

START

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CASE

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

MARCH TERM CONTINUED.

.....X
THE PEOPLE,
Plaintiff,
-against-
EDWARD MONBRUN,
Defendant.
.....X

: Before:

: HON. T. C. O'SULLIVAN, J.

: and a Jury.

New York, April 6th, 1909.

Indicted for Rape in the First and Second Degrees, Assault in
the Second Degree, and Abduction.

Indictment filed February 26th, 1909.

A p p e a r a n c e s:

For the People: Assistant District Attorney Appleton.

For the Defendant: Julius Hochfelder, Esq.

A jury was duly empaneled and sworn.

Stewart Liddell,

Official Stenographer.

THE PEOPLE'S TESTIMONY.

MR. HOCHFELDER: May it please the Court, I desire to state that one of my most important witnesses, a Doctor Bridges, who was subpoenaed by me to be in Court, came here, and some professional engagement necessitated his immediate withdrawal from the Court, and after a consultation with Mr. Appleton, it was agreed, in a general way, that if it was necessary, we would suspend Court.

MR. APPLETON: The Doctor will be here at two o'clock.

Mr. Appleton opens to the jury in behalf of the People.

(The Court then admonished the jury in accordance with Section 415 of the Code of Criminal Procedure, and adjourned the further trial of this case until two o'clock p.m.)

Recess.

After recess.

New York, April 6th, 1909.

TRIAL RESUMED.

MR. HOCHFELDER: I respectfully move that your Honor limit the consideration of the jury to the principal counts, one and two, rape in the first degree and second

degree, if the District Attorney is satisfied now that he has no direct proof or res gestae evidence, which, if taken together, would satisfy him that no conviction could be had; then, I ask, and only in that event, that your Honor instructs the jury that the two counts, rape in the first and second degrees, be eliminated from the consideration of the jury.

THE COURT: Motion denied. At the proper stage in the trial renew your motion, but at this stage of the proceedings it is denied.

MR. HOCHFELDER: May I ask your Honor to request the District Attorney to choose upon which ~~of the~~ particular count he is going to try this case, or whether he is going to try it on all of them.

THE COURT: That motion will be denied.

MR. HOCHFELDER: I ask your Honor, at this particular time, whether the District Attorney is going to try to prove the count of abduction in this case.

THE COURT: No, the Court will make no directions to the District Attorney.

MR. HOCHFELDER: May I ask your Honor, in view of the seriousness of the charge, to exclude all witnesses for the defendant and complainant from the Court room, in this case?

THE COURT: Yes, that can be done.

LOUISE WILLIAMS, called as a witness in
behalf of the People, testifies as follows:

BY THE COURT:

Q How old are you, little girl? A Seven.

Q Seven? Do you go to church? A Yes, sir.

Q Yes, and do you say prayers, night and morning?

A Yes, sir.

Q If any person would tell a thing that was not really
so, what would you call that? A A lie.

Q A lie, yes. Do you know whether it is wrong or right
to tell a lie? A Wrong.

Q It is wrong to tell a lie. Now, do you know why?
Have you any reason to believe why it is wrong to tell a lie?
What do you think about that? Who said that you should not
tell a lie? A God.

Q God said so, and do you believe if you told a lie that
anything would happen to you on account of that? A Yes, sir.

Q Yes; do you believe that you will be punished? A Yes,
sir.

Q But whether there is punishment or not, do you believe
that it is a wrong thing to tell a lie? A Yes, sir.

Q And for that reason, when questions are asked of you
you will try to tell what? A The truth.

THE COURT: You may examine.

DIRECT EXAMINATION BY MR. APPLETON:

Q Louise, how old are you? A Seven.

Q Do you know this man here, (indicating the defendant?)

A Yes, sir.

Q What is his name? A Edward Monbrun.

Q What, Edward Monbrun?

THE COURT: I think you had better select some person to stand at the child's side and repeat the answers of the child so that the jury may hear.

MR. APPLETON: The court officer is satisfactory to me, if he is satisfactory to the defendant.

MR. HOCHFELDER: He is satisfactory.

BY MR. APPLETON:

Q Where do you live? A 132 West 28th Street.

Q Who do you live with?

THE COURT: Wait a moment. Do you think you can talk loud enough so that that man over there, (indicating 12th juror) will hear you?

THE WITNESS: Yes, sir.

THE COURT: Now, talk loud.

BY MR. APPLETON:

Q Who do you live with, your mama and papa? A Yes, sir.

Q Did this defendant, Monbrun, live in the same house that you lived in? A Yes, sir.

Q Is that an apartment house, a flat house? A Yes, sir.

Q Do you recollect what floor you live on? A On the top floor.

Q And how many flights of stairs do you go up to get to your house? A Four.

Q And do you know which floor the defendant lived on, Mr. Monbrun? A The third.

Q Now, on or about the 8th day of February, 1909, did you go into the room of the defendant? A Yes, sir.

Q Where had you been before you went into the defendant's room that day? A I went to the store with my mama.

Q And did you go into the defendant's room when you got back from the store with your mama? A Yes, sir.

Q Who was in the room when you went into this room? A A little girl and me, and another little girl.

Q And who else? A Nobody else.

