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COURT OF GENERAL SESSIONS OF THE PEACE,

County of New York,

Part I.

.....

THE PEOPLE &c.,

-v-

FRANCESCO DESCHESERO.

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Before

HON. JOHN W. GOFF, R.,

and a Jury.

Indictment filed April 2, 1901.

Indicted for Sodomy.

New York, April, 11, 1901.

APPEARANCES:

For the People:

Assistant District Attorney ROBERT TOWNSEND.

For the Defendant:

AMOS H. EVANS, ESQ.

.....

Thomas W. Osborne,
Official Stenographer.

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LOUIS ASTERITA, called as a witness in behalf of the People,

being duly sworn, testified as follows:--

D i r e c t E x a m i n a t i o n .

BY MR. TOWNSEND:

Q ~~Where do you live?~~ *I live* A 323 East 67th street.

Q ~~How old are you?~~ *I am* A Seventeen. *years of age*

Q ~~What do you work at for a living?~~ *I* A ~~Work.~~

Q ~~At what?~~ *I* A Umbrella factory.

Q ~~Is your father living?~~ *is* A Yes, sir.

Q ~~You live home with your father?~~ *I* A Yes, sir.

Q ~~Look at the prisoner, the defendant at the bar, and state whether you know him.~~ *I* A Yes, sir.

Q ~~How long have you known him?~~ *I* A About three weeks ago--

Q ~~How long have you known him, about a year?~~ *I* A Yes, sir.

Q ~~Known him a good while?~~ *I* A Yes, sir.

Q ~~How often would you see him?~~ *I* A About twice.

Q ~~Do you recollect the 1st of March?~~ *I* A Yes, sir.

Q ~~Did you see him that morning?~~ *I saw* A Yes, sir.

Q ~~Whereabouts was he at that time?~~ A At the hall, 65th street.

Q ~~What number?~~ A 236.

Q 236 West 65th st.? A Yes, sir.

Q ~~Where were you at the time you saw him there?~~ *I was* A I was walking up.

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Q ~~Whereabouts was he at that time?~~ A At the hall, 65th street.

Q ~~What number?~~ A 236.

Q 236 West 65th st.? A Yes, sir.

Q ~~Where were you at the time you saw him there?~~ *I was* A I was walking up.

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Q ~~Walking up where?~~ A Up to the store.

Q ~~What store?~~ A Grocery store.

Q To get some groceries? A ~~Yes, sir.~~

Q ~~As you passed by where the defendant was did he say or do anything?~~ *He* Called me upstairs.

Q ~~What did he say to you?~~ A He said, "Come upstairs".

Q ~~What did you say to him?~~ A I said, "No".

Q ~~What?~~ A I said, "No".

Q ~~What did he do then?~~ A He coaxed me up.

Q State what he did--what he said and what he did. ~~He~~ He coaxed me up; that is all.

Q ~~How did he coax you?~~ A He said, "Oh, come on".

Q ~~What did you do then?~~ A Then I went up.

Q You went up? ~~How far did you go?~~ A Up to the first floor.

Q One flight up? A ~~Yes, sir.~~

Q ~~What was up there?~~ A Nobody.

Q ~~What was there, a room or what?~~ A A room.

Q ~~What was in the room?~~ A A lot of chairs.

Q ~~Had you ever been in that room before?~~ A ~~No, sir.~~

Q ~~Do you know whether the defendant lived there or not?~~ ~~No, sir.~~

Q ~~When you got in the room what did the defendant say or do?~~ A Told me to take down my pants.

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Q ~~What did you do then?~~ A I took them down.

Q ~~What did he do then?~~ A Then he put some oil on his thing and he stuck it in.

Q ~~Put some oil on his penis?~~ A Yes, sir.

Q ~~Did you see where he got the oil from?~~ A Yes, sir.

Q ~~Where?~~ A From a closet.

Q ~~What was it in, a bottle?~~ A In a bottle.

Q He put it on his penis, and then what did he do? Did he ~~put anything on~~ *defend* A No, sir.

Q ~~Then what did he do?~~ A Then he told me to go home.

Q Before that-- *you say he took my trousers down.* ~~Then what did you do?~~ A Then I was on a chair.

Q ~~How on a chair?~~ A Like this (the witness bends down).

Q Show the jury how on a chair-- hands on the chair? A Yes, sir. (The witness bends forward).

Q ~~What did he do then?~~ A Then he stuck his thing in.

Q ~~Where did he put it?~~ A In my back-side.

Q ~~When he put it in your back-side what did he do?~~ A That is all.

Q ~~Did he make any motion?~~ A No, sir.

Q ~~What did you say or do?~~ A He gave me five cents and I went home.

Q ~~He gave me five cents?~~ A Yes, sir.

Q ~~Did you say anything to him?~~ A No, sir.

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- Q When he put it into ~~your~~ *my* back-side, ~~as you say~~ *Q* did you ~~feel anything?~~ *not* ~~A No, sir.~~
- Q *Q* Did you feel it in you? ~~A Yes, sir.~~
- Q Feel it in ~~your~~ *my* back-side? ~~A Yes, sir.~~
- Q How far in? A Half way.
- Q ~~What?~~ A Half.
- Q *Q* ~~Have of it in your~~ *had* back-side? ~~A Yes, sir.~~
- Q *Q* Did you scream out? ~~A No, sir.~~
- Q *Q* Did not say anything? ~~A No, sir.~~
- Q Did he say anything after he got through? ~~A No, sir.~~
- Q *Q* Except to give ~~you~~ *me* some money? ~~A No, sir.~~
- Q *Q* ~~Were you~~ *was* examined by a doctor? ~~A Yes, sir.~~
- Q Dr. Dooley? ~~A Yes, sir.~~
- Q ~~How long afterwards?~~ A About three weeks.
- Q Before that ~~did your~~ *me* father make an examination of you? ~~A Yes, sir.~~
- Q ~~When did you next see the defendant after that morning?~~ A I did not see ~~him~~ any more.
- Q Didn't see him until ~~when~~ -- you saw him in court? ~~A Yes, sir.~~
- Q Not until you saw him in court? ~~A No.~~
- Q *Q* Did you say anything to him there? ~~A No, sir.~~
- Q *Q* Did he say anything to you? ~~A No, sir.~~
- Q Was this house where this took place in the County of New

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York? ~~A No,~~ it is only in one building.

Q Is it in the City of New York? ~~A Yes, sir.~~

Q And County of a New York? ~~A Yes, sir.~~

~~Cross Examination.~~

BY MR. EVANS:

Q How old are you? ~~A 17.~~ *17 years old*

Q Born here? ~~A Yes, sir.~~

Q ~~Born~~ in this country? ~~A Yes, sir.~~

Q ~~New York City?~~ ~~A Yes, sir.~~

Q Did you ever go to school? ~~A Yes, sir.~~

Q ~~How long did you go to school?~~ A About two weeks.

Q ~~About two weeks?~~ A Yes, sir.

Q Never any longer than that? ~~A No, sir.~~

Q Can you read? ~~A No, sir.~~

Q ~~Cannot?~~ ~~A No.~~

Q And cannot write? ~~A No, sir.~~

Q Did you sign a paper in the police court when you went in there? ~~A No, sir.~~

Q Did you make your mark? ~~A No, sir.~~

Q Was any paper shown to you? ~~A No, sir.~~

Q Do you remember you were taken to the police court in 54th street? ~~A Yes, sir.~~

Q Your father took you there? ~~A Yes.~~

Q Didn't you make a statement there? ~~A Yes,~~ I told--

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Q Did you make it to the police court clerk? A ~~Yes, sir~~

Q ~~Didn't he take it down in writing?~~ A ~~Yes, sir.~~

Q ~~Didn't you make your mark to it?~~ A ~~No, sir.~~

Q ~~Wasn't that statement read to you after it had been taken down by the police court clerk?~~ A ~~No, sir.~~

Q Do you understand what I ask you? A Yes

Q ~~I talk about the day that you went into the police court up on 54th street with your father. You remember that day?~~ A ~~Yes, sir.~~ *I went to the police court with my father*

Q You remember it well. And I ask you the question as to whether or not a statement was not taken down before the police court clerk, and you say, "Yes", and I ask whether that statement was not read over to you. Is that true?

A Yes, sir.

Q ~~Didn't you just say a moment ago that it was not?~~ A ~~Yes, sir.~~

Q ~~Which is true, that it was read over to you or that it was not read over to you?~~ A ~~It was read over to me.~~

Q Why did you say it was not read over to you? A I made a mistake.

Q ~~You made a mistake?~~ A ~~Yes, sir.~~

Q You understood what I asked you? A Yes, sir.

Q You made a mistake when you said it was not read to you?

A Yes, sir.

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Q Do you remember stating that you did not make your mark to that statement? A Yes, sir.

Q You just told me that a moment ago? A Yes.

Q Was that true or not? A It is true.

Q You did not make your mark? A I did make my mark.

