanted the witness to come and see some canary birds; witness lived in Jackson street. Next time she saw her, her girl wanted to borrow witness's hat; this was over a year ago. Next time witness was standing at her uncle's gate, 35 Edina Place, and she wanted witness to come and see her daughter, who was sick.

29 That she (witness) first came to town 3 years ago; boarded at Doty House 7 months. Lived next on Wells street, No. 90; didn't know how long she staid on Wells street. Next her mother started a shop at 144 South Clark street. She then went away to Rockford to School; was there 6 or 7 months; then came back to Chicago. She then lived on the corner of Illinois and Wells; staid there 1 or 2 months. Lived next on Clark street, at 192, she thought. Stayed there one month. While there her mother sewed for the first families.

30 She next lived on the corner of Superior and Clark streets. Don't know how long—about six weeks. Her mother then went to nurse Mr. Tinkham's wife, and witness went to Mr. Schackford's and staid about 6 weeks. Her mother then moved to the corner of Elm and Wolcott streets; staid there 3 months, and then to Chicago Avenue, where she then resided.

31 That Mrs. Allen washed for her mother, and she became acquainted with her 1 or 2 years ago. The last time witness saw her she lived on Van Buren street. She said she had a bill to collect. Witness went there because her daughter wanted to see her. Going to the P. O. went on Clark street to Randolph street; then to Dearborn street; then to Van Buren street, and then to Edina Place.

32 The Defendants, Smith and Schwab, then called some ten or twelve witnesses to prove character, and all of them testified that they were acquainted with their general character, and that it was good.

But they farther stated that they knew nothing of their character for chastity.

And the Court then gave the following

INSTRUCTIONS FOR THE PEOPLE:

33 1. The Jury, in determining whether the Defendants, or any two of them did act in concert to ~~coerce~~ *cause* the said Lizzie M. Engles to have illicit intercourse with said Charles H. Schwab, the Jury should take into their consideration all the facts and circumstances detailed in evidence by the witness, Lizzie M. Engles; the conduct of said Schwab and Smith immediately after the girl, Lizzie M. Engles, and the defendant Allen came into the store, as detailed in evidence; the fastening of the door, if the Jury believe from the evidence the door was fastened; the statement of Defendant Allen about Piano; if the Jury believe from the evidence that Defendant Allen made statements about the Piano; the procuring of wine, if the Jury believe from the evidence wine was procured; the offer of silk dress and ring to Lizzie M. Engles, if the Jury believe from the evidence that such offers were made; in fact, all the acts of the Defendants, as shown by the evidence.

34 2. It is not necessary for the People to prove that there was any concert of action between the Defendants, before the said Lizzie M. Engles was introduced into the store of the Defendants, Schwab & Smith, by the Defendant, Mary C. Allen; if the Jury believe that said Lizzie M. Engles was introduced into the store of the Defendants, Schwab and Smith.

35 3. But it will be sufficient if the People have proved to the satisfaction of the Jury that any two of the Defendants acted in concert and with an understanding; and to the end that the Defendant, Charles H. Schwab, should have illicit carnal connection with the said Lizzie M. Engles, after she was so introduced into the store by the said Mary C. Allen, if she was so introduced.

36 4. The soliciting of a female to have illicit carnal connection with a male person by two or more persons, constitutes an indictable conspiracy.

37 5. A conspiracy is a combination of two or more persons by some concert of action, to accomplish some criminal or unlawful purpose, not in itself criminal, by criminal or unlawful means.

38 6. The evidence in proof of a conspiracy will generally from the nature of the case, be circumstantial. Though the common design is the essence of the charge, it is not necessary to prove that the defendants came together and actually agreed in terms, to have that design, and to pursue it by common means.

39 7. If it is proved that the defendants pursued by their acts, the same object, often by the same means, one performing one part, and another, another part of the same, so as to complete it with a view of the attainment of that same object, the jury will be justified in the conclusion that the Defendants were engaged in a conspiracy to effect that object.

And to the giving the same, the defendants excepted.

And the Defendants then asked the Court to give the following Instructions :

DEFENDANTS' INSTRUCTIONS.

40 1. To convict under an indictment for conspiracy, either the end attempted to be accomplished must be unlawful, or the means used must be unlawful, and under such circumstances the word "unlawful" means partaking of criminality.

41 2. The Defendants are presumed to be innocent, and the Jury cannot convict them unless they are proved to be guilty beyond a reasonable doubt.

42 3. Before the Jury can convict the Defendants, or either of them, they must be satisfied from the evidence, that two or more of the Defendants had agreed or combined by unlawful means to accomplish the act alleged in the indictment. There can be no conspiracy without an agreement, or combination, and the means to be used must be unlawful and criminal.

43 4. Unless the People have expressly proved the fact, or such circumstances as render it reasonably certain, that before the Prosecutrix went to the store of the Defendants, Smith and Schwab, there had been a previous concert and agreement between them and Mrs. Allen, the other Defendant, to bring the Prosecutrix there for the purpose alleged in the indictment, they will acquit the Defendants under this indictment.

44 5. It is not enough that the Defendants, or either of them, endeavored to induce the Prosecutrix to let either of them have connection with her. There must have been an agreement or combination to accomplish the act by unlawful and criminal means.

45 6. To warrant the Jury in convicting the Defendants of conspiracy by false representations in this case, they must have been of such a character as were calculated to deceive the Prosecutrix, and against which she could not, by reasonable and ordinary prudence, guard; and such as were calculated to accomplish the act alluded to in the indictment.

46 7. It is not enough that the Defendants, or either of them, endeavored to induce the Prosecutrix to let them, or either of them, have connection with her. There must have been an agreement or combination to accomplish the act by unlawful means—meaning "Criminal means."

47 8. Unless it shall be expressly proven, that a conspiracy existed, as alleged in the indictment, and that Smith knew that the object of Mrs. Allen and Schwab was to have sexual intercourse with the Prosecutrix, when they visited the upper room, and that he also aided and assisted them by criminal means in the same, they will acquit him.