Q Well, was Mr. Monbrun there at that time? A Yes, sir.

Q Mr. Monbrun, you and two other little girls? A Yes, sir.

Q Now, did the other little girls go out before you, or after you? A One little girl----

Q One little girl what? A One little girl went out just a few minutes after I came in.

Q One little girl went out just a few minutes after you went in? A Yes, sir.

Q Then did the other little girl go out, a while after that? A No, sir.

Q Did she stay there all the time? A Yes, sir.

Q Now, was anything done to you in that room? A Yes, sir.

Q What was done to you? A He opened my pants, and he laid me on the bed, and he opened his own, and then he laid me on the bed, and then he shook and shook, and then after he put his tongue in my mouth, and then he went-- he was making noises like this, (breathing hard). And then he opened my pants, and then my mama called me, and the little girl ran out, and she says, "All right, Mrs. Williams, Louise will be right up."

Q Now, Louise, when the defendant unbuttoned your pants, did you say anything? A No, sir.

Q Did he put--- what part of your body did he touch? A This part, (indicating abdomen).

Q And how did he touch it? A He only opened my pants, and then he laid me on the bed.

Q Well, when he laid you on the bed, did he touch you in that part of your body that you pointed to? A No, sir.

Q When he laid you on the bed, did you say that he got on top of you?

MR. HOCHFELDER: I object, one moment. Let the witness testify.

MR. APPLETON: All right. I will try to be fair.

MR. HOCHFELDER: In view of the age of the little girl--

THE COURT: Objection sustained, for the present.

(To the witness) Tell what he did.

BY MR. APPLETON:

Q When the defendant put you on the bed, where did the defendant go, or what did he do? A He laid me on the bed, and he put me on top of him first.

Q Put you on top of him? What do you mean by that?

A He put me on top of his body.

Q He put you on top of his body? A Yes, sir.

Q At that time were your drawers, or your pants, as you called them, buttoned, or unbuttoned? A Unbuttoned.

Q And what part of his body did he put you on? A This part, (indicating abdomen).

Q And did he touch any part of your body? A No, sir.

Q And then afterwards you say he put you on the bed?

A Yes, sir.

Q What did he do when he put you on the bed? A He put his thing in mine.

Q He put his thing in your thing? What do you mean by your "thing", what part of your body? A This part, (indicating abdomen).

THE COURT: You may continue to find out what she means by that.

Q When you say the defendant put his thing in your thing, what do you mean by his "thing"? A His own like mine.

Q Like yours? A Yes, sir.

Q Well, where was it that he got it from? A I do not know.

Q What part of him did it come from? A I do not know.

Q Did it hurt you when he put his thing in your thing?

A Yes, sir.

Q And where did it hurt you? A Here, (indicating abdomen).

Q And at that time you say he had his tongue in your mouth? A Yes, sir.

Q Now, did you get up from the bed? A When my mama called me.

Q How many times did she call you? A Twice.

Q And the second time did you get up off the bed?

A Yes, sir.

Q Did you go upstairs to your mama's flat? A Yes, sir.

Q Now, what is the first thing you did after you got upstairs? A I ran to my papa and told him.

Q You ran to your papa and told him? A Yes, sir.

Q You told your papa what? A I told him what he did.

Q What who did? A What Mr. Monburn did.

Q And then who was the next person you spoke to after you told your father what Monsieur Monbrun did? A I told my mama, and mama came in.

Q You told your mama what Monsieur Monbrun did to you?

A Yes, sir.

Q And then what happened? Did anybody come into your flat then? A The two little girls.

Q The two little girls? A Yes, sir.

Q And after they came in, did anybody else come in?

A No, sir.

Q Did the defendant come into your flat after that?

A Yes, sir.

THE COURT: This man?

Q This man, Mr. Monbrun, did he come up into your flat after that? A Yes, sir.

Q And did your father talk to him? A Yes, sir.

Q Now, did you go to Doctor Nagel, the next day?

A I did not go. He came for me.

Q He came to your house the next day, did he? A Yes, sir.

Q And did Doctor Bridges also come to your house? A Yes, sir.

Q And did they both look at your parts where you were sore? A Yes, sir.

MR. APPLETON: I think that is all I care to ask the child about.

CROSS-EXAMINATION BY MR. HOCHFELDER:

Q Louise, when you went into Mr. Monbrun's room, did you go alone? A Yes, sir.

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Q And one girl went out when you came in; is that right?

A Yes, sir.

Q And was there also another girl in the room when you came in? A Yes, sir.

Q And was this little girl playing on the floor? A No, sir.

Q Where was she playing? A On the bed.

Q On the bed, and when you came in, Louise, did you find the door open of Mr. Monbrun's room? A Yes, sir.

Q You went into that room a number of times, did you?

A Yes, sir.

Q How long have you been living in that house, Louise?

A I cannot tell you.

Q Well, do you know how to count? A Yes, sir.

Q One, two, three, and so on? A Yes, sir.

Q You do not go to school, do you? A Yes, sir.

Q All right, now how many times did you go into that room during the time that you lived in that house? A I do not know.

Q You do not know? Was it more than ten times, (indicating on fingers); one, two, three, four, ten times? A I do not know.