Q Didn't you just a moment ago say you did not make your mark to the paper? A Yes, sir.

Q Why did you say that, if you did? A I made a mistake.

Q When was it? A On Tuesday morning.

Q That this defendant took you up into the room? A On Tuesday morning.

Q What Tuesday morning? A The 1st of March.

Q The first day of March? A Yes, sir.

Q What makes you remember so distinctly that it was on Tuesday morning? A Because I was going to the store.

Q You were going to the store? A Yes.

Q What store? A 65th street.

Q Where? A In the block.

Q Where? A In the block.

Q What kind of a store were you going to? A Grocery store.

Q For your parents? A Yes, sir.

Q They had sent you to the grocery store? A Yes.

Q And that is the reason that you remember that it was on Tuesday, the 1st day of March? A Yes, sir.

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Q ~~Hadn't you~~ gone to the grocery store before that? ~~A Yes,~~
sir.

Q ~~Hadn't you~~ gone a great many times? ~~A Yes, sir.~~

Q A great many other mornings? ~~A Yes, sir.~~

Q That is not any reason why you remember that it was on Tues-
day, the 1st day of March, is it? A That is the day he
called me upstairs.

Q ~~What?~~ A That is the morning he called me upstairs.

Q Why are you so certain that is the morning? Couldn't it
have been Wednesday, the 2nd day of March, or the Saturday
before? A No, sir.

Q What makes you remember so distinctly that it was on Tuesday
the 1st day of March? A That is the day he called me up-
stairs.

Q ~~How many days has the month of March?~~ Do you know how many
days there are in a week? ~~A Yes.~~

Q ~~How many?~~ A Six.

Q Six days in a week. Before you went to the police court
you had a talk with your father in regard to this? ~~A Yes,~~
sir.

Q Did your father tell you what to say in the police court?
~~A Yes.~~

Q ~~What?~~ A Yes, sir.

Q He told you what to say in the police court? ~~A Yes, sir.~~

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Q And ~~you~~ said in the police court just what ~~your~~ father told ~~you~~ to say? A ~~Yes, sir.~~

Q Did you make more than one statement in the police court?

A ~~No, sir.~~

Q What? A ~~No, sir.~~

Q Just the one statement? A ~~Yes, sir.~~

Q That ~~your~~ father told ~~you~~ to tell? A ~~Yes, sir.~~

Q Had you had any talk with ~~your~~ father? A ~~No, sir.~~

Q Before the 1st day of March in regard to anything of this kind? A Yes, sir.

Q You had? Had anybody else been doing anything of this kind to ~~you~~ besides this defendant? A ~~No, sir.~~

Q Nobody else? A ~~No, sir.~~

Q Did you understand what ~~I~~ said a moment ago when I asked ~~you~~ if ~~you~~ had any conversation with ~~your~~ father in regard to a matter of this kind before the 1st of March-- ~~you~~ understood that? A ~~Yes.~~

Q And ~~you~~ said yes? A ~~Yes, sir.~~

Q Do you mean that or is it a mistake? A No, sir, I mean it.

Q ~~You~~ mean before the 1st of March you had a talk with ~~your~~ father about this? A Yes, sir.

Q Did ~~you~~ tell him before that time what had happened? A ~~Yes, sir.~~

Q How did you come to tell ~~your~~ father? A Because I wanted

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to tell him.

Q ~~How long~~ after the 1st day of March was it that you told your father? A It was on Monday.

Q ~~What?~~ A On Monday.

Q The next Monday? A Yes, sir.

Q Was that the first conversation you had with your father in regard to it? A Yes, sir.

Q Did you understand me when I asked you whether you had ever talked with your father about it before the 1st day of March?

A Yes, sir.

Q And you said, "Yes."

Q You talked with your father about it before it actually occurred; is that true? A Yes, sir.

Q Told him all about it? A Yes, sir.

Q And then you talked to him again afterwards? A Yes, sir.

Q On the following Monday? A Yes, sir.

Q ~~What did you tell him?~~ A I told him he took me upstairs and told me to put down my pants.

Q Why was it you waited until the following Monday to talk to your father about the matter? A I told my mother.

Q Told your mother? A Yes, sir.

Q ~~When?~~ A On Sunday.

Q The day before? A Yes, sir.

Q ~~Did your mother tell your father or did you tell him?~~

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~~No, my mother told him.~~

Q ~~Then you did not tell your father?~~ ~~A No, sir.~~

Q ~~You did not tell your father at all?~~ ~~A No, sir.~~

Q Your father asked you about it? A I told him after my mother

Q ~~Did your father ask you about it?~~ ~~A Yes, sir.~~

Q Before you told him anything at all about it? A Yes, sir.

Q That was on Monday? A Yes, sir.

Q When he asked you about it you told him? A Yes, sir.

Q ~~Did you tell him you were diseased?~~ ~~A Yes, sir.~~

Q ~~Did you tell him you were in pain?~~ ~~A Yes, sir.~~

Q ~~Why was it you spoke to your mother about this matter~~
~~all?~~ A Because she wanted to know.

Q She asked ~~what?~~ A Yes, sir.

Q She asked you if anything of this kind had happened? A
~~Yes, sir.~~

Q She asked you if this man had done anything of that kind to
~~you?~~ A Yes, sir.

Q ~~Yes, don't mean that, do you?~~ ~~A Yes, sir.~~

Q You mean that? A Yes, sir.

Q ~~Your~~ mother came up to ~~you~~ and asked you if ^{any} thing of this
kind had happened? A Yes, sir.

Q Without you ever having said anything at all to her about it
~~to her?~~

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Q Is that right? A ~~Yes, sir.~~

BY THE COURT:

Q ~~What did your mother say to you?~~ A She said, "What did he do?" I said, "He called me upstairs".

Q ~~What did your mother say to you?~~ A She wanted to know.

Q ~~Know what? What did she say?~~ A She wanted to know did it happen by this man, and I said, "Yes".

Q That is, the man that called you upstairs? A ~~Yes, sir.~~

Q ~~You told her a man called you upstairs?~~ A Yes, sir.

Q ~~Did you know this man before?~~ A Yes, sir.

BY MR. EVANS:

Q ~~Do you mean to say that before you had spoken to your mother or your father or anybody about this matter that your mother spoke to you about it?~~ A Yes, sir.

Q ~~What did your mother say to you?~~ A She said, "Did this happen by this man?" and I said, "Yes".

Q ~~Said what? A "Did this happen by this man?" and I said, "Yes".~~

Q ~~What happened?~~ A This.

Q ~~What?~~ A This thing.

Q ~~Did she asked you if anything had happened?~~ A Yes, sir.

Q ~~What did your mother say to you?~~ A She said, "Did this dirty thing happen by this man?" and I said, "Yes".

Q ~~mother, before you had spoken to her, asked if this~~

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man had done anything like that to ~~me~~ ~~Yes, sir.~~

Q Is that right? ~~Yes, sir.~~

Q And then the next day your father spoke to you about it?

A Yes, sir.

Q Was your father home on Sunday? A Yes, sir.

Q What time was it on Sunday that your mother spoke to you about it? A It was about three o'clock.

Q In the afternoon? A Yes, sir.

Q Was your father home at the time? A No, sir.

Q What time did he come home Sunday afternoon? A I don't know.

Q Why? A Because I went to bed.

Q Did you go to bed in the afternoon? A No, sir, in the night.

Q What time did you go to bed? A About 6 o'clock.

Q About 6 o'clock in the evening? A Yes, sir.

Q You did not see your father that night? A No, sir.

Q What time did you see him the next morning? A About 7 o'clock.

Q How many members are there of your family? A About six.

Q Do you know how many there are? A Yes, sir.

Q Your mother and your father? A Yes, sir, and me and another big brother and my little brother and my little sister.

Q Where is your big brother? A Working.

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Q ~~Where is your little brother?~~ ~~He~~ is put away.

Q ~~What?~~ He is put away.

Q Put away ~~where?~~ A In the Gerry Society.

Q He is with the Gerry Society? A ~~Yes, sir.~~

Q Do you know why he was put away? A Yes, sir.

Q Why? A He would not go to school.

Q Because he would not go to school? A Yes, sir.

Q Is that the only reason? A Yes, sir.

Q How much younger is he than you? A He is about twelve years old.

Q ~~What?~~ A ~~About twelve years old.~~

Q ~~Didn't he get~~ into some of the same kind of trouble that you got in? A Yes, sir.

Q On the next Monday morning or was it Monday morning or afternoon, or what time of the day was it that your father spoke to you about the matter? A In the morning.

Q Were you up? A Yes, sir.

Q Dressed? A Yes, sir.

Q Had you breakfast? A Yes, sir.

Q How was it your father happened to say anything to you about it? A Because my mother told me.

Q I know, but did your father come up to you or you go to him and say anything about it? A No, sir.

Q ~~What did your father say to you?~~ A He said, "Did he done

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it? and I said, "Yes".