48 And the Court gave the first two of said Instructions asked for by Defendants, but refused to give the others, and to such refusal said Defendants excepted.

49 And, thereupon, the Jury having retired to consider, returned with a verdict of guilty, as to all of the Defendants.

50 And the said Defendants, Smith and Schwab, then moved in arrest of Judgment, which motion was overruled, and Defendants excepted.

51 And also filed a written motion for a new trial, as to themselves, on the grounds that,

1. The verdict was against the evidence.
2. The Court erred in giving the People's Instructions.
3. The Court erred in refusing Defendants' Instructions,

Which last motion was also overruled, and Defendants excepted.

52 And the Recorder then proceeded to sentence Defendants, Smith and Schwab, each to the City Bridewell, for the term of 6 months, or to pay a fine of \$100, and one third costs of prosecution, and the Defendant Allen to be imprisoned in the City Bridewell 3 months.

And, thereupon, Defendants Smith and Schwab, tendered their Bill of Exception, which was duly signed, and caused a transcript of the proceedings, to be filed in this Court, and assigned for error that

- 1st. There is no indictable offense set forth in the Indictment.
- 2d. The Court erred in refusing to arrest the judgment.
- 3d. The Court erred in refusing to grant a new trial, upon the ground that the verdict was against the evidence.
- 4th. In refusing to grant a new trial as to Smith, upon the ground that there was no evidence upon which to convict him.
- 5th. The Court erred in giving the second instruction on the part of the State.
- 6th. In giving the fourth and fifth instruction on the part of the People.
- 7th. The Court erred in refusing to give the 3d, 4th, 5th, 6th, 7th and 8th instructions requested on the part of the Defendants.

WOODWARD, LULL & ABBOTT,
AND E. VAN BUREN,

FOR DEFENDANTS..

*8th. In allowing evidence to be given of
the declarations of Mrs. Lull in reference
to Smith, without evidence connecting
him with a previous conspiracy.*

Smith et al

vs

The People

Abstract

Filed May 24, 1860

Almond

clerk

State of Illinois
Cook County } ss.
City of Chicago }

p 1
Treas before the Hon. Robert S Wilson,
Recorder of the City of Chicago and presiding
Judge of the Recorders Court of said City, at a
term thereof, begun and held at the Court House
of the City of Chicago in the County and State
aforesaid, on the first Monday of, it being the
second day of April in the year of our Lord one
Thousand Eight Hundred and Sixty and of the
Independence of the United States the Eighty fourth.

Present Hon. Robert S Wilson, Recorder of the City of Chicago
Charles Haven, States Attorney, 7th E. D. District
John Gray, Sheriff of Cook County

Attest: C. R. T. Forrest, Clerk of said Court.

x
The Sheriff returned into Court the *Venue facias*,
formerly issued, by which it appears to the Court
that the following named persons were duly summoned
to appear this morning to serve as Grand Jurors at this
term of Court to wit:

J H Gray
John B Tenover
Otto Selpeke

J B Higginson
John Lobstein
Francis King

Samuel McKay
J R Hugenin
Wm J Harris

George Herck	W B Keen	Harvey Danks
Joseph Tolboon	E G Richmond	Wm Thomas
Louis Lichtenberger	Martin Ryerson	E Nash
Otis S FAVOR	P T Sherlock	Andrew Tauber
W Lochbuler	I Clark	

who upon being called answered to their names and _____
 who severally together gave their attendance at this Term
 and thereupon J. H. Gray one of their number was appointed
 Foreman of the said Grand Jury who were duly sworn
 and charged by the Court and thereupon retire to
 consider of their presentments.

Be it Remembered ^{that afterwards} to wit on the sixth day of April
 in the year last aforesaid, it being the term of Court
 aforesaid, the following among the proceedings were had
 and entered of Record in said Court, which proceedings
 are in the words and figures following to wit:

The Grand Jury came into Court and made among
 others the following presentment endorsed True Bill to wit:

The People of the State of Illinois

vs

Charles H Schwab
 John B Smith and
 Mary C Allen

Conspiracy

which said Indictment is in the words and
 figures following to wit:

State of Illinois
 City of Chicago } ss.
 Cook County

Of the April term of the Recorders
 Court of the City of Chicago, in said State and County,
 in the year of our Lord, one thousand eight hundred and sixty

The Grand Jurors chosen, selected and sworn,
 in and for the City of Chicago, in the County of Cook,
 and State of Illinois, in the name and by the authority
 of the People of the State of Illinois, upon their oaths,
 present that Charles H Schwab, John B Smith and Mary
 C Allen late of said City, on the first day of March in
 the year of our Lord one thousand eight hundred and
 sixty, in said City of Chicago, in the County and
 State aforesaid, did between themselves unlawfully
 conspire combine confederate and agree together wickedly
 knowingly and designedly to procure by false pretences,
 false representations and other fraudulent means one
 Lizzie Bingles to have illicit carnal connection with a
 man to wit with the said Charles H Schwab one of
 the Defendants, contrary to the Law and against the
 peace and dignity of the same People of the State of Illinois

And the said Grand Jurors chosen, selected and
 sworn, in and for the City of Chicago, in the County of
 Cook, and State of Illinois, in the name and by the
 authority of the People of the State of Illinois, upon their
 oaths, further present that the said Charles H Schwab,
 John B Smith and Mary C Allen late of said City, on

4

the same day of March in the year of our Lord one thousand eight hundred and sixty, in said City of Chicago, in the County and State aforesaid, did then and there unlawfully between themselves combine, confederate and agree together wickedly knowingly and designedly to cause and procure by false pretenses, false representations and other fraudulent means one Lizzie M Engles then and there a minor female child of the age of sixteen to have illicit carnal connection with a man to wit: with the aforesaid Charles H Schwalb contrary to the Law and against the peace and dignity of the same People of the State of Illinois.