Q Do you think it was more than twenty times? A No, sir.

Q Well, how many times, if it was not ten nor twenty, how

many times was it? A I think it must be eight times.

Q Eight times, no more than eight times that you remember? A Yes, sir.

Q And whenever you went into that room, did you find the room open, Louise? A Yes, sir.

Q And when the little girl was playing on the bed, the room was open, too; was it? A No, sir.

Q It was not open? A No, sir.

Q Well, did you close the door when you came in? A No, I did not close the door.

Q You opened the door when you came in, didn't you?

A The door was open.

Q Oh, the door was open? Well, you did not close it, did you? A No, sir.

Q And what was Mr. Monbrun doing when you went in there?

A He was playing with the little girl.

Q Was he playing on the floor? A No, he was speaking to her in French.

Q Speaking to her in French, and where was she at the time? A On the bed.

Q And was she playing with any toys on the bed? A No, sir.

Q What was she playing with? A She was only talking.

Q And he wasn't away from the bed, was he? A No, sir.

Q Where was he? A He was next to her.

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Q Well, how was he next to her, standing or sitting?

A Sitting.

Q Sitting on what, on the chair? A On the bed.

Q On the bed, and he was talking in French to her?

A Yes, sir.

Q And you understand French, don't you? A Yes, sir.

Q Now, after you got in, did you see any one close the door? A No, sir.

Q Well, then, you think it was open?

MR. APPLETON: I object to that. It is immaterial what she thinks.

Q Did you see your mother close the door of the room, Louise? A No, because she was out in the hall.

Q She did not close the door because she was out in the hall of the same floor? A Yes, sir.

Q And she was in front, wasn't she on the same floor?

A She was on the top floor. She was going upstairs.

Q Now, you went into the room, and your mama was upstairs on the top floor? A Yes, sir.

Q And what was she doing? Was she calling you? A She ~~was~~ was making the supper.

Q She was making the supper; but what was she doing in the hall that time? She was not making supper in the hall, was she? A No, sir.

Q Well, she was standing in the hall? A Yes, sir; she

thought I was going right up, and she said she would wait for me.

Q Well, Louise, did she see you go into the room?

A Yes, sir.

Q And did she say, "Louise, come up soon." A Yes, sir.

Q And she hollered down from the fourth floor to the third floor, didn't she? A Yes, sir.

Q And did you go up soon?

MR. APPLETON: Well, I object to what "soon" is.

Q Well, how long were you in there, Louise? A I don't know.

Q Well, do you know how long it takes to count a minute? A No, sir.

MR. APPLETON: Well, now, if your Honor please, even grown people cannot tell time down to a matter of fifteen seconds.

THE COURT: Well, she may tell if she knows.

MR. APPLETON: I withdraw the objection.

BY MR. HOCHFELDER:

Q Now, Louise, what time did your mama commence to make supper, ~~did~~ do you know? A Half-past six.

Q At half-past six? A Yes, sir.

Q Papa was home, wasn't he? A Yes, sir.

Q Well, now, when you were on the bed, there was another little girl on the bed, too, wasn't she? A Yes, sir.

Q And what is that other little girl's name? A Alvira.

Q Alvira, and do you know her second name? A Alvira Giordano.

Q Well, then, Alvira was on the bed, and then you were on the bed? A Yes, sir.

Q And did you commence to play with Alvira? A No, when I got in there the first thing he opened my pants. First he said, "Hello", and then he opened my pants.

Q That is the first thing he said? A Yes, sir.

Q Did he commence to do it in the hall? A No, sir.

Q He did it in the room? A Yes, sir.

Q On the bed? A No, sir.

Q Did he open up the other girl's pants too? A No, sir.

Q And just as soon as you got in, he said, "Hello", and then he opened your pants? A Yes, sir.

Q And the door was open? A Yes, sir.

Q And did you ever stand on the top floor, and look into Mr. Monbrun's room? A Sometimes I did.

Q Yes, you could look right down into his room when the door was open? A Yes, sir.

Q And Mama was looking right into that room? A Yes, sir.

Q And you saw your mama because you looked up? And said "All right, Mama, I will be up soon", didn't you? A Yes, sir.

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Q Now, did you see your mama ~~ask~~ for a long time when you were in the room? A No, sir.

Q Where did your mama go? Did she say, "Come on, come on, now, Louise, be quick?"

MR. APPLETON: Just a minute. You ask two questions.

Q Did she say, "Louise, come on now, I am waiting for you"?

MR. APPLETON: I object to that. It has been answered.

THE COURT: I will allow it.

Q Did she say that? A No, sir. She said, "Will you be up in a few minutes", and she went and made the supper, and called me when the supper was ready.

Q How do you know she went to make the supper? You were not looking at the time? A No, sir; she told me. She says, "I am going to make the supper, come right up, and if Monsieur Monbrun says, "No", "Come right upstairs."

Q Do you know whether your mama commenced to make the supper before you went down? Did she have the supper ready? A No, sir.

Q Did you see mama around the stove? A No, sir.

MR. APPLETON: Fix the time.

Q When you went down? A No, sir.

Q What were you doing then? A We just came up from the market.