Q ~~Your father asked you~~ if this man had done anything of that kind to you? ~~A Yes, sir.~~

Q You did not tell him the man had done anything of that kind to you? ~~A No, sir.~~

Q You had not told your mother that the man had done anything of that kind to you? ~~A No, she wanted to know.~~

Q ~~What did your father tell you?~~ ~~A He came up to me and he asked me.~~

Q You told him-- when he asked you did you tell him this man had done something to you? ~~A Yes, sir.~~

Q ~~Did your father make an examination of you?~~ ~~A No, sir.~~

Q He did not. ~~Did your father ever make an examination of you?~~ ~~A No, sir.~~

Q Do you know what that is? ~~A No, sir.~~

Q ~~Did your father ever look at you?~~ ~~A Yes, sir.~~

Q To see what was the matter with you? ~~A Yes, sir.~~

Q ~~When, that morning?~~ ~~A No, Friday morning.~~

Q ~~The next Friday morning?~~ ~~A I mean Friday night.~~

Q The next Friday night? ~~A Yes, sir.~~

Q He did not look at you at that time, on Monday morning?

~~A No, sir.~~

Q Nor did anybody else? ~~A No, sir.~~

Q He waited until the next Friday night? ~~A Yes, sir.~~

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Q And then he looked at you on Friday night? *me* ~~A Yes, sir.~~

Q ~~When were you taken to the doctor?~~ *me* A On Monday night.

Q The next Monday night? ~~A Yes, sir.~~

Q This was pretty nearly two weeks after this man had done anything to you? *me* ~~A Yes, sir.~~

Q ~~You were then taken to the doctor?~~ ~~A Yes, sir.~~

Q And the doctor made his examination? ~~A Yes, sir.~~

Q ~~When was it that you went with your father to the police court?~~ *me* ~~A On Tuesday morning.~~

Q Tuesday morning? ~~A Yes, sir.~~

Q Two weeks after this occurred? ~~A Yes, sir.~~

Q *are you* ~~Are you sure of that?~~ ~~A Yes, sir.~~

Q Isn't it a little longer than that? ~~A No, sir.~~

Q *me* ~~Did you go to the police court more than one time?~~ A ~~No, sir.~~

Q *me* ~~Only once?~~ ~~A Yes, sir.~~

Q *are you* ~~Are you sure that it was only two weeks?~~ ~~A Yes, sir.~~

Q ~~Wait a minute; don't be so fast.~~ *me* ~~Are you sure it was only two weeks?~~ ~~A Yes, sir.~~

Q After this occurred, that you went to the police court? ~~A Yes, sir.~~

Q *are you* ~~Are you not mistaken about that, too?~~ ~~A No, sir.~~

Q ~~Do you remember the day very well?~~ ~~A Yes, sir.~~

MR. TOWNSEND: ~~What day?~~

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BY MR. EVANS:

Q That ~~you~~ went to the police court. ~~Do you remember that~~
day? ~~A Yes.~~

Q ~~On what day of the week was it, Do you remember?~~ A On
Tuesday.

Q ~~Just two weeks after this occurred?~~ A ~~Yes, sir.~~

Q ~~Wasn't it three weeks after it occurred?~~ A ~~No, sir.~~

Q ~~What?~~ A ~~No, sir.~~

Q ~~Wasn't it on the 21st day of March that you went to the~~
police court? A ~~No, sir.~~

Q ~~Do you know what day it was that you went to the police~~
court? A ~~Yes, sir.~~

Q ~~Do you remember the day?~~ A ~~Yes, sir.~~

Q ~~Cannot you be mistaken about that?~~ A ~~No, sir.~~

Q ~~Who went with you?~~ A My father.

Q ~~Did he tell you to go?~~ A Yes, sir.

Q He told you to go with him? A Yes, sir.

Q From the time that you told your father, or at the time
your mother told your father, and the time your mother asked
you about this until the time you went to the police court,
did you go with your father to see this man? A No, sir.

Q ~~Did you not?~~ A ~~No, sir.~~

Q Did you see this man after he took you up in this room, as
you say, until the time you saw him in the police court?

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~~A Yes, sir.~~

Q ~~Where did you see him?~~ A In the street.

Q ~~Where in the street?~~ A 67th street.

Q ~~Was your father with you?~~ A No.

Q Was it after ~~my~~ mother had spoken to ~~you~~ about the matter?

~~A Yes, sir.~~

Q After ~~your~~ mother had spoken to ~~you~~ about the matter?

~~A Yes, sir.~~

Q When ~~your~~ mother spoke to ~~you~~ about the matter and asked ~~you~~ if it was this man that had done anything, ~~did~~ she say anything about ~~you~~ going to this man? ~~A No, sir.~~

Q ~~In your father said anything to you when he spoke to you about it, about going to where this man was?~~ ~~A No, sir.~~

Q ~~Did you know where this man lived?~~ ~~A Yes.~~

Q ~~How long have you known him?~~ ~~A About since he was born.~~

Q ~~You have known him since he was born?~~ ~~A Yes, sir.~~

Q ~~How old are you?~~ A 17. *years old,*

Q ~~Are you mistaken about that, now?~~ ~~A No, sir.~~

Q You have known this man since he was born; he is older than you. A I know it.

Q And still you have known him since he was born? A Yes, sir.

Q *you* Sure of that? ~~A Yes, sir.~~

Q When he asked ~~you~~ to go upstairs in the room ~~you~~ were simply going along the street? ~~A No, sir; he was standing at the~~



hall.

Q ~~You were~~ ^{you} walking along the street? A ~~Yes, sir.~~

Q ~~Did he~~ ^{did you} say what he wanted ~~you~~ ^{me} to go upstairs for?

~~A No, sir.~~

Q ~~Did you~~ ^{did not} ask him? A ~~Yes~~ ^{No} sir.

Q ~~Did not~~ ask him at all? A ~~No~~

Q ~~You~~ simply said, "No". A ~~Yes~~

Q Is that right? A ~~Yes.~~

Q ~~You~~ said, "No", without knowing what he wanted ~~you~~ ^{me} to go upstairs for? A ~~Yes, sir.~~

Q Why did you say "No" when you did not know what he wanted you to go up for? A He wanted me upstairs.

Q Why did you say no, that you would not go upstairs, when you did not know what he wanted ^{you} to go up there for? A I made a mistake.

Q How did you make a mistake? A I was all mixed up.

Q ~~You~~ got all mixed up? A ~~Yes, sir.~~

Q ~~When,~~ when ~~you were~~ ^{you} telling these gentlemen ~~your~~ ^{me} story?

~~A Yes, sir.~~

Q ~~You~~ made some mistakes about it? A ~~Yes, sir.~~

Q ~~You~~ made a good many mistakes, didn't you? A ~~Yes, sir.~~

Q When ~~you~~ ^{he} said this man took ~~me~~ ^{me} upstairs ~~you~~ ^{me} made a mistake, didn't you? A ~~Yes, sir.~~

Q When ~~you~~ ^{he} said he did anything to ~~me~~ ^{me} you made a mistake?

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~~A Yes, sir.~~

Q Then the story you tell is not true at all, is that right?

~~A No, sir.~~

R e d i r e c t E x a m i n a t i o n .

BY MR. TOWNSEND:

Q You say you have never been to school but two weeks?

~~A Yes, sir.~~

Q What kind of laboring work do you do? A Wire work.

Q Who was the first person that you told after you say this man did this thing to you? A My mother.

Q Who was the next person you talked to about it? A My father.

~~BY MR. EVANS:~~

Defendant

Q Your mother spoke to you first about it? ~~A Yes, sir.~~

BY THE COURT:

Q You answered counsel, you answered that gentleman down there, that all that you had said about this man here, the defendant at the bar, about having taken you upstairs and having done something very bad to you, that that was all a mistake; is that so? A Yes, sir.

Q ~~It is not true?~~ A It is true.

Q ~~Why did you say~~ to this gentleman down there that it was not true, that you had made a mistake? ~~A~~ I was all mixed up.

Q ~~Are you diseased?~~ A Yes, sir.

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~~Q~~ In your back? ~~A~~ Yes, sir.

BY MR. ~~TOWNS~~

~~Q~~ Your father told you to tell this story? ~~A~~ Yes, sir.

LOUIS ASTERITA, call'd as a witness in behalf of the People,
being duly sworn, testified as follows:--

~~Direct Examination.~~

BY MR. TOWNSEND:

~~Q~~ Where do you live? ~~A~~ 323 West 67th street.

~~Q~~ The last witness, the boy who was last on the stand, is
your son? ~~A~~ Yes, sir.

~~Q~~ You are the father of how many children? ~~A~~ I am the
father of nine children. I lost five and I have got
four living.

~~Q~~ How old is this boy of yours? ~~A~~ He is going on 17.

~~Q~~ He works for a living? ~~A~~ I cannot make anything out of
it if he wants to go to work. If he don't I have to support
him. He has no head.

~~Q~~ Do you know the defendant? ~~A~~ Certainly.