Charles Haven State's Attorney

Endorsed

A. True Bill

J. H. Gray

Foreman of the Grand Jury

Witnesses

Lizzie M Engles

Ellen F Herbert

Filed April 6th 1860.

Wm K. C. Forrest

Clerk.

X

Be it Remembered, to wit on the seventh day of April in the year last aforesaid, it being the term of Court aforesaid, the following among the proceedings were had and entered of Record in said Court, which

proceedings are in the words and figures following to wit:

2911.
5-
The People of the State of Illinois
vs
Mary C Allen imple etc } Conspiracy

The above Defendant having been furnished with a Copy of her Indictment and a List of the Jurors and witnesses and she being now here duly arraigned for Plea says that she is not Guilty in the manner and form as charged in said Indictment. Thereupon it is ordered by the Court that she be remanded.

Be it Remembered ^{that afterwards} to wit, on the tenth day of April in the year last aforesaid, it being the term of Court aforesaid, the following among the proceedings were had and entered of Record in said Court, which proceedings are in the words and figures following to wit:

2911
The People of the State of Illinois
vs
Charles H Schwab
John B Smith &
Mary C Allen } Conspiracy
This day come the said Defendants with their Counsel and the said People by their Counsel also come and the said Defendants Charles

H Schwab and John B Smith (Mary C Allen having pleaded before) having been furnished with a Copy of their Indictment and a List of the Jurors and witnesses,

and they being here now duly arraigned for Plea
severally say that they are not guilty in the manner and
form as charged in said Indictment.

And now issue being joined it is ordered by
the Court that a Jury come thereupon comes a Jury
of good and lawful men to wit:

Ja ^s . McKeatch	A W Parson	James H. Bower
Silas C. Linn	James L. Utis	Utis Field
R. D. Lacey	Robert Fergus	John Fort
Theodorad Furst	Hamilton Barnes	Wm. Barnes jr

who being duly empanelled and sworn and they
hearing the testimony of witnesses, arguments of counsel
and instructions of the Court retire in charge of a
sworn Officer of the Court to consider of their Verdict
and afterwards return and for Verdict say, we of the
Jury find each of the three Defendants guilty in
the manner and form as charged in said Indictment
Thereupon it is ordered by the Court that they be
remanded.

Be it Remembered ^{that afterwards} to wit on the seventeenth
day of April in the year last aforesaid, it being the term
of Court aforesaid, the following among the proceedings
were had and entered of Record in said Court, which
proceedings are in the words and figures following, to wit:

2911

The People of the State of Illinois

vs

Charles H. Schwab
John B. Smith and
Henry C. Allen

Conspiracy

This day come the said Defendants by their Counsel and move the Court for a new Trial herein and in arrest of Judgment which said motions were overruled by the Court, and to which overruling of the Court the Defendants by their Counsel then and there except.

Be it Remembered ^{that afterwards} to wit, on the same day and year and Court last aforesaid, it being the term of Court aforesaid, the following among the proceedings were had and entered of Record in said Court, which proceedings are in the words and figures following to wit:

2911

The People of the State of Illinois

vs

Charles H. Schwab implets

Conspiracy

This day come the said People by Carlos Heaven States Attorney, and the said defendant with his Counsel also comes and now neither he nor his Counsel for him saying anything further why the judgment of the Court should not now be pronounced against him or

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the verdict of guilty heretofore rendered herein:

Therefore, it is ordered and adjudged by the Court that the said defendant Charles H. Schwab be taken from the bar of the Court to the Common Jail of Cook County, from whence he came, and from thence by the Sheriff of Cook County to the Common Bridewell of this City, and be delivered to the Keeper of said Bridewell, and the said Keeper is hereby required and commanded to take the body of the said Charles H. Schwab and confine him in said Bridewell, at labor, for and during the term of six months from and after the delivery hereof, and

It is further Ordered by the Court, that the said defendant be fined the sum of One Hundred Dollars, and pay ^{one third of the} the costs of these proceedings, and that he further stand committed until said fine and costs are paid, and that he be thereafter discharged.

The People of the State of Illinois

vs

John B. Smith imp. etc

Conspiracy

This day come the People by Carlos Haven States Attorney, and the said Defendant with his Counsel also comes and now neither he nor his Counsel for him saying anything further why the Judgment of the Court should not now be pronounced against him on the verdict of guilty heretofore rendered herein.

Therefore, it is ordered and adjudged by the Court

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that the said defendant John B. Smith be taken from the
bar of the Court to the Common Jail of Cook County,
from whence he came, and from thence by the Sheriff of
Cook County to the Common Bridewell of this City, and
be delivered to the Keeper of said Bridewell, and the said
Keeper is hereby required and commanded to take the
body of the said John B. Smith and confine him in said
Bridewell, at labor, for and during the term of six
months from and after the delivery hereof, and

It is further Ordered, by the Court, that
the said defendant be fined the sum of One Hundred
Dollars, and pay ^{one third of} the costs of these proceedings, and that
he further stand committed until said fine and
costs are paid, and that he be thereafter discharged.

29/11
The People of the State of Illinois

vs

Mary C Allen impl etc

} Conspiracy

(This day come the People by
Carlos Heaven States Attorney, and the said Defendant
with her Counsel also comes and now neither she nor
her Counsel for her saying anything further why the
Judgment of the Court should not now be pronounced
against her on the verdict of guilty heretofore rendered herein.