Q Now, Mr. Monbrun, he put you on the bed on this part of

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the body, this way, (indicating), didn't he? A Yes, sir.

Q And you were lying on top, this way, (indicating),
is that right? A Yes, sir.

Q And how was the other girl lying, this way, too?
(Indicating). A No, sir.

Q How was she lying? A No, sir; she was running around
the bed.

Q Oh, she was running around the bed, was she? A Yes,
sir.

Q Was the bed away from the wall? A No, sir; it was
this way, (indicating), next to the wall.

Q Well, she did not go all the way around the bed? A No,
sir; she went only like that, (indicating), and then came
back.

Q She was running this way, (indicating), and then
came back? A Yes, sir.

Q And what was she running with? Did she have something
in her hands? A No, sir; she was going like that, (indi-
cating).

Q She was going like that, (indicating). A Yes, sir.

Q Did you ever see her go like that before that one
day, (indicating) lifting up her feet, (indicating). A No,
sir; she was kneeling and going around the bed.

Q Well, was she crawling on the floor, this way, (indi-
cating). A No, sir; she was going this way, like that, (in-
dicating) on the floor, this way, (indicating).

Q Well, was she jumping like that, (indicating)?

A This way, (indicating).

Q And did she have something to play with? Was she following something? A No, sir.

Q ~~She~~ Was ~~just~~ ^{she} going that way before? A No, sir.

Q Did you ever see her going that way before?

MR. APPLETON: I object to that as already answered.

THE COURT: What is the question?

(Question read by stenographer).

MR. APPLETON: I withdraw the objection, rather than to be charged with being unfair.

BY MR. HOCHFELDER:

Q Well, now, Louise, you were lying this way on the bed, (indicating)? A Yes, sir.

Q And were you kicking with your feet up in the air?

A No, sir.

Q Well, what were you doing? Did you lie---

MR. APPLETON: You asked her what she was doing.

Give her a chance to answer.

BY THE COURT:

Q What were you doing? A I was lying the way you were.

BY MR. HOCHFELDER:

Q And were you looking at something on the bed? A No, sir; I was looking at his face.

Q You were looking at his face? A Yes, sir.

Q And where was his face? A Like this, (indicating).

Q On the floor? A No, on the bed.

Q His face was on the bed? A Yes, sir.

Q And was his face away from you? A A little bit.

Q A little bit away from you? A Yes, sir.

Q Well, do you know whether his clothes touched ~~his~~ your clothes? Now, for instance, you were this way on the bed? Was he over here?

MR. APPLETON: She understood your question,

"Did his clothes touch your clothes?"

MR. HOCHFELDER: I think we might simplify matters a little bit.

MR. APPLETON: You should not ask her a question if you do not want her to answer it.

BY MR. HOCHFELDER:

Q Was he away from your clothes? A No, he was under me, and my clothes was touching his clothes.

Q He was under you? A Yes, sir.

Q Now, you had your face against him, too; did you?

A No, because he was under. I had my face near his face.
saying

Q Now, was he ~~saying~~ anything to you, Louise, when he was on the bed? A He says, "Isn't that nice?"

THE COURT: Speak a little louder. What did he say?

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THE WITNESS: "Is that nice", he asked me.

Q Did he show you anything when he asked you, "Is that nice?" A No, sir.

Q Did he have anything in his hand? A No, sir.

Q How far was he away from you when he said that?

A He was that far away from me, (indicating about four to six inches).

Q That far? A Yes, sir.

Q Now, were you on top of him that time? A Yes, sir.

Q You were on top of him that time? A Yes, sir.

Q And had you--- You had your face where? A I had my face just that much away from his, (indicating).

Q Well, now, did he press you hard to the bed when you were on top of him? A No, sir.

Q He did not? Did he hurt your hands? A No, sir.

Q Did he hurt your feet? A No, sir.

Q Did he hurt your head? A No, sir.

Q And when you were on top of him, was he holding you in his hands? A No, sir.

Q He was not? A No, sir.

Q Well, what was he doing? A He was like this, (indicating), and he was shaking like that, (indicating).

Q Was his back this way on the bed, (indicating)?

A Yes, sir.

Q That way, (indicating)? A Yes, sir.

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Q And your back was this way, too, was it? (indicating)

A Yes, sir.

Q And was he talking to the little girl that time when you were on your back this way, (indicating). A No, sir.

Q And Mr. Monbrun was on his back this way, (indicating). A No, sir.

Q Was he talking to the girl? A No, sir.

Q What was the girl doing? A She was running like I showed you before.

Q Well, she was running around all the time that way, was she? A Yes, sir.

Q And he was talking French to her? A Well, when I came into the room---

Q And what did he say to her, do you know? A I cannot tell you; I do not remember it.

THE COURT: What did you say?

THE WITNESS: I said I can't tell you; I don't remember.

Q Well, Louise, did you forget since that time?

A Yes, sir.

Q Now, were you talking to your mama about this? A My Papa first.

Q Yes, and what did you tell to your papa? A I told him what he did.

Q Did you tell him that he was--- that he told you that

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he was going away, and you must go away from the room, that he was going to close up? A No, sir; he didn't tell me that at all.