~~Q~~ You have known him for some time? ~~A~~ I know him since he
came to this country.

~~Q~~ That is how long? ~~A~~ He is here over twenty years, may be.

~~Q~~ During that time would you see him often? ~~A~~ See him most
all the time. We lived in one neighborhood.

~~Q~~ Lived in the one neighborhood? ~~A~~ Yes.

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Q ~~Where~~ would you be when you saw him? A Up on the street.

Some times he came up to my house and I go to his house--

his sister's house and mother's house.

Q ~~He~~ visited your house? A Yes, sir.

Q When you first learned of this trouble what did you do?

A As soon as I find out, because I know particularly,

as soon as he give it away who done it, I took the boy

to the doctor for examination.

Q Before that what did you do with the boy? A All I asked

the boy, who done it, and he won't give it away to me,

because he was afraid I would lick him, so he give it to the

mother away Sunday afternoon, and she go to work and she

told me Monday morning.

Q ~~Did you~~ make any examination of the boy? A Of course,

she was trying that vaseline.

Q Did you look at his back-side? A Sure I did. I said,

"Good God, he has a full dose".

Q What was the condition of his back parts when you saw him?

A He was ripped up.

Q Sore? A Sore? Oh, God, the worst thing you ever seen in

your life.

Q What did you do with the boy? A I took him right over to

the doctor and had an examination and the doctor said he was

diseased.

~~Q Then did you go with the boy to the station house? A~~

Me I took him up to the court and had him arrested.

Q ~~You had the defendant arrested? A Yes, sir.~~

~~Q Where was the defendant when you first saw him after you~~

~~learned of this trouble--where was the prisoner when you~~
~~first saw him? A I saw him most every day.~~ *was in the court, the prisoner was*

~~Q After you learned of it, after you heard of it? A After~~

I heard it-- I heard it Monday morning about twenty after seven.

Q Where did you meet the defendant after that for the first time? A I don't know what you mean.

Q After *you* discovered the trouble with the boy ~~did you see~~ the defendant? A ~~Sure, yes.~~ I met him Thursday morning.

I was talking to him.

~~Q Where was he? A I met him in 65th street, where he is living--used to be living.~~

~~Q Tell what you said to the prisoner and what he said to~~

~~you. A I ain't talking anything about the case at that time at all, only talked regular, like a gentleman, same as always did.~~

Q ~~Did you know of it at that time? A I did.~~

Q And you never said anything to him about it? A Not at all, because I wanted to get him in it. I knew he was filled up with the business, with the dose.

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I had
 Q ~~Did you have~~ him arrested? A ~~Yes, sir.~~

Q After he was arrested, did ~~you~~ *not* talk with him? A ~~No, sir,~~
 not afterwards.

Q ~~Did you talk with him before?~~ A Before he got arrested.

Q ~~What did you say to him about this trouble?~~ A When I got
 him arrested, he asked me, he said, "What I get arrested
 for?" I said, "I want you to understand, my dear friend,
 you rottened my boy, and I will get satisfaction of you.
 You got satisfaction off my boy, and I will get satisfac-
 tion of you."

(Through the interpreter): When I had the defend-
 ant arrested, the defendant asked me, "Why did you have me
 arrested, what for?" Then I said to him, "I had you
 arrested because you took satisfaction out of my boy who is
 crazy, and I will get satisfaction from you from the Court."

Did not talk much
 Q ~~Did you have any~~ further talk with him? A ~~Not much~~ after
 that.

Q Before this, before this matter came out had you had any
 talk with him about his--about any trouble that he had?
 A ~~Certainly~~ right along.

Q ~~State what talk you had with him?~~ A About the disease
 he had and everything else.

Q (Through the Interpreter): What talk did you have with
 this defendant before this trouble came out about any di-

sease or trouble that the defendant might have? A He did not say anything about my boy.

Q Did you have a talk with the prisoner or with the defendant about his own trouble, about any disease that the defendant had or anything about his private parts?

Objected to as leading.

Objection overruled. Exception.

A Yes, sir.

~~Q Please tell what you said to the defendant and what the defendant said to you.~~ A He spoke to me just like one man speaks to another. He said, "I have been diseased from women," that he would have to undergo a treatment in the hospital, having some chancre, that is about all.

~~Q How long did you have this talk before you learned of the trouble with the boy?~~ A We met nearly every day, I and the defendant, and we always had some talk about that, and he was three weeks, nearly, at home, on account of this bad disease, and about three weeks before that this happened with my son.

Cross Examination.

MR. EVANS:

My wife caused!
Q ~~How long did you say you had known this defendant?~~ A I know him since he put his foot in this country.

Evans
Q ~~You were here when he came?~~ *Certainly*

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- Q ~~You live where?~~ A Between 64th and 65th and 69th and 59th street-- always around that neighborhood.
- Q ~~Where do you live now?~~ A 67th street, 323 West 67th .
- Q ~~Where does he live?~~ A 240 65th .
- Q Right in the same neighborhood? ~~Yes, sir.~~
- Q You and he had been friends? ~~Certainly.~~
- Q Ever since he came to this country you had been seeing him all the time? ~~Yes, sir,~~ except he was working a little while in Jersey, and some times he came across and we would meet.
- Q How long did he work there? A I could not say.
- Q ~~Three months or two or three years?~~ A I believe it was a year or so, I don't remember.
- Q ~~You know~~ about how long ago that was? A I could not say. I tell you I don't know how long ago because I did not keep track of people , what they do, but I meet him every day.
- Q With the exception of that time, you knew him and saw him almost continually ~~from~~ every week? ~~A Sure enough,~~ this city--not when he was on the other side.
- Q Two or three times a week you saw him? ~~Yes, sir,~~ we used to work together.
- Q ~~He would come to your house?~~ A He came to my house, I go up to his house, and we were friendly.
- Q When was the last time that he was at your house? A I ain't

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got no book. If you give me a book I put it down.

~~Q~~ When was the last time? ~~has~~ A I don't know, I told you.

Q When was the last time that he was at your house to visit you? A I don't know.

~~Q~~ Was it just before his arrest? A Just before he got arrested I was talking to him in the morning.

Q How long has it been since he was at your house to visit you? A Oh, he was working down on Watt street and I met him in the morning.

Q How long? A I don't know. *how long*

~~Q~~ ~~I don't know?~~ ~~No~~

~~Q~~ Was it a week before he was arrested that he visited you at your house? A We met every morning and some times he came to my house and some times he don't, and I go to his house.

Q How long before this boy was arrested? A I don't know.

Q Was it three or four months? A I could not say. We always met him going to have a drink, and this and that.

Q You would not swear he had been to your house for the last three or four months before he was arrested? A Sure enough, because I sell him some cooper tools and I can prove it, and he owes me another dollar yet from selling him some cooper tools.

Q And that is the trouble with this case? A Not at all.

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Q ~~What does he owe you~~ ^{me} the dollar for? ~~A~~ I sell him an adz.

Q ~~When did you~~ ^Q sell him that? A ~~That was~~ on Saturday morning.

Q ~~When did you~~ ^Q sell him that? A I think it was the month of-- I think it was December or January.

Q Of this year? A I don't know if December or January.

Q He did not pay you the money? A He was a friend of mine and he was working with me right along.

Q Working down on the docks with you ~~me~~ ^{me} A He had a cooper job, New York Central, and he says, "Hello, will you do me a favor?" I said, "Yes, if I can do it," so we got down to the talk, "I want some tools." I said, "Go right ahead." I have a cooper shop and I won't refuse him. I said, "Come right down. I will give you all the tools you want." He said, "No, I don't have to go to work tonight." I said, "Come ahead, and I give him an adz and all the things he needed." I don't care a damn about the money, because he got sick afterwards, and I never asked him for the money. He got sick afterwards.

Q You don't care anything at all about the money? A ~~Not~~ ^{a bit.}

Q ~~Why did you~~ ^Q say he still owed ~~me~~ ^{me} a dollar yet? A As long as he did not give it to me.

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~~Q You are still thinking about it a little?~~ A I said, "See how much a friend that be."

you are not
~~Q You are still thinking about it?~~ ~~A No~~ -- just to say, "See how much friend that be right along."

Q When you went to talk to him on the morning before he was arrested you asked him for fifty dollars? A You are a damned liar. I did nothing of the kind.

THE COURT: You must not use such language in this Court.

To defendant's counsel
BY MR. EVANS:

Q You knew your boy was diseased on Monday morning? A I ain't examined the boy.

~~Q Answer my question. Didn't you know the boy was diseased on Monday morning, yes or no?~~ A ~~Certainly, yes.~~

~~Q What was the day that you saw this boy?~~ A I saw him Monday morning and saw him Thursday morning.

~~Q Saw this defendant?~~ A That lad there, Deschessero.

J Q You saw him on the same morning that *J* you knew your boy was diseased? A Yes, sir. *my*

J Q You saw him on the same morning that you first learned the store? ~~And I kept quiet.~~

Q ~~You saw him on the same morning, did you?~~ A I saw him the same morning, yes, sir, and I kept quiet on the case.