Therefore, it is ordered and adjudged by
the Court that the said defendant Mary C Allen be
taken from the bar of the Court to the Common Jail
of Cook County, from whence she came, and from thence

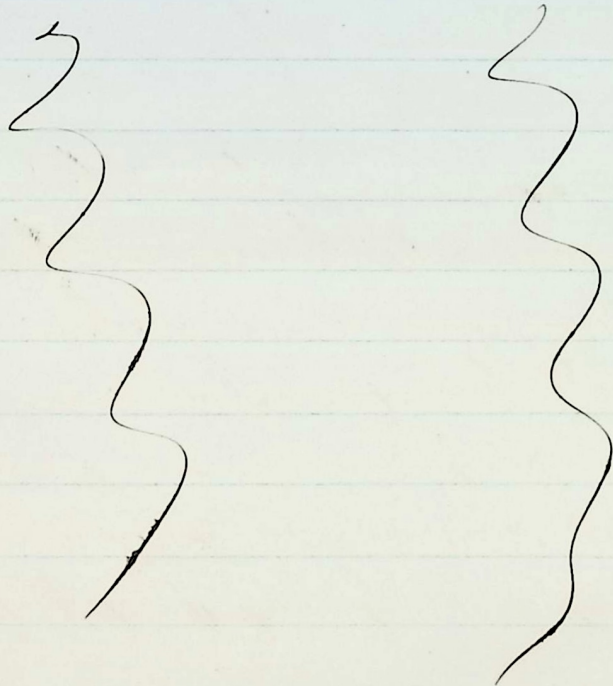
by the Sheriff of Cook County to the Common
Bridewell of this City, and be delivered to the Keeper
of said Bridewell, and the said Keeper is hereby required
and commanded to take the body of the said Mary
Allen and confine her in said Bridewell, at labor,
for and during the term of three months from and
after the delivery hereof, and that she be thereafter
discharged.

Recorder Court of the City of
Chicago
of April Term AD 1860

The People

Charles H Schwab } Indictment for
John B Smith & } Conspiracy
Mary C Allen }

Be it remembered that
at the April Term of the Recorder Court of
the City of Chicago the above entitled cause
came on to be heard, the same being an
Indictment for a conspiracy to induce to the
Prosecution to cohabit with Charles H Schwab
illicitly & on the trial of said cause the
following evidence was given in the case, which
was all of the evidence that was heard in
the said cause



Lizzie M Engel, ^{a witness} called on the part of the People testified on her direct examination as follows.

(My name is Lizzie M Engel. I live at 325 Chicago Avenue. I was fifteen years old on the 18th of last July. I have lived here 3 years but not all the time. I first came here 3 years ago. I have been part of the time at Rockford and part of the time at Kenosha to school. I have seen the Dependents Smith + Schwab + the colored woman.

I was going on an errand for my mother about 10 weeks ago, was going on Van Buren St. + met Mrs Allen's daughter about 8 or 9 years old. She asked me to go in + see her mother who was sick. I said I havint time I would call another time. Then Mrs Allen came to the door + asked me to come in. I replied I havint time then. She asked me to come in + write a letter. I said I come the next Monday if I had the time. Then I was going to the Post Office + I went there and she asked me to write a letter, said she'd sit by me + tell me what to write. This was on Monday, she got the writing materials + I wrote the letter to Luther Jones. The question was then asked by

the State Attorney "What did she tell you to write to Lawyer Jones"? To which question the Defendants by their Counsel objected on the ground that the letter could be the best evidence & also that question was irrelevant, but the objection was overruled by the Court. And to the overruling of said objection the Defendants by their Counsel did then & there accept & the witness in answer to said question replied

She wanted me to write to Lawyer Jones to pay his doctors bill, that Doctor Hitchcock was going to take all of her furniture unless he come & pay his doctor bill, that she had got rid - of this baby & that she trusted Mrs Jones's wife would be as true to her, as she had been a fancey woman to him, that she hadn't asked any favor of him for a long time, that is what she told me to write. I directed the letter to J W Jones, she said that Jones was just married, that he'd married a wealthy lady on the Avenue & she wanted to spite him & that she wanted to show it, to Dr Hitchcock before sending it. I gave it to her & after I wrote the letter she said she was going to collect a bill on South Water St. at a wholesale liquor store & hated to go alone I told her I didn't like to go to the store, that I didn't want to go

She replied that she didn't want to go alone. Then she took down a black silk dress and asked me to put it on. I answered that I didn't want to put on any body else's dress. I asked why she wanted me to put it on and she said I didn't want to. She replied that if I didn't put it on I would not go in with her & she didn't want to go alone. I then told her I'd put it on. I'd put it on over mine. She said no take off yours. That I'd see no one there & so I went. I went to J. O. Smith & Co's store. There was a sign on the Building. it was on South Water St. ^{in this city} She went into the front room & took 2 glass bottles along I went down with her & went to store door & went into office. Mr. Schwab was sitting reading a book. we went into the office. Smith was at his desk & was reading a newspaper. Went in & Mr. Schwab gave me a seat. I had a veil on. & he didn't give me time to raise my veil but Schwab came to me & asked to raise my veil. I replied that I didn't like to have him raise my veil. He came again & said well I'll take it off. I replied it was not very polite in a stranger to act in that way. & then ^I got up to go out of office & he got up & stood in the office door & told me to take my seat. He turned the catch of the door & I then took

my seat. Mrs Allen then looked at Schwab
 & looked at Tim & she asked Schwab if he
 fetch in a glass of wine, there was one
 glass in the office & he went out & got some.
 He was gone about 5 minutes & came in with
 two glasses, he handed me one tumbler & gave
 the other to Mrs Allen. After he handed the
 wine to me I told him I couldn't drink
 it all. The glass that he gave me was lighter
 colored than the other Mrs Allen said I
 might look at hers, she handed me the glass
 & then took it right back again & I told
 Mr Schwab I couldn't drink the wine, it was
 too strong. I spilled some on the matting &
 Smith then spoke & said that ladies who called
 there didn't treat Tim as I did, they didn't
 waste their wine, I told Tim it was too strong
 I couldn't drink it. I wasted some more of
 it till there was but little left. Then Schwab
 went to the desk & wrote a little note & held
 up \$10 gold piece & asked her to take it
 to a lady - He asked her if she'd take the
 note to a lady & get his ring back, that
 he'd give her the \$10. Mrs Allen then spoke
 & said there was a fine up stain & she wanted
 to buy it for her daughter, Smith said he'd go
 & show it - But Schwab didn't want Smith
 to go but said he'd go, Schwab asked me if I

