v. *Higgins*, 53 Vt. 191, being quoted from Mr. Pomeroy, and was thus: "Whether an indictment in the words of a statute is sufficient or not depends on the manner of stating the offence in the statute; if every fact necessary to constitute the offence is charged, or necessarily implied by following the language of the statute, the indictment in the words of the statute is undoubtedly sufficient; otherwise not." That rule in substance has always been the test applied to indictments in this State. Under it this indictment is insufficient. The "illicit," as its derivation indicates, means that which is unlawful or forbidden by the law. Bouv. Law Dict.; Webst. Dict. It is not claimed that every illicit intention would warrant a conviction under this statute. It must be a particular unlawful intention. Therefore, as the indictment stands, all the allegations might be true, and the respondent be not guilty. The illicit intention might have been to steal, burn or murder, as well as to have unlawful sexual connection.

The journal above named thereon remarks:—

There is a refreshing interest in this decision. To go back to the very beginning, the statutory provision as to the evidence which is to infer guilt of conjugal infidelity is peculiar. The accused must have been found "in bed" together. The law takes no cognizance of the offense unless it be committed "in bed." Then to most minds it would have appeared that the mere fact of a man's being found in bed with his neighbor's wife was sufficient to "afford presumption of an illicit intention." But not so apparently in the eyes of the framer of the statute. There must be other "circumstances" concurring with the common couch ere guilt can be inferred. Again turning to the indictment, there is a novelty in the description of the accused as having on the occasion of the offense "been then and there a man." In the view of the prosecutor no doubt the accused might at some other place or at some other time have been a woman, but that is of no moment, seeing that at the place and time of the alleged offense he was "then and there a man." The decision itself would seem to suggest that even in the new world the recent changes in the criminal procedure in Scotland would appear revolutionary. But the most interesting suggestions of all are those conveyed in the last two sentences of the report: "As the indictment stands, all the allegations might be true, and the respondent not guilty. The illicit intention might have been to steal, burn or murder, as well as to have unlawful sexual connection." Now, going to bed with one's neighbor's wife has always been deemed of itself to infer a heinous offense, but hitherto one had no idea of the vast possibilities of crime which such conduct opened up. We presume from the context that stealing, burning and murdering are cited merely as examples *ex grege*, and that the illicit intention inferred by this conduct might have been any offense known to the criminal law. In this view a charge taking the form of our old indictments might run somewhat as follows: "Whereas by the laws of this and every well-governed realm an attempt to commit wilful fire-raising is a heinous crime, and severely punishable, yet true it is and of verity, that you, the said John Smith, are guilty of the said crime, actor or art or part, in so far as on or about the 10th day of August last, in the house No. 247 High street, at present occupied by William Brown, tailor, you the said John Smith did go to bed with Jessie Spence or Brown, wife of the said William Brown, and this you did with the intention of committing wilful fire-raising." There is here a valuable suggestion for the defense in actions of divorce. Hitherto it has been deemed sufficient to prove that A slept with B's wife, and there remained no other possible defenses save lenocinium and condonation. But all this will be changed if we adopt the American suggestion. It will be prudent, however, for the defender to choose some comparatively venial offense as a cloak for the conjugal misconduct. Thus, in answer to an article in the condescendence for the pursuer libelling an act of adultery, we might have: "Answer for the co-defender—Admitted that the co-defender slept with the defender on the occasion libelled. *Quoad ultra* denied. Explained that co-defender went to bed with the defender with the intention of night poaching."