Q ~~And you saw him again the next morning?~~ A I saw him Monday

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morning and saw him Thursday morning.

Q ~~And when again did you see him?~~ A I saw him up in 54th street court.

Q ~~Then you saw him on the street twice before he was arrested, is that right?~~ A I saw him Monday morning and I saw him Thursday morning, and I saw him Wednesday morning up at the Court.

Q Did this boy tell you when this happened? Did you ask him when it happened? A It was three weeks before.

Q ~~Did this boy tell you when this thing happened?~~ You talked to the boy about it, ~~you say?~~ A Certainly I did.

Q ~~On the Monday morning you talked to the boy?~~ A I talked to the boy on Monday as to when that happened.

Q Did the boy tell you when it happened, when it occurred? Did he tell you when this man did that to him? Did he tell you what day it was that this man had done that thing to him? A I can't remember exactly what date.

Q ~~Did the boy tell you the time? Did you ask him when it was that this man had done this thing to him?~~ A It was three weeks before he told me about it.

Q Did he tell you that it was three weeks before? A Pretty well bloomed up on him. The workboy cannot work and do nothing.

Q ~~Did the boy tell you it was three weeks before?~~ A Yes.

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JOHN J. DOOLEY, called as a witness in behalf of the People,
being duly sworn, testified as follows:--

~~Direct Examination.~~

BY MR. TOWNSEND:

Q ~~You are a practicing physician?~~ A I am.

Q ~~Where do you live?~~ A 319 West 58th street.

Q And have been for some years? A Yes, sir, eleven years.

Q A graduate of institutions here? A Yes, sir, College of
Physicians and Surgeons, New York City

Q ~~Did you make an examination of the private parts of one~~
Louis Asterita? A I did.

Q ~~Do you recollect when?~~ A About the 15th of March; some-
wheres around there. I could not give you exactly the
date.

Q ~~Of this year?~~ A Yes, sir.

Q ~~Where was the examination made?~~ A At my office.

Q In this city? A Yes, sir.

Q From the examination that you made ~~what did you find?~~ A

I found that he had ulcerations around the anus, chancroids.

BY THE COURT:

Q ~~Give a word that the jury will understand.~~ A What the
boys call soft chancres.

Q The part of the body that you examined. A The anus.

Q ~~Everyone does not know what the anus is.~~ A The end of the

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intestine

Q Is it properly described when it is called the rectum?

~~A No,~~ the rectum is further up.

Q Popularly termed-- it is recognized as the rectum. We are not all physicians. These are twelve business men and they have not had the advantage of a technical education and may not be able to understand the technicalities. A Some times it is called the rectum.

It

Q Is called the rectum in general language. That is substantially the correct designation? ~~A Yes, sir.~~

BY MR. TOWNSEND:

Q You said there was ulcerations around this rectum? ~~A~~

~~Yes, sir.~~

Q ~~In the nature of what?~~ A They looked to me to be what they call chancres, soft chancres.

Q Did you notice whether there had been any penetration of the rectum or the anus? A I doubt it very much if it could have occurred with penetration.

~~Q Could you tell whether there had been partial penetration?~~

A May have been abutting of the penis against this anus, but that is about all. I don't see how the man could have entered that boy without him crying out.

BY THE COURT:

Q ~~You were~~ not there to know if he cried out or not. ~~He~~

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Q Then how can you come to that conclusion? A I asked the boy if it hurt him. He said no. If you insert your finger in the anus it hurts severely.

BY MR. TOWNSEND:

Q You will testify what you found there, whether there was any rupture or separation of the parts such as would occur by the insertion of some blunt instrument? A There was not. There was no rupture or tear of the mucous membrane.

Q There was no rupture or tear? A ~~No.~~

Q ~~You say there were ulcerations?~~ A ~~Ulcerations.~~

BY THE COURT:

Q Such as the chancres? A The proof that it was chancres was that he got what they call a bubo in the groin from septic infection.

BY MR. TOWNSEND:

Q ~~What in your judgment could have occasioned the ulcerations such as you found?~~ A The ulcerations, of course, must have come from something that was infected with the same thing, chancres.

BY THE COURT:

Q Is this what is commonly known as a sexual disease?

A Yes, sir; it is a venereal disease.

BY MR. TOWNSEND:

Q It could be occasioned by contact with a person whose penis

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was infected with chancres? ~~A Yes, sir.~~

BY THE COURT:

Q Assuming that the penis of a man was smeared with oil, would it make any difference in the appearance of the lips of the rectum, so far as penetration was concerned or producing rupture? A If the penis was smeared with oil it would hardly enter without making a rupture and tearing something of the mucous membrane, and then it would leave a permanent injury, or at least for a while.

Q Repeat that. A If he were penetrated by this penis it would temporarily paralyze the muscles surrounding the end of the rectum and he could not control his bowels, and there would be a tear in the mucous membrane.

~~Q My question was, would the smearing of the person of the man with oil make any difference in that conclusion that you came to? A No, sir.~~

Cross Examination.

BY MR. [unclear]

Q Did you find any such paralysis? ~~A No, sir.~~

Q Did you find any evidence that any blunt instrument of any kind had entered his anus or rectum? ~~A No, sir.~~

Q You simply saw these sores on the outside? A That is all.

Q They could have been made by coming in contact with the seat of a watercloset or any other way? A No, not from a

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seat of a watercloset because the anus is situated too high up from the buttocks. It is protected in that way.

~~Q~~ But coming in contact with any disease of that kind? ~~A~~

The chances are very slim.

~~BY~~ THE COURT:

Q Sitting down, ordinary sitting down, would ~~that~~ expose the anus to infection? ~~A~~ No, sir, you could sit down on the chancres and it could not affect your anus because it could not get up there.

Q Then ~~it~~ requires some active motive force to inject the infectious matter into the anus? ~~A~~ Contact of the penis or a stick infected that would go in between the buttocks.

Q That would mean some motive force to reach that point?

~~A~~ Yes, sir.

~~BY~~ MR. EVANS:

Q ~~As I understood you to say, if any blunt instrument had been inserted in the rectum of this boy, the parts downward the rectum would have been paralyzed to a certain extent?~~

~~A~~ If an instrument as large as a penis was inserted in the rectum there would be a temporary paralysis of the muscle.

Q ~~You~~ did not find any such paralysis in this boy's case?

~~A~~ No, sir.

Q Could not this infection have come if the boy had worn somebody else's clothes that had been so diseased? ~~A~~ The chances

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of getting chancres in such a way are almost impossible and very rare.

Q It is a contagious disease? A It is infectious.

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WILLIAM F. DEERING, called as a witness in behalf of the People, being duly sworn and examined, testified as follows:

~~Direct Examination:~~

BY MR. TOWNSEND:

Q ~~You~~ are connected with the Police Force in this County?

~~A Yes, sir.~~

Q ~~With the Central Office?~~ A No. Twenty-sixth precinct.

Q ~~Do you~~ know the defendant at the bar? A ~~Yes, sir.~~

Q You met him for the first time ~~when?~~ A On the 20th of March.

Q ~~Where?~~ A On West End avenue, between 66th and 67th streets.

Q ~~What time?~~ A Between half past seven and eight o'clock at night.

Q ~~In the evening?~~ A Yes, sir.

Q ~~Anybody with you at the time?~~ A ~~Yes, sir,~~ the boy's father. *was with me after that*

Q ~~Any other officer?~~ A ~~No, sir.~~

Q ~~What was the defendant doing at the time you met him first?~~
A Standing at a cigar store there.

Q ~~What was said or done at that time that you can hear?~~

A On the way up to 67th-street from West End avenue I told him what I locked him up for. I asked him, "Did you

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have anything to do with this boy-- did you take him into your room and put sweet oil on your penis?" He said, "No; I never done anything like that." I told him that was what he was accused of. I asked him if he was diseased at any time. He said yes; three or four months ago he had a venereal disease.

Q Then you took him to the station house? A Yes, sir.

Q Was anything further said by him with reference to this matter at any time in your presence? A That is all, except the next morning I asked him over again, and he said the same thing; that he never had anything to do with the boy. Over in the Police Court I asked him—

Q Did you refer again to his trouble? A Yes, sir; and he said about three or four months ago he had a disease.

~~Cross-Examination:~~
BY MR. EVANS. *By the court:*

Q He said that he had been diseased some three or four months ago? A Yes, sir, some three or four months ago.

Q Were you in the Police Court the morning that the father and the boy were there, when the warrant was being sworn out?

A Yes, sir.

Q And do you know what occurred at that time; did you see what occurred when the father and the boy came in?

A The father came to the Seventh District Police Court

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with a letter from Dr. Dooley to Magistrate Cornell. Two of the Society men-- I don't know the names--

Q ~~What society?~~ A Gerry-- whatever conversation was had with Magistrate Cornell, I don't know, but he asked what precinct it was in. And so a court officer said the 26th precinct. Then he asked if any of the officers were there, and he said yes, there was three of us here. And he called us over and gave us this letter.