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I replied that I^d seen a great many + didn't want to go to see it
 wanted to go & see it, & she asked me if I
 couldn't play said she wanted me to see it
 before she took it or bought it + (Mrs Schwab
 And Mrs Allen went up stairs + I went with
 them to look at the piano. it was in the
 front room, it was an old one, I couldn't
 play on it, there was a bureau there a
 bedstead + a tick on it. a black lounge. a
 rocking chair + some common chairs. there
 were shades on the windows. After I went
 into the room I went to the piano + Mrs Allen
 said she must go down stairs + stay with Smith
 + would be back in a few minutes. She wanted
 me to stay in the room until she came back
 As soon as she went out. I went to the window
 + Schwab went to the door + pushed it to
 + I couldn't get it open, he pulled
 down the shades + I told him I didn't
 want to stay there. I asked him why he
 pulled down the shades. He replied that
 he did it want the men across the street
 looking in there. Then I started to the door
 + couldn't get it open. Schwab came to
 me + set of took hold of me + asked me
 to come + sit on the lounge with him I sat
 on the lounge with him + he said this is
 Mrs Allen's dress. I said yes it is her skirt
 + he remarked why? I am well acquainted

with it - I've seen it a great many times.
 He then enquired if I'd play chess a little
 while, I didn't know what he meant at first
 he then asked ~~me~~ added if you will I'll
 buy you a nice silk dress just as nice as
 Chicago can afford, then I told him
 I didn't want his silk dress, if I wanted
 one my mother would get it for me, then he
 asked me if I heard him tell Mrs Allen
 about getting a ring and said it was a diamond
 ring & he would give it to me. I replied I
 didn't want his ring & asked him if he'd
 please tell me what time it was and he
 took out a little watch & said it was $\frac{1}{2}$ past
 12. But it was more than that when we
 went there, I asked him to let me see but
 he couldn't - he said that he had New York
 time, that he had just returned from New
 York & then he put the watch in his pocket.
 He asked me if I didn't want the watch
 & chain. I told him no. I said I must go
 home because I must be at school at
 half past one o'clock. He replied that I'd
 plenty of time yet to go home to go to school.
 He wouldn't let me out of the room, then
 he had a ring on his finger set with a white
 stone & enquired if I wanted that. I told him
 I didn't want any of his presents, then I went

to the window & pulled up one of the shades
 & he came & pulled it down & I started for
 the door & then after I went to the door he
 followed me to the door & I couldn't get out.
 I then said if my brother was in his place
 & his sister should call there & he treated his
 sister as he treated me how he would like it.
 He answered that he had sisters & they were
 highly respected, that his sisters did such
 things & that if I did it, it would not be
 known, that all girls did so, then I went to
 the door & got it open & he pulled me back
 & then took me to a chair in front of window
 & sat down & pulled me onto his lap, then
 he said to me again such a nice ^{looking} girl, can't
 you afford to give me a kiss. I told him I
 couldn't then he tried to put his hands
 under my clothes & I told him he better
 look out how he was acting around me.
 Then Mrs Allen came up, station while I
 was in his lap & pushed the door open &
 asked him "Have you committed your
 purpose" or something like it. Schwalb
 answered "no, she pretends to be too much of a
 lady" & he still kept me on his lap. She
 came into the room & came & pulled me off
 of his lap & pushed me against the bedstead &
 told me to stay there until she came back.

that she was going to fix her skirt - she was
 going out a few minutes & would return.
 Then Schwab said "That wine was too strong
 hadn't I better get you another glass" He
 said this when Mrs Allen went out - she was
 out 2 or 3 minutes & Schwab then said if you
 promise to come to Mrs Allen's ^{house} & meet me to
 morrow at 2 o'clock I'll let you go. I
 said yes I'll come at 2 o'clock, but I only
 said it to get away from them - I didn't
 go near them after I got away. After we
 got started Mrs Allen wanted me to go
 further up stairs & see them manufacture
 liquor. We started to go & there was a man
 coming up stairs & Schwab pulled me back
 & said he didn't want the man to see me
 I asked why ^{he} didn't want the man to see me
 I said I was not afraid of his seeing me.
 There was something in the middle of the room
 & he pulled me back to that. I then went
 up stairs: there was nothing up there but a
 stove & some pipes. There Mrs Schwab said
 there is where they "Cultivate" liquor & Mrs
 Allen remarked Smith is damned mad
 that I didn't let him go up with the girl
 first, we were then coming down stairs.
 Then after we got down stairs Mrs Schwab took
 a box of Champagne bottles & spoke to a
 person in German & then Mrs Allen inquired

what he said & Schwab answered that he
 enquired whether Smith had taken a couple
 of bottles of Champagne with him to dinner
 because if he Smith had he (Schwab)
 wouldn't. Then we went to the office door
 & Mrs Allen asked me where I was going. I
 answered I am going to take the North side car
 & go home. Then she said, ^{well} I declare I must
 take the car & go to the City limits, that she
 had never rode in them & would like to see
 them, we were then coming out of store.
 Mrs Schwab then asked ~~me~~ if I had any
 change. I said yes, my mother had given me
 some ^{tips} for going & coming. Mrs Schwab then
 went to a drawer & took out 25 cents & handed
 to her to ride both ways, With that she took a
 decanter of wine from Office & I had on her
 dress & wanted to take it off. I went to
 second hand dress store on Clark Street, between
 Water & Kongie & took off the dress & handed
 it to her. Then I got into the car & she also
 & she was very angry, she abused the passengers
 on the car & the Conductor had her arrested
 & she said something to the Conductor about me
 & the Conductor had me arrested. My mother
 came & got me out & she was shut up until
 Monday. They did not ask me any questions I
 told my mother when I got home as soon

as I got into the home all about what had happened.