Q Louise, after you left the room, did the other little girl remain? A A few minutes after I went out.

Q Well, how do you know that she went away a few minutes after you went away? A Because my mama told me when I was home, what to say in Court.

Q How is that, Louise? Just say it over again?

THE COURT: Repeat it. Tell what your mama told you?

THE WITNESS: My mama told me what to say in Court.

Q She told you that? A Yes, sir.

Q How many times did she tell you that? A Every day when I had to come to Court.

Q She told you what to say? A Yes, sir.

Q And what did she tell you to say? A She told me to say everything what is right, and not to say a lie, and she asked me to say it, and I told her, and she says, that is right.

Q That is right. Now, how did you know that that little girl remained in that room when you went away? Did your mama also tell you to say that? A Yes, sir.

Q Yes, but you don't know that she went away yourself? Do you? Your mother told you that? A Yes, sir.

Q Now, what else did your mama tell you to say? A Nothing else.

Q And when you went upstairs to your mama after your mama had called you, did you say to her, "Mama, is supper ready?" A No, sir; I went right to my papa.

Q And did you say to papa, "Is supper ready?" A No, sir.

Q Well, what did you say? A I told him what Monsieur Monbrun did.

Q Did you tell your papa that Monsieur Monbrun kissed you in the mouth? A Yes, sir.

Q Yes, and he did kiss you, didn't he? A Yes, sir.

Q And did he kiss you on the floor? A No, sir.

Q Were you standing on the floor? A Yes, sir.

Q When he kissed you? A Yes, sir.

Q And did he say to you, "Louise, I must close the door, I am going to work," did he? A No, sir.

Q Well, did you see him close the door? A No, sir.

Q Did you see him go away? A No, sir.

Q After you told your papa what happened, did Papa go downstairs? A No, sir.

Q Well, did Mr. Monbrun come upstairs, and drink some beer or wine? A I don't know.

Q Well, did he drink something from a bottle, didn't he? A I don't know.

Q Well, did he drink something from a can? A I don't

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know.

Q Was Papa drinking, too? A No, sir.

Q Well, was Mama drinking? A No, sir.

Q Did Papa play a game of cards in that house? A No, sir.

Q Well, what did he do when he came upstairs? A He was going to this lady's house, and my papa----

Q This lady's house? A Yes, sir.

Q Which lady's house? A Mrs. Giordano.

Q And did she live upstairs, too; on the fourth floor?

A Yes, sir.

Q And did you go out, and Mr. Monbrun came upstairs to this lady's house? A No, sir.

Q ~~Mama~~ Who went first? A I did.

MR. APPLETON: Wait a minute----

Q You said you went to this lady's house, ~~Mrs. Giordano~~ Mrs. Jordan? A No, sir.

Q What is her name? A Mrs. Giordano.

Q You went first up there, did you? A No, sir.

MR. APPLETON: Now, the child said she did not, and then the question is so framed that she cannot understand. It is evident from the child's last answer that she did not understand.

BY MR. HOOFFELDER:

Q When you say you left the room, did you mean Mr. Monbrun's room? A Yes, sir.

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Q And then you went to this lady's house? A No, sir.

Q What is the name, Mrs. Giordano? A Yes, sir.

BY THE COURT:

Q Where did you go? A I went to my papa.

Q And when did Mr. Giordano come? A He wanted to come upstairs, and my papa called him in my house.

Q Well, did he come into your papa's house when your papa called him? A Yes, sir.

Q And how did your papa call him, do you know? A He was coming upstairs, and he says, "Come here, Mr. Monbrum, I want to speak to you."

Q Where was your papa at that time? In the chair? A In the hall.

Q Your papa was sick at that time, was he not? A Yes, sir.

Q And was he in bed that day? A No, sir.

Q He was sick but he was walking around the house? A Yes, sir.

Q Now, where were you at the time when papa called him?

A I was in my mama's bed.

Q Yes, in your mama's bed? A Yes, sir.

Q What did you do in that bed? A I was sleeping.

Q You were sleeping? A Yes, sir.

Q And did you go to sleep right away after you left Mr. Monbrum's house? A No, sir.

Q Well, how-- you did not have your supper at that time, did you? A No, sir; I didn't have one to eat. I didn't feel like it.

Q You didn't feel like it? A No, sir.

Q And did mama ask you to have supper? A Yes, sir.

Q Just right after you got up there? A No, sir.

Q Well, when did she ask you to have supper? A After I told my papa.

Q Well, when you came upstairs to your room did you say anything about supper at all? A No, sir; my---

Q No, and you fell asleep, did you, right away, after you went up there? A No, sir.

Q You did not? A No, sir.

Q Did you go to the room right after you saw papa?
A No, sir.

Q Well, when did you go to the room? A I went in the kitchen and mama asked me to have supper and I said, "No", I didn't want to eat supper.

Q Supper wasn't ready, was it? A Yes, sir.

Q And was it on the table? A Yes, sir.

Q And where was papa at the time when supper was on the table? A We had just come out to eat supper.

Q He just came out from the room that he was in? A Yes, sir.

Q And where did he go then? A We went into the kitchen to eat his supper.

Q And then what did he do? A He asked me to have supper and I said, "No, I can't eat supper."