Q The Gerry Society took no part in the matter? A ~~No.~~

J O H N J . D O O L E Y , recalled:

BY THE SECOND JUROR:

Q I understood you to say that the insertion of the penis would cause a temporary paralysis. A Yes, sir; the dilatation of the muscle.

Q After the lapse of three weeks would that still be noticeable? A ~~Yes, sir;~~ it would.

BY MR. EVANS:

Q You didn't notice anything of the kind in this boy? A No, sir.

BY MR. TOWNSEND:

Q Do you mean to say that the slightest penetration of these parts by the penis would produce paralysis? A If, as the boy said, he entered half way.

Q Not as the boy says. A No. A slight penetration would

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cause severe pain, but not paralysis, because there are two muscles; outside muscle, which is a thin ring, and inside.

Q The slightest penetration beyond the cheeks, would that of itself cause it? A That would not cause paralysis, but a complete penetration would.

BY THE COURT:

Q What distance do you say a complete penetration would be; how far, assuming a boy of this age and his physical stature?

A One inch would be sufficient to paralyze the muscle.

Q One inch? A Yes, sir.

Q Suppose there was a penetration one quarter of an inch; would it be sufficient to paralyze the muscle? A The penis is circular on the end, and it could go in a quarter of an inch without doing any damage, but if the whole circumference of the penis went in, then, of course, it would cause paralysis.

Q The orifice is composed of flexible muscles? A It is a muscular tube, and at the end is a muscle which is always in contraction and closes it.

Q That muscular tube is capable of contraction and expansion, according as nature's necessities require? A Yes, sir.

Q And it gradually opens towards the lips of the orifice?

A Yes, sir.

Q How far in from the outer lips of the orifice is the narrowest

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part? A The narrowest part is the extreme end of it, that we call the anus. That is the end of the tube.

Further in? A Further in.

And from the external line or lips of the orifice how far is it to the narrowest part of the tube? A The tube is like a hole, and is constricted by a string, which is the muscle.

Q It is conical in shape? ~~A Conical.~~

Q And from the entrance to the cone ~~how far~~ to the narrowest part where the constriction takes place? A It is all along, the muscle is-- it surrounds the rectum.

~~Q Could there, or could there not, have been a penetration within the lips of the orifice, the outer circle of the orifice, without leaving any signs or indications, at the expiration of three weeks?~~ A ~~There could be: yes, sir.~~

Were these shankroids on the external line of the orifice?

A Just outside, around the anus-- you cannot infect skin very well. The infection had to take place in the mucous membrane.

Q The infection could not very well have taken place upon the skin of the bottocks? ~~A No, sir.~~

PEOPLE REST.

MR. EVANS
MR. EVANS: The defendant moves the Court to direct the jury to acquit. It requires no argu-

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ment on my part to convince your Honor that the testimony of that boy is utterly worthless and valueless. The boy is not corroborated. The only testimony in regard to corroboration is the statement of the father, who upon the stand, without being questioned by the defense or prosecution, breaks out and says that the defendant still owes him a dollar.

THE COURT: Do you attach any importance to that?

Mr. Evans
MR. EVANS: I do. I say that, so far as corroboration in this case is concerned, there is absolutely none. The doctor testifies that he examined this boy, and that the boy was diseased, but there is no evidence corroborating the statement of the boy that this man had anything to do with him. Nobody saw him take him up stairs. No one saw anything in connection with the matter in any way, shape or form, and upon the boy's plain statement this jury is asked to convict the defendant. I submit that there is not sufficient evidence to go to the jury in this case.

THE COURT: There are two grounds presented in your motion. First, that there is no corrobora

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tion; secondly, that it would be dangerous to convict this defendant upon the testimony of the boy, because of an apparent weakness of intellect.

On the first ground, the law does not require corroboration. It differs from the crime of rape, where supporting evidence, or corroboration, is required. In the crime of sodomy there is no corroboration required. Indeed, although the second party to the act of sodomy consents, and is not only a willing, but an active, party in the commission of the crime, that does not relieve the accused from the responsibility for the act; so that in that essential element it differs from rape. Consent does not relieve the accused from responsibility.

On the question of corroboration, if it were necessary, it is for the jury to consider, and it is in evidence that this boy complains that the defendant committed an act of sodomy with him through the anus, and that, as a result, he was infected with a loathsome disease. The doctor's testimony is that there was such a loathsome disease on the person of the boy, and that such a loathsome disease of the rectum could not be pro-

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duced without there having been some active force or agent employed to inject the infectious matter between the buttocks. On that ground, I deny the motion.

On the ground that the boy's testimony is unreliable because of an apparent weakness of intellect, that involves a question of fact, and the Court will not assume to pass upon that question, but will leave that question to the jury; and I therefore deny the motion on that ground.

MR. EVANS: May I recall the boy's father?

THE COURT: You may recall him.

=====

LOUIS ASTERITA, recalled:

Handwritten: To top's memory

Q After you learned on Monday about this boy, and learned, as you say, that this was the man who had ill treated him, you saw the defendant the same day? ~~A~~ I saw him Monday morning; certainly.

Q It was on Monday morning that the boy's mother told you about it? ~~A Yes, sir.~~

Q And that same day you saw him? A ~~Yes, sir.~~

Q ~~Where did you see him?~~ A He lives in 240 Sixty-fifth street. He got his breakfast at his sister's place, in

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Sixty-seventh street, on the corner of Sixty-seventh street and Eleventh avenue.

~~Q Where was it you saw him?~~ A I saw him at 240.

~~Q You saw him at 240?~~

~~Q Did you go there to see him?~~ A He was out to get his breakfast and go down to work.

~~Q You saw him as he went past?~~ A I talked to him going along together.

~~Q You walked down the street with him?~~ A Yes, sir, certainly.

~~Q How far did you walk?~~ A As far as the corner of Sixty-seventh street and Eleventh avenue.

~~Q At that time you knew that ~~my~~ boy had been treated that way by him?~~ A Yes, sir. I kept quiet nicely.

~~Q Did you say anything to him about it?~~ A What for? Because he would run away.

~~Q You didn't say a word to him about it?~~ A Because he would run away.

~~Q You did not speak to him about it?~~ A No, sir.

~~Q Didn't say a word to him about it?~~ A What for? I didn't say anything to him; of course not, because I wanted to get him arrested.

~~Q I want to know whether or not you said anything to him at all about the matter when you walked down the street that~~

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~~morning with him.~~ A I didn't speak anything about the matter at all; only I knew all about it, what he had and what the boy had.

Q Did you take the boy to the defendant; did you take your son to this man and charge him with the crime? A The boy knew him right along.

Q When you heard of it, did you take the boy to this man?

~~A No.~~

Q You walked down the street three or four blocks with him that morning? A He pointed out to me, there is the man; he knows him.

Q The next day you met him again? A Yes, sir.

Q And when you met him again the next day, did you say anything at all to him about it? A No, sir.

Q You never said anything to him about it until you went into the Police Court and got a warrant? A That is all.

Q Not a word? A That is all. And then he wants to know what he—

Q And you met him three times during that week? A Yes, sir.

Q Did you say anything to him about that dollar that he owed you during that week? A No.

Q When was it that you said anything to him about that dollar?

A I ain't talking anything about the dollar at all.

Q Haven't spoken about the dollar? A Until just now, and

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doctor Monday evening.

~~Q You saw him Monday morning?~~ A I saw him Monday morning.

Q And then that evening? A I had a certificate from the doctor, and I took him to court Tuesday morning.

Q You didn't want to say anything to him about it until you had all the papers out? A Until I get him where he is, because if I had opened my mouth--

~~Q Never mind.~~

PEOPLE AGAIN REST.

=====

FRANCESCO DESCHESSERO, the defendent, called as a witness in his own behalf, being duly sworn and examined, testified as follows:

Direct Examination:

BY MR. EVANS:

Q ~~You are~~ an Italian? A ~~Yes, sir.~~

Q ~~How long~~ have you been in this country? A Over twenty years.

Q ~~How old~~ are you? A Thirty-four. *years old*

Q ~~Where do you live?~~ *San* Sixty-fifth street.

Q ~~What~~ number? A 240.

Q ~~Who with?~~ A All alone. I have a room by myself.