After being arrested my Mother was sick at home & she sent Lieut Davis & gave bail for me. When I came out Mrs. Allen told me if I got out to go to Capt of Forrest & get bail for her. When the Lieut came after me she paid go to Capt of Forrest & get me bailed out. It was in the City of Chicago where I met these parties between La Salle & Mills St.

On her Cross Examination the said witness further testified.

I was arrested in the car with the colored woman - Charles Currier had me arrested. It was on the North side. Currier was Conductor of the car. I was not arrested in the car. I had started to go down on Chicago Avenue had left the colored woman in the car & started to go up on Clark St & had got opposite to the barn of the Company when Mr Currier came up with a policeman, he said the Policeman must take me because I did not act well on the car. I had got out to go home. I didn't come back to the car but Currier & the Policeman came & met me.

at the farm, My mother lived on Elm St on
 the South side above Division Street. I didn't
 see my mother from the time I was at Smith
 + Schwab's store until I was picked up in
 the Armory. It was between 3 + 4 O'clock that
 I was taken to the Armory. I can't tell the
 name I was bailed out. I was there but
 little time when the Lieut came after me.
 He is the Lieut of Police. I had not known
 Currier before I was arrested. I knew him
 by sight. Had rode in the cars with him.
 I learned his name from the papers. I
 knew his name before. I had rode in the
 cars with him. Doct White bailed me out.
 Don't know where he lives. Had seen him
 before. Saw him when mother was sick. I
 was not taken before a magistrate. I don't
 know where he gave bail. The colored woman
 told me to give my name as Emma Green
 at the Armory. I gave this name. It is not
 my correct name. I should have given my
 correct name if she had not told me not to.

I had never seen Smith + Schwab
 before I saw them at liquor store. I had
 on a veil. It was a brown veil. It was not
 my own veil. The black dress didn't fit me
 because it wasn't made for me. It was too
 large. I had to wrap it around me.

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I went into Chicago Avenue & where I was going, the lady was out. I went to Mrs Lappings House to see about the house. found no one in it. they had promised the house to us in case it should not be moved. My mother had told me in the morning to go & see about it. I left home at about 11 O'clock. Mother told me to go to Mrs Lappings for one place & to Mrs Grey for another, this is all I went to the Post office also. Mrs Grey lives in Edina Place. I dont know for what my mother wished me to go to Mrs Grey. She sent a note I didnt stop at Mrs Lappings on my way home. I first stopped at the Post office ^{Mrs Greys & the post office} & then went to Mrs Allen. I cant tell how long I was at Mrs Greys. I delivered the note she lives in Edina Place. I dont know the time when I put on the black silk dress. I think it was after 12. Cant tell within an hour I came from Mrs Allens directly to Smith & Schwalb. I didnt stop on the way. I didnt see any time piece on the way nor then. It was after 12. I can hear the bells when they ring they rung when I left Mrs Allens House. This was 10 weeks ago. It was the Aunt Huns bell that I heard. It struck 12 O'clock. I cant tell exactly where I was at the time I heard

JN

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the bell ring & so knew the time. I knew
 because I wanted to get home. I was going
 to school at the time. The school was kept
 in Front Clarke St - near to - I can't tell
 what St. I walked through Clarke St
 with the Colored women's dress on. It kept
 tripping me up. I didn't wear a veil all
 of the time. I can't tell when I first put
 veil down. I put it down whenever I took a
 notion to. I can't tell where I first put it down.
 It was down when I first went into Smith
 & Schwalb's store. I was in Smith & Schwalb's
 about $\frac{3}{4}$ of an hour or maybe longer but I
 think not. Their office is near the front door.
 Mrs Allen walked in first & I followed. Mrs
 Allen & I entered the office side by side
 I was put ahead of Mrs Allen when we
 entered the office. I didn't notice Mrs
 Allen entering the office first. Mr Schwalb
 got up & gave me a chair. & I sat down.
 I don't know how long I staid in the office.
 I staid there 10 or 15 minutes. The door was
 open when we entered. I can't tell how
 large the office is. The first thing Mr Schwalb
 did was to come to me to take up my veil. I
 told him the second time it was not very polite.
 The first time he did it I told him I didn't
 like it very well & then he stopped & stood

back. He didn't stop a minute but said he'd take it off. The first time he asked me if he shouldn't raise my veil he said, "Thank I raise your veil." I told him I didn't like it very well or very much. This was my answer to the first time he wanted to raise it. The second time he said I'll take it ^{entirely} off. I don't know that he said allow me to raise your veil. I don't know that I swore on the direct examination that he did.

I was taken out of the Lockup the same afternoon just at evening. I did not go before a Justice in the evening. I did not appear at the time I gave bail to appear. Nobody told me not to appear because Mr Davis said he'd call at 8 O'clock for us, me & my mother. I don't know whether Mrs Allen went before the Justice or not. The trial before magistrate was I think about 3 weeks ago. I had taken my brother & started for school commenced going about a week before I was arrested. I wasn't there every day but had commenced going. Had been one week. I went about 3 days. It was kept by a French lady. I am not certain of her name. Think it was Ruben. The omnibus run where I was arrested is way up on Clarke St. Mrs Lapping lives at 325 Chicago Avenue, I can't tell the distance, I.

never counted the blocks, it is about 3 or 4
blocks. Can't say for certain, this was the
place where I was arrested. Mr Schwab did
not untie my veil. He didn't take it off. He
didn't throw it up. Don't know if I threw it
up or off or not. He didn't. I don't remember
whether I threw it over my face or not. I think
I threw it up. I don't think I sat with it over
my face. Mr Schwab went up stairs first
(Mrs Allen next + I next). He unlocked or
unlatched the door. Schwab had his arm
hold of me when I sat on his lap - Can't
tell how he had hold of me but I know
he didn't have his arm around me. I am
not sure how he held me when I sat on his
lap. I don't know whether he had hold
of my arm. When we went out of the room.
I went first - Mrs Allen followed + Schwab
next. Mrs Allen suggested going to look at the
liquor. Mrs Allen went first + Schwab + I next.
He didn't have hold of arms. we walked side
by side. When we came down Mrs Allen + Schwab
came together first + I followed. I didn't go
into the office again. I didn't call out while
in the room up stairs. I didn't call to the man
who was going up stairs. I didn't know the
woman where we went to take off the dress.
Mrs Allen went in also. I was not personally

acquainted there. When I first came home from Rockford Mrs Allen was in our house waiting for a dress to be fixed this was between one + two years ago.