Q And did mama ask you to eat supper too? A Yes, sir.

Q Did mama pull you out of the bed to have supper?

A No, sir.

Q Where did you tell Mama that you did not want supper?

A In the kitchen.

Q In the kitchen, and right after you left papa, after you told him what happened, you went to your room, to the bed, did you? A No, sir.

Q Well, when did you go to the room? A After my papa and mama asked me to eat.

Q Yes, did you tell papa and mama the same story that you are telling now? A Yes, sir.

Q And were papa and mama together, or did you tell papa first? A I told my papa first.

Q And then you told who? A My mama.

Q And then papa went out into the hall, did he? A No, sir.

Q Well, when did papa see Mr. Monbrum? A First, he was eating his supper and he heard Mr. Monbrum calling Madame Jiordino.

Q And where was Mr. Monbrum when he was calling the madam? A He was coming up the stairs.

Q Did you hear him call? A Yes, sir.

Q What was he saying? A He was saying, "Madam Jiordino, I want to see you", and Madam Jiordino did not hear, so he came up.

Q And then he went into her room? A No, sir.

Q Well, where did he go? A My papa called him and he came in our room first.

Q Yes, and did papa say to him anything there? A Yes, sir.

Q Well, what did he say? A He said, "I will fix you up all right. What did you do to my child?"

Q Well, what did he say?

MR. APPLETON: Who is "He"?

Q Mr. Monbrum? A He says, "I didn't do anything", and he was shaking.

Q He was shaking? A Yes, sir.

Q Well, did papa say anything that he did? A No, sir.

Q And did you say anything to papa when Mr. Monbrum was present, what Mr. Monbrum did you to you? A Yes, sir; my papa called me up and he said, "Now, you tell the truth", and I said, "Yes, you did it."

Q Yes, you did what? A Yes, you hurted me.

Q That Mr.---

MR. APPLETON: Now, let her finish. Let the jury hear. Don't drown it out.

THE COURT: Yes, you did what?

THE WITNESS: Yes, you did. You hurted

me.

BY MR. HOCHFELDER:

Q Did you tell Mr. Monbrum right there when papa was present? A Yes, sir.

Q And where did you say he hurt you? A He hurt me in my thing.

Q Did mama tell you that you should call this part (indicating) "thing"? A No, sir; but---

Q Who told you that you should call that "thing"? A Because it is not nice to call it another name.

Q It is not, and did mama tell you to call it "thing" because it was not nice? A No, sir.

Q (Continuing:)-- to call it any other name? A No, sir.

Q And the thing that you were speaking about, what did he do with his thing? A We put it in my thing.

MR. APPLETON: Wait a minute. I object to the form of the question. It is too involved. We start out with one question and then he asks another.

THE COURT: She has answered. The stenographer will read the question.

(Question read by stenographer.)

BY MR. HOCHFELDER:

Q Why do you call that thing that he put into your thing, why do you call it thing? A Because I don't want to call it another name.

Q Well, how do you call it thing for?

MR. APPLETON: Wait a minute. Your Honor,
we are going too far with this. The child has been
to school.

THE COURT: Yes, that question will be excluded.

BY MR. HOCHFELDER:

Q Now, Mr. Monbrum used to come into your mama's house
very often, did he? A Yes, sir.

Q Every day? A No, sir.

Q And did he have supper with you sometimes, with your
mama and papa? A No, sir.

Q Well, did he ever eat at the table in the kitchen?

A Whose table?

Q Your mama's table? A No, sir.

Q He never ate in the house? A No, sir.

Q But he used to come very often? A Yes, sir.

Q Well, did papa ever play cards with Mr. Monbrum?

A Yes, sir.

Q Well, they used to talk together? A Yes, sir.

Q And he used to talk to your mama? A Yes, sir.

Q Well, when would he come to mama's house, in the
morning or the afternoon? A Always in the nighttime.

Q After supper or before? A After supper, about
nine o'clock.

Q About nine o'clock? A Yes, sir.

Q. What time did you go to bed? A. Oh, half past nine.

Q. Half past nine every night? A. Yes, sir.

Q. How long did papa use to stay in the house when he would come, if you know?

MR. APPLETON: How long did papa stay in the house?

MR. HOCHFELDER: No, Mr. Monbrum. How long would he stay in your papa's house. I try to be fair; I do not mean to mislead this witness.

BY MR. HOCHFELDER:

Q. How often did papa stay in the house more than half an hour? A. I don't know.

Q. Well, do you know what an hour is? A. Yes, sir.

Q. And do you know what two hours are? A. Yes, sir.

Q. And did papa ever remain in that house more than two hours? A. No, sir.

MR. APPLETON: Do you mean papa again?

Q. Mr. Monbrum, when he was coming to your house? A. No, sir.

Q. He would not remain two hours? A. No, sir.

Q. You don't know, do you? A. No, sir.

Q. You don't know?

THE COURT: That is, you mean to say he did not remain two hours when you knew anything about it?

MR. WITNESS: No, sir.

BY MR. HOCHFELDER:

Q Do you ever get up at 12 o'clock in the night? A No, sir.