Q ~~Have you any~~ relations here, ~~any~~ people of ~~what~~? A ~~Yes.~~

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Q ~~What do you do for a living?~~ ~~A Anything.~~

Q ~~Laborer, or work by the day?~~ ~~A Laborer.~~

Q ~~Where do you work?~~ ~~A Freight handler.~~

Q ~~Where have you been working?~~ ~~A Down in Desbrosses street.~~

Q ~~Who for?~~ ~~A Mr. Kelly.~~

Q ~~You work there right along, steadily all the time?~~

~~A Yes, sir, since last winter; about seven months ago since I started in there.~~

Q ~~You know this boy who appeared on the witness stand?~~

~~A Certainly, I know him.~~

Q ~~How long have you known him?~~ ~~A Since he was born.~~

Q ~~Do you know his father?~~ ~~A Yes, sir.~~

Q ~~How long have you known his father?~~ ~~A Since I came to this country.~~

Q ~~Did you go to visit his house?~~ ~~A Once in a while.~~

Q ~~Been on friendly terms with him?~~ ~~A Yes, sir.~~

Q ~~Worked together?~~ ~~A Worked together, too.~~

Q ~~Where did you work together?~~ ~~A Sixty-sixth street, New York Central.~~

Q ~~Sixty-sixth street?~~ ~~A Yes, sir.~~

Q ~~How long ago was that?~~ ~~A That is a year ago.~~

Q ~~And since a year ago haven't you been working along with him?~~ ~~A No, sir.~~

Q ~~And haven't you?~~ ~~A No, sir.~~

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Q Did you hear the story that this boy told? A I don't know anything about it.

Q ~~Did you hear~~ the story that he told? ~~A Yes, sir,~~ I heard what he said.

Q ~~Did you hear~~ him say that on the morning of the first of March you saw him going along the street, and asked him to come up stairs with you ~~and~~ did you hear him testify to that?
A ~~I heard him.~~

Q ~~Is that true?~~ A I don't know nothing about it. I never saw the boy.

Q ~~Is it true or false?~~ A It is false. The man is against me; that is all.

Q ~~Did you hear~~ him testify as to what you had done to him? v
A I heard.

Q Was that ~~true or false?~~ A False. The man has a grudge against me.

Q ~~Did you ever have anything to do with this boy?~~ A ~~No, sir.~~

Q In that way? A ~~No, sir,~~ nothing of the kind.

Q Do you remember the first of March, whether you were working or whether you were idle? A No; I wasn't at work then.

Q ~~You were not working?~~ A No, I wasn't working; that is right.

Q ~~Did you hear~~ the boy say that you took him up stairs, coaxed

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him up stairs into your room; ~~did you hear the boy say~~

~~that?~~ A Yes; I heard him say it.

Q Did you do that? A No, sir.

Q Did you hear him testify as to what was done up in that room? A I heard the boy say

Q Is that true? A No, sir.

Q Did you ever touch the boy? A No, sir.

Q Did you ever see, during the month of March, the father of this boy? A I saw the father most every morning.

Q Do you remember the father testifying about his going down the street with you? A Yes, sir.

Q And talking to you? A Yes, sir.

Q Did he have any conversation with you on that morning?

A We talked about work.

Q Do you remember the next morning, Tuesday morning, the day before you were arrested? A I remember.

Q Did the father have any conversation with you at that time?

A Not at all.

Q Just wait a minute and don't be too quick. Did he have any talk with you? A Yes, sir.

Q What did he say to you? A He said about the boy was sick, and he wanted fifty dollars of me to pay on the boy-- he asked me for fifty dollars, and I said, "What?" And I laughed, and went down to work.

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~~Q Did he say what he wanted the fifty dollars for? A For his boy; on account of his boy.~~

~~Q For fifty dollars on account of his boy? A Yes, sir.~~

~~Q For what? A He didn't explain to me.~~

~~Q Did you ask him why? A I laughed at it and went away.~~

~~Q Did you ask him why he wanted fifty dollars? A No, I didn't ask him. I laughed at it and went away down to work.~~

~~Q It is true that you owed the father a dollar? A Yes, sir.~~

~~Q You have been owing it to him for some time? A Yes, sir.~~

~~Q How long have you been owing him that money? A Six months, about.~~

~~Q Did you have any words with him in regard to the money?~~

A He has been telling all around about the dollar. I give him a dollar, and owe him another dollar yet.

~~Q Did you have any words with him, or quarrel with him, in regard to the dollar? A Had a few last summer in a store.~~

~~Q What was the conversation? What did he say to you in regard to the money? A He said I owed him a dollar, and didn't pay it to him. I said I didn't refuse it; I owed it, and I owe it yet.~~

~~Q Did he say anything to you at that time about it? A He wants the dollar; that is all.~~

~~Q Did he say anything as to what he would do if you didn't pay him the dollar? A No, more than he said, "If you don't~~

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pay me fifty dollars, you will feel it." I laughed at him and went away.

Q He said, "If you don't pay that fifty dollars, you will feel it?" ~~A Yes, sir.~~

Q Did he have this boy with him on that morning? ~~A No, sir.~~
That is six o'clock in the morning.

Q He didn't have the boy with him? ~~A No, sir.~~

Q Did he tell anything about charging with having anything to do with the boy? ~~A No, sir.~~ He told me he wanted fifty dollars on account of his boy. I said, "You are crazy," and I laughed and went to work.

Q You say you never touched the boy? ~~A No, sir.~~

Q Never had anything to do with him? ~~A No, sir.~~

Q Have you ever been convicted of any crime yourself?

Objected to. Excluded. Exception.

Q Do you remember the police officer at the time you were arrested? ~~A Yes, sir.~~

Q And his asking whether or not you had any disease?

~~A Yes, sir.~~ He asked me, and I said no; that about five, or four or five, months ago I had a little bit of a thing, but I cured it up long ago.

Q That is true; you told the officer that at that time?

~~A Yes, sir.~~ certainly. That is about going on five months.

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Q You have been in the Tombs ~~for how long?~~ A Around 25 or 26 day. *I have not*

Q During that time ~~has~~ had any physician attending you? *Me*
A No, sir.

~~Cross Examination~~

BY MR. TOWNSEND:

Q Are you a married man? A I am a single man.

Q Where is your wife? A ~~She went away.~~

Q You were married? ~~Yes, sir.~~

Q ~~When did she go away, or when did you leave her?~~ A She went away. *Was*

Q ~~Where were you living at the time?~~ A ~~Sixty-seventh street.~~

Q ~~What number Sixty-seventh Street?~~ A 221.

Q You had two children, didn't you? A Yes, sir.

Q ~~How old were these children?~~ A One going on twelve and the other one eight years old.

Q ~~Boys?~~ A Girls.

Q Both of them? A ~~Yes, sir.~~ *My*

Q ~~How long ago was it that your wife went away?~~ A A year last Christmas.

Q ~~Did she leave you?~~ A She left me.

Q ~~Do you know where your wife is?~~ A Over in Jersey some place.

Q ~~When did you last see her?~~ A Going on three months.

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Q ~~Where was she when you saw her?~~ A Gloucester, New Jersey.

Q ~~You did tell the officer that you had a disease?~~ A ~~Yes.~~

Q ~~And what was that disease?~~ A ~~I had the clap.~~

Q ~~How many times did you have the clap?~~ A That was the first time. *I had only one*

Q ~~It was a pretty bad case, wasn't it?~~ A ~~No, pretty light.~~

Q ~~Did you go to the hospital?~~ A ~~No.~~ A friend gave me a kind pint of medicine, and I cured it.

Q ~~Didn't you go to the hospital?~~ A ~~No, sir.~~

Q ~~A friend of yours gave you some medicine?~~ A ~~Yes, sir.~~

Q ~~Don't you know where the Roosevelt Hospital is?~~ A ~~No,~~

~~sir.~~ I have never been there.

Q ~~Haven't you ever been there?~~ A ~~No, sir.~~

Q ~~Sure?~~ A ~~Roosevelt?~~— No, sir.

Q ~~You have never been to the Roosevelt Hospital?~~ A ~~No, sir.~~

Q ~~What hospital were you at?~~ A I went in a drug store to buy medicine.

Q You talked to Mr. Asterita about your trouble? A What is that?

Q Did you talk to Mr. Asterita about having had the clap?

A Nothing of the kind.

Q Never told him anything about it? A That is a long time ago.

Q ~~How long ago was it?~~ A Going on five months since I was

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cured and everything.

Q ~~How long were you affected with it?~~ A I had it on about fifteen or around twenty days.

Q ~~Pretty painful?~~ ~~Yes,~~ not much.

Q Didn't pain? ~~A No.~~

Q ~~You have another name that you sometimes use?~~ ~~A~~ Around the neighborhood, ~~yes, sir.~~

Q ~~What is your other name?~~ ~~A~~ Call me Frank Paul, for short.

Q ~~Didn't you go to the hospital under that name?~~ ~~A~~ ~~Yes, sir.~~

Q ~~You gave that name at the hospital?~~ ~~A~~ ~~Yes, sir.~~

Q What hospital? A Between Fifty-ninth and Sixtieth street. The name of the hospital I don't know.

Q On the west ~~or east side?~~ ~~A~~ West.

Q ~~What did you go there for?~~ ~~A~~ To fix the business.

Q ~~Was that the first case?~~ A The first case.

Q Then you had two cases; you once went to the drug store?

A Yes, sir, and cured that myself.

Q And at the time you went to the hospital you couldn't cure that yourself? ~~A~~ ~~No, sir.~~

Q ~~How long ago did you go to the hospital?~~

A About two months and a half, going on three months.

Q ~~You went up there how many times? How long were you in the~~

~~hospital?~~ A I went there four times.

Q Doctor cut you with a knife? ~~A~~ ~~No, sir.~~

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~~Q What was the matter with you?~~ A I went there with what-
ever they call them-- they said, a lump.

Q Had a lump-- did you ever hear them called shankers, or
shankroids? A Never heard anything of the kind.

Q ~~A pretty bad case of clap?~~ ~~A Not very.~~

Q ~~You were cut four times?~~ A Only once.

Q But you went four times? ~~A Yes, sir,~~ but it is all cured
now.

Q ~~What did they do to you? What did the doctor do to you at
the hospital?~~ ~~A Put a kind of syringe in the cut.~~

Q ~~A big instrument?~~ A ~~No, sir.~~

Q That was about two months and a half before you were ar-
rested? ~~A Yes, sir.~~

Q ~~When were you cut?~~ ~~A On the side, here.~~

BY THE COURT:

Q In the groin? ~~A Yes, sir.~~

Q ~~Do you know where the groin is?~~ A Right in the groin.
here (indicating).

BY MR. TOWNSEND:

Q Do you know what the doctor called it? ~~A No, sir.~~

Q Did he tell you what it was? ~~A No, sir.~~

Q Did he ask you where you got it? ~~A No;~~ he didn't ask me.
He cut it; that was all. He didn't ask me any questions.

Q You say Mr. Asterita said he wanted some money from you for

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the boy? ~~A Yes, sir.~~

~~Q Did he tell you what the trouble was with the boy?~~

A Didn't tell me no trouble. He said, "You ruined my boy," and I laughed at him.

~~Q Did you ask him how he was ruined, what way he was hurt?~~

A He said he had a sore back. I said, "I don't do any-
thing of the kind."

Q You just laughed at him? ~~A Yes, sir.~~ I went away down
to work.

Q Did you ask him why he wanted money from you for the boy?

A He blamed me on account of that boy was sick. I
said, "What is the matter with you? I don't know your boy
at all. I never saw your boy, and don't know anything
about him."

Q Did he tell you the boy had a disease in his back? A He
didn't explain that. He said, "You have to pay fifty dol-
lars to cure my boy."

~~Q Didn't he tell you he had trouble with you?~~ ~~A Yes, sir.~~
He said, "It is on account of your being sick. You gave
it to my boy."

Q He said, "You have got the disease, and you gave it to my
boy?" ~~A Yes, sir.~~

Q He was correct there— he told the truth then? A Cer-
tainly.

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The Court admonished the jury in accordance with §415 of the Code of Criminal Procedure, and took a recess until 2:15.

AFTER RECESS:

DEFENDANT RESTS.

Depto. Evans
MR. EVANS: I desire to renew my motion made at the end of the People's case, upon the same grounds.

Motion denied. Exception.

Depto. Evans
MR. EVANS: I also move your Honor to direct the jury to acquit this defendant upon the ground that, under section 303 of the Penal Code, under which he is indicted, a person who voluntarily submits to such carnal knowledge is equally guilty with the person who commits the crime, which makes him an accomplice.

Section 399 of the Code of Criminal Procedure provides that a conviction cannot be had upon the testimony of an accomplice unless he be corroborated by such other evidence as tends to connect the defendant with the commission of the crime. Now, in this case what evidence is there independent of the evidence of this accomplice? The testimony of the doctor simply shows that the boy was

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diseased in these parts. There is no evidence which, taken by itself, outside of the accomplice, which goes to show that this man committed this crime; and upon that ground we make this motion.

THE COURT: Motion denied.

Exception.

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THE COURT'S CHARGE.

GOFF, RECORDER.

Gentlemen of the Jury: As you have heard me instruct juries before, you are the exclusive judges of the facts in the case. The Court is the exclusive judge of the law. As to the law, you are bound to accept the instructions of the Court.

The law applicable to the crime charged against the defendant is as follows:

"A person who carnally knows in any manner any animal or bird, or carnally knows any male or female person by the anus or by or with the mouth, or voluntarily submits to such carnal knowledge, or attempts sexual intercourse with a dead body, is guilty of sodomy."

This defendant is charged with having carnally known the complaining witness by the anus.

The prosecution alleges and claims to have proven that on the day in question the defendant invited the complaining witness up stairs, and then requested the complainant to let down his trousers, that the complaining witness placed his hands upon a chair in a stooping position. He tells you that

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the defendant covered his penis with oil, and then inserted his penis in his anus.

You have heard the anus explained here by the physician, so that it does not require any further explanation on my part for you to understand what that means.

The prosecution claims that some days thereafter there was manifested on the person of the boy a loathsome disease; that the boy's parents, becoming acquainted with his condition, brought him to the doctor, from there to the police court, and, as a result, this defendant was arrested.

The doctor testified that he found upon the anus or around the anus of the boy what are called in medical parlance schanchroids, a venereal disease, and he testified that the disease could only have been contracted through infection; that is, contact with something that had the disease itself, and he says that the portion of the boy's person where these ulcers were found was protected from external contact by the buttocks, and that it required some force or agency and some instrument to insert, or, at least, to pass the buttocks in order to reach the affected parts-- the orifice of

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the anus.

You gentlemen understand the whole question, I am sure, and I shall try to dispose of this case with as brief a summary as possible.

The defendant denies that he did the act charged against him. He says that he had a venereal disease. He says that for one disease he went to a drug store and obtained medicine from or through a friend, and that at another time, two months prior to this occasion, he went to a hospital and was treated there, and that a lump in his groin was cut by the doctors.

You will remember, in that connection, that Dr. Dooley, the physician here, testified that the boy, the complaining witness, had a lump in his groin which was the result of septic poisoning connected with the shanchroids upon his anus.

These, gentlemen, are briefly the facts in the case.

I have no expression to make regarding them. I leave them to you for your exclusive determination. You are to judge of the credibility of each and every witness in the case, of the complaining witness as well as the defendant.

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If you believe that there have been contradictions or variations in the testimony of the complaining witness, you can take the whole matter into consideration and judge whether these conflicts or variations on the part of the complaining witness were the result of wilful desire or intention to falsify, or whether they were the results of omission or inadvertance, or of failute to understand the questions.

There is a further provision of the statute that says that "any sexual penetration, however slight, is sufficient to complete the crime specified in the last section"— any penetration, however slight, is sufficient in the eye of the law.

The boy says that he felt the penis of the defendant inserted half way. Whether he went through what the doctor calls his buttocks or in his person, he did not say. The doctor says that the anus itself was not ruptured, but that the anus was some distance within the tube, as he called it; that is, some distance in from the orifice, and that a blunt instrument might go some distance-- and he held up his fingers and showed you-- before it would reach the interior; that is,



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the place that he described as having contractile or expansive qualities.

I charge you that if the defendant did invite the boy and cause him to put his trousers down, and then put oil upon his own penis, as it is claimed that he did, and if he put his penis between the buttocks of the boy and with his penis penetrated the anus of the boy in the slightest degree, then he committed the crime specified in the section of the law which I have read.

You will bear in mind also the doctor's testimony upon the point of infection. He says that infection could not have been produced by contact of the infected part of the instrument with the skin of the boy; that it would have to come in contact with the mucous membrane; in other words, I should take it to be his meaning, though you are the judges of that, that the part of the boy which was covered by the skin, as we understand it in general terms, could not have been affected by contact with an infected object, and that the infection could only have been produced by an infected blunt instrument coming in contact with the membrane, or what might be called the tender

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or delicate parts of the interior of the person.

However, you are to determine all these questions, whether stated as expert opinion or as matters of fact.

The defendant is presumed to be innocent until the contrary be proved, and in case of a reasonable doubt whether his guilt is satisfactorily shown he is entitled to an acquittal. You have heard me define reasonable doubt before, and I am sure the very phrase carries with it its true meaning— that is, a reasonable doubt; not any doubt, but a reasonable doubt that is founded upon the evidence in the case and nothing outside of the evidence. He is entitled to the benefit of such a reasonable doubt.

But, if upon the whole case and upon comparing the testimony and weighing it carefully, you come to the conclusion that beyond a reasonable doubt the defendant did the act charged against him, then you should render a verdict of guilty of the crime charged. Let not the revolting character of the crime charged prejudice you against the defendant. Give the evidence a just and impartial consideration.

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Your verdict will be either guilty or not guilty.

Dep. Clerk
MR. EVANS: The defendant requests the Court to charge the jury that under section 303 of the Penal Code, under which this defendant is indicted, the complaining witness is an accomplice.

THE COURT: Request denied.

Dep. Clerk
MR. EVANS: Exception. Also that, as an accomplice, no conviction can be had upon his testimony unless he is corroborated by such other evidence as tends to connect the defendant with the commission of the crime.

THE COURT: Motion denied.

Exception.

The jury rendered a verdict finding the defendant Guilty.

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