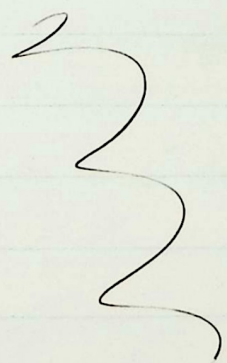
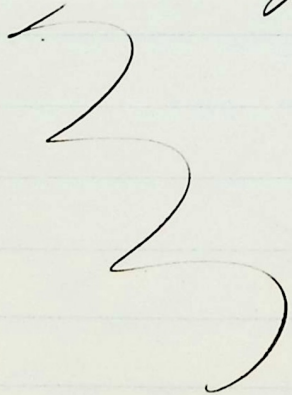
I am not in the habit of going to Mrs Allens I next saw her at our house. she had not paid all that was due for her dress, + came to pay it. This was about a year ago. The next time I saw her I went to carry a dress to have it washed. It was next after I came from School, it is over a year ago. The next time I saw her she wanted me to come + see some Canary birds + I brought a singer into our house. I lived in Jackson Street the next time I saw her. Her girl wanted to borrow my hat. this was over a year ago. The next time I was standing at my uncles house No 45 Edina Place + she wanted me to come + see her daughter who was sick.

I first came to this City 3 years ago. I boarded at Dotys Hotel paid there 7 months. I next boarded on Mill St No 90 at Dr Collins. dont know how long I staid there. Next mother started a shop at 144 South Clark St. Then I went away to school at Rockford - was there I forget how long between 6 + 7 months, came thence to Chicago. Then I lived on the corner of Illinois + Wells St.

staid there, ^{going on} 1 or 2 months moved next on to
Clark St at I think 192 Staid there 1 month
while there Mother sewed for the first families
Next we lived at the Corner of Superior &
Clark St. dont know how long we lived
there about 6 weeks. My Mother then went to
nurse Mrs Finkham's wife & I went to Mrs
Shuckfords & staid about 6 weeks. Then we
went to the corner of Elm & Wolcott Sts.
& remained there 3 months & then to Chicago
Avenue where we now live.

Mrs Allen washed for my mother. I got
acquainted with Mrs Allen 1 or 2 years ago
the last time I saw her she lived on Van Buren
St. she said she had a bill to collect. I
happened to go there because her daughter
wanted me to.

When I first went to the Post Office I took
Clark St. to Randolph St. then to Dearborn
St. to Van Buren & then to Edina Place. I
had not seen Mrs Allen for several months
till the morning her little girl called me in.



The following Witnesses were called on the part of the defendants

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Hiram Joy, who testified that he was acquainted with Smith & Swab, that he had known them about two years that he knew their general character & that it was good
On cross-examination

I don't know what the depts character for chastity -
Mr. Curtis; who testified that he knew them - had known Smith four years & Swab two or three years that he knew their general reputation that it was good that he had heard nothing said against them. Cross-ex - know nothing of character for chastity

Mr. Forsyth; who testified that he had known them over a year, his place of business is next door to them - their reputation is good. Cross-ex. know nothing of reputation for chastity

Mr. Ramsey; that he knew Smith slightly He is an upright business man I know nothing against his character & of their character for chastity he knows nothing

Mr. Whitkousky; that he has known Smith five or six years - know Swab two years, that he knew their character & that it is good

Mr. Hoisington. That he had known defendants about three years he never heard anything against them considers their character good.

On cross-examination that he knows nothing of their reputation for chastity

Mr. Wallace. That he is a justice of the peace, has

28 known Smith four or five years knows nothing bad of him
he was always a gentleman his reputation is good.

Croperam^{er} that their general reputation is good

Mr. De Wolf That he is a Justice of the Peace knows Smith
& Swab has known them two or three years, knows their
reputation & it is good so far as he knows

Croperam^{er} Never heard any one speak of their reputation
for chastity.

Mr. Thorcason That he has boarded with defendants
knows nothing against them they are honorable men
has known them two years that their reputation is
good

Mr. Glaschoff That their reputation is good.

On the trial of the said cause the Counsel for the People
requested the Court to give the following instructions
to the Jury

1st That a conspiracy is a combination of two or more
persons by some concert of action to accomplish some
criminal or unlawful purpose or to accomplish some
purpose not in itself criminal or unlawful, by crim-
inal or unlawful means

2nd That the evidence in proof of a conspiracy will generally
from the nature of the case be circumstantial though
the common design is the essence of the charge it is not
necessary to prove that the defendants came together
& actually agreed in terms to have that design & to
pursue it by common means

3rd That if it be proved that the defendants pursue, by their

29

Given

acts the same object - often by the same means one performing one part, another another part of the same so as to complete it with a view of the attainment of that same object the jury will be justified in the conclusion that the defendants were engaged in a conspiracy to effect that object

4th

Given

That the soliciting of a female to have illicit carnal connection with a male person by two or more persons constitutes an indictable conspiracy

5th

Given

That it is not necessary for the people to prove that there was any concert of action between the defendants before the said Lizzie M. Eagles was introduced into the store of the defendants Swab & Smith, by the defendant Mary C. Allen if the jury believe from the evidence that said Lizzie M. Eagles was introduced into the store of the defendants Swab & Smith

6th

Given

But that it will be sufficient if the people have proved to the satisfaction of the jury that any two of the defendants acted in concert & with an understanding & to the end that the defendant Charles H. Schwab should have illicit carnal connection with the said Lizzie M. Eagles after she was introduced into the store by the said Mary C. Allen if she was so introduced

7th

Given

That the jury in determining whether the defendants or any two of them did act in concert to cause the said Lizzie M. Eagles to have illicit intercourse with said Charles H. Schwab, should take into their consideration all the facts & circumstances detailed

in evidence by the witness Lizzie M. Engles - the conduct of the said Schwab & Smith immediately after the girl Lizzie M. Engles & the defendant Allen came into the store, as detailed in evidence - the fastening of the door, if the jury believe from the evidence the door was fastened - the statements of the defendant Allen about the piano, if the jury believe from the evidence that defendant Allen made statements about the piano - the procuring of wine if the jury believe from the evidence that wine was procured, the offer of a silk dress & ring to Lizzie M. Engles if the jury believe from the evidence that such offers were made - In short all the acts of the defendants as shown by the evidence -

Each and all of which were given by the Court as was requested & to all & each of which as so given the defendants by their counsel then & there excepted

And the said defendants then & there upon the said trial by their counsel requested the Court to give the following instructions to the jury;

1st That the defendants are presumed to be innocent & the jury cannot convict them unless they are proved to be guilty beyond a reasonable doubt -

2nd That to convict under an indictment for conspiracy either the end attempted to be accomplished must be unlawful or the means used must be unlawful; & under such circumstances the word unlawful means partaking of criminality

Which were given accordingly

And the defendants also requested the Court to give the following further instructions -

3^d

That before the jury can convict the defendants, or either of them they must be satisfied from the evidence that two or more of the defendants had agreed or combined by unlawful means to accomplish the act alleged in the indictment. There can be no conspiracy without an agreement or combination & the means to be used must be unlawful & criminal

Refused

4th

That unless the people have expressly proved the fact, or such circumstances as render it reasonably certain that before the prosecutrix went to the store of the defendants Smith & Schwab there had been a previous concert & agreement between them & Mrs. Allen, the other defendant to bring the prosecutrix there for the purpose alleged in the indictment, they will acquit the defendants under this indictment

Refused

5th

That, it is not enough that the defendants or either of them endeavored to induce the prosecutrix to let them or either of them have connexion with her there must have been an agreement or combination to accomplish the act by unlawful & criminal means

Refused

6th

That, to warrant the jury in convicting the defendants of conspiracy by false representations, in this case they must have been of such a character as were calculated to deceive the prosecutrix & against which she could not by reasonable & ordinary prudence, guard & such as were calculated to accomplish the act alluded to in

Refused

the indictment.

Refused

7th That, it is not enough that the defendants or either of them endeavored to induce the prosecutrix to let them or either of them have connexion with her there must have been an agreement or combination to accomplish the act by unlawful means, - meaning criminal means

Refused

8th Unless it shall be expressly proven that a conspiracy existed as alleged in the indictment, & that Smith knew that the object of Mrs. Allen & Schwab was to have sexual intercourse with the prosecutrix when they visited the upper room, & that he also aided & assisted them by criminal means they will acquit him.

The giving of each & all of which was refused by the Court to which ruling & decision in respect to each & all of the said instructions the defendants by their Counsel then & there excepted

And thereupon the jury having retired to consider of their verdict, returned with a verdict of guilty against all of the defendants - who by their respective Counsel then & there entered a motion in arrest of judgment & also separately filed motions for new trials each of them on the grounds following viz: That the verdict was against the evidence

Because the Court refused to give the instructions asked for by defendants & by the defendant Smith individually

Because the Court gave the instructions asked for by the people

After the rendition of the verdict and before sentence at the request of the counsel for the people & the counsel for

the prisoners and in the presence of the prisoners witnesses were introduced sworn & testified before the Court both for the people & the defendants with ^aview to enable the Court to determine as to the extent of punishment.

§ 3 And thereafter & on the 17th day of April during the said term the said motions in arrest of judgment & for a new trial were each of them severally overruled by the Judge of the said Court. And the said defendants were then sentenced by the said Court as follows, viz:
The said defendants John B. Smith & Charles H. Schwab each to pay a fine of \$100 & one third of costs of Court & to stand committed until paid & also to be imprisoned in the City Bridewell for the space of six months
And the said defendant Mary C. Allen be imprisoned in the City Bridewell three months

And to the overruling of the said motions in arrest of judgment & for a new trial the said defendants by their said counsel did then & there except and prepared & tendered this their Bill of exceptions to the Judge of the said Court & prayed that the same might be signed which was done at the City of Chicago this 17th day of April A.D. 1860

R. S. Wilson
Recorder &c

State of Illinois }
County of Cook }
City of Chicago }

I, Jos. H. C. Forrest, Clerk of
the Recorders Court of the
City of Chicago, County and State aforesaid, do
hereby certify, that the foregoing is a full and correct
Transcript of the Record, ^{of said Court} including indictment, trial
Conviction and sentence, as also a true copy of a
Bill of Exception, in the case of the People of the
State of Illinois vs. Charles H. Schwab, John B.
Smith & Mary C. Allen as filed in said Court.

In witness whereof I have hereunto
set my hand and affixed the seal
of this Court this 18th day of April
A. D. 1860

Jos. H. C. Forrest
Clerk

State of Illinois }
City of Chicago }
Cook County }

I do hereby
certify that the foregoing record
& Bill of Exception contain a
true statement of the proceedings
in said cause. Carlos H. Mason
April 18th 1860. State Atty



22
In Supreme Court.

John B. Smith.

Charles H. Schwab.

Mary C. Allen.

Beffs in Error.

~~add~~

The People -

Record.

Filed Apr. 20. 1860

L. Leland

Clk.

Prepared

\$5.00.

Full & Van Buren