MR. APPLETON: Now, I object to that. What has that got to do with this case? It is objected to.

THE COURT: Yes, you may strike out that question and answer and we will not have any testimony of that character here. You might as well desist now from questions of that nature.

MR. HOCHFELDER: I do not want to carry it too far. Your Honor's suggestion I shall abide by. Now, I just want to ask you one question.

Q When you were on your back on the bed, Louise, and when Mr. Monbrun was on his back, did he go this way (breathing hard)? A Yes, sir.

Q Well, did you turn over to see? A No, sir.

Q You did not turn over to see? A No, sir.

Q Well, how did you see that? A Because I knew it was him, because Elvira was sitting down.

Q Because what? A Because Elvira was sitting down.

Q And that is the only reason that you know that it was him?

MR. APPLETON: I object to that. She has given her answer.

THE COURT: Yes, sir.

THE COURT: Objection sustained.

BY MR. HOCHFELDER:

Q Well, when he was doing that, he did not hurt you, did he? A No, sir.

Q And did he have your hand in his that time? A No, sir.

Q Did he have anything in his hand that belonged to you, your hat, or coat or shoes? A No, sir.

Q He did not? He did not even touch you, isn't that so?

A Yes, sir.

MR. APPLETON: Just a minute; we have been all over that.

Q I just want to refer to that particular question.

MR. HOCHFELDER: I just want to refer to that particular question. I think that is very important, if your Honor please, in this case. I am going to be guided by your Honor's discretion. I don't want to in any way burden this honorable Court with any questions that might tend to worry the jury or your Honor. It is a case that is of a grave nature, and I accordingly wish to bring out little discrepancies, if possible.

THE COURT: Yes.

MR. HOCHFELDER: And if I can do that, well, I will be doing justice to my client. If your

Honor thinks I have gone far enough?

THE COURT: Try and do it with as little repetition as possible.

MR. HOCHFELDER: If your Honor thinks I have gone far enough, I do not want to burden this Court or ^{worry} your Honor or the jury.

THE COURT: I understand your attitude, and I do not direct you as to your method of cross-examination at all.

MR. HOCHFELDER: Thank you.

BY MR. HOCHFELDER:

Q Now, Mr. Monbrum was on the bed and you were on the bed this way (indicating)? Did the little girl, Elvira, play on the floor? A No, sir.

MR. APPLETON: Now, I object to that as a repetition.

Q Did she say anything to you, Louise? A No, sir.

Q Did she say anything to Mr. Monbrum? A No, sir.

Q And do you know-- did you see Elvira when she was on the floor playing, whether she saw you, whether you thought---

MR. APPLETON: I object to that as immaterial.

THE COURT: Yes, objection sustained.

BY MR. HOCHFELDER:

Q Now, Louise, you did not cry when you went out, did you, out of the room? A No, sir.

Q No, and the other girl didn't cry, did she?

Q And did the other girl say anything to you when you were present? A Yes, sir.

Q Well, what did she say? A She said, "What is the matter, Louise", and my mama said, "What did Mr. Monbrun do to you, Louise"?

MR. HOCHFELDER: I beg your pardon. The jurors cannot hear you.

THE WITNESS: The little girl said to me, "What is the matter, Louise"---

THE COURT: Speak a little louder, little girl.

THE WITNESS: And my mama says, "What did Mr. Monbrun do to ~~you~~ Louise", and the little girl told my mama.

BY THE COURT:

Q What did she tell her? A What Mr. Monbrun did.

BY MR. APPLETON:

Q That was Elvira? A Elvira.

Q Not Ada or Ida, is the other one's name Ida? A Yes, sir.

BY MR. HOCHFELDER:

Q Where was that when she spoke to your mother? A In my house.

Q And did Elvira come up to your house alone to play with you?

MR. APPLETON: Now, I object to that question.

"Did she come up to your house alone", I think was the first question. The other would be the second.

THE COURT: Ask her whether she knows she came alone.

BY MR. HOCHFELDER:

Q Did she come alone, did Elvira come alone? A No, sir; with her sister.

Q Another little girl? A Yes, sir.

BY MR. APPLETON:

Q Ida? A Yes, sir.

BY MR. HOCHFELDER:

Q What did they come up there for, if you know? A Because they heard me crying.

Q Well, you did not cry when you saw papa coming, did you? A Yes, sir.

Q And did you tell mama and papa why you were crying? A Yes, sir.

Q Now, Mr. Monbrum used to give you little things for presents, didn't he? A Yes, sir.

Q Very often? A Yes, sir.

Q And did he also very often get hold of you in the street and kiss you? A No, sir.

Q Well, where did he kiss you, if he kissed you at all? A He used to kiss me in his room.

Q In his room? A Yes, sir.

Q And also in your room when papa and mama were present?

A Yes, sir.

Q And did he kiss you many times in your room when mama and papa were present? A No.

Q Just once? A No, sir.

BY THE COURT:

Q Did he ever? A Sometimes.

BY MR. HOCHFELDER:

Q You don't know how many times, Louise, do you? A No, sir.

Q And did papa and mama ever scold him for kissing you? A No, sir.

Q In your room? A No, sir.

Q Did papa ever say to Mr. Monbrum that he must not kiss you? A No, sir.

Q How long do you know Mr. Monbrum, Louise? A I don't know.

Q You know what five years are? A No, sir.

Q Did he know you two years? A I don't know.

Q You don't know how long he knew you? A No, sir.

BY THE COURT:

Q If you know, do you know how long? A No, sir.

BY MR. HOCHFELDER:

Q Now, Louise, did you and your grandmother have a talk with Mr. Monbrum on the next day? A No, sir.

Q Did you see him on the next day? A No, sir.

Q Did you see him that night again about half past nine, Louise? A No, sir.

Q You did not? A No, sir.

Q And did he come into your house, your mama's house, before you went to bed? A No, sir.

MR. APPLETON: Oh, I object to that. She said he came up when her father ~~mh~~ called him.

MR. HIGHFETTER: That is all, if your Honor please.

MR. APPLETON: Now, bring in Ida Giordano, if you please.

(Ida Giordano is brought into the room.)

RE-DIRECT EXAMINATION, BY MR. APPLETON:

Q Now, is this the little girl, Ida, who came out first and called you? A No, sir.

Q In answer to your mother, I mean. A No, sir.

Q Was this little girl in the room when you first went into the room? A Yes, sir.

Q Now, when did this little girl go out of the room?

A She did not go out until my mother called me.

Q She went out when your mother called you, that is what I meant, and then did she go out? A Yes, sir.

Q Is this the little girl that you referred to as playing on the floor? A Yes, sir.

Q That is what I thought. She went out of the room?

A Yes, sir.

Q This is Ida? A Yes, sir.

MR. APPLETON: That is all. Call Doctor Nagel.

J O S E P H D. N A G E L , called as a witness on behalf of the People, being duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. APPLETON:

Q Are you a duly licensed and practicing physician and surgeon in the City of New York? A Yes, sir.

Q How long have you been admitted to practice in the State of New York? A For the last twenty years.

Q And during the last twenty years have you been practicing your profession, that is, the profession of medicine and surgery in this city? A I have.

Q On the 9th day of February, 1909, were you called at the premises 132 West 28th Street, in the County of New York? A I have.

Q Who were you asked to see? A I was called to see the daughter of Isadore Williams, living in that house.

Q Is that the child, Louise Williams, who was just on the witness stand? A That is the one.

Q Did you examine that girl? A I have.

Q And what part of her did you examine? A I examined her sexual organs.

Q Will you please state to the Court and jury what you

observed in the examination of the sexual organs of that child, that you made on that occasion. A I discovered evidences of recent penetration of the vagina and stretching, laceration of the hymen, the virgin membrane.

Q Was there anything, any inflammation there at that time?

A There were evidences of inflammation produced evidently by recent penetration.

Q Now, what time of the day on the 9th of February was it that you made that examination? A I made that in daylight, in the afternoon.

Q In the afternoon? A yes, sir.

Q Now, were you called upon to examine another child in that house on that occasion? A I was.

Q And what other child were you called upon to examine?

MR. HOCHFELDER: I object to that, may it please your Honor. I move to strike it out as not binding on this defendant.

THE COURT: Yes.

MR. APPLETON: Then I will not press that line further under your Honor's ruling.

CROSS-EXAMINATION BY MR. HOCHFELDER:

Q Dodcot, after your examination of the sexual organs of this little girl, did you come to any conclusion that the

laceration or inflammation might be caused by an instrument, by any means whatsoever? A No, sir, the penetration was evidently caused by some blunt object..

Q And when you term the object a blunt one, might that be a piece of iron or wood or any metallic substance? A No, a metallic substance could not possibly produce inflammation of that character.

Q You are sure about that? A Sure about it.

Q And what was the character of that explanation? A I cannot tell the exact character, except that it was not a metallic substance that caused it.

Q Will you tell us, as near as possible?

MR. APPLETON: Will you please not interrupt him?

THE COURT: You are proceeding to make a statement. You may continue.

THE WITNESS: The character of the instrument that penetrated, it must have been blunt because there was no actual cutting of the tissues, and it must have been some yielding substance because the contusion was not sufficient to produce a violent tearing.

Q Well now, Doctor, you found no blood? A I found no blood. When I examined the child it was 24 hours afterwards.

Q Yes, you found no evidence that blood was there?

A Well, you could not tell that at that time.

Q Well, so far as you are concerned, you found no blood?

A No blood then.

MR. APPLETON: I object to that. He has already answered it.

MR. HOCHFELDER: Will your Honor allow that answer to stand?

MR. HOCHFELDER: It is a repetition.

THE COURT: I will allow it to stand as it is.

It does not make any difference.

BY MR. HOCHFELDER:

Q Now, would an injury of that kind, as you describe, be possible to have been caused by a fall against a sharp object? A It could not.

Q Well, how could it be caused, if you know? A Well, the nature of an injury, as you have described, striking against the edge of a chair or table, would not produce any penetration, ~~therefore~~ symptoms of penetration.

MR. APPLETON: Doctor, will you please answer the questions put to you? Will you please answer?

THE COURT: Read the question.

(Question read by stenographer.)

THE COURT: The question was how it could be caused, if you know. Answer the question.

THE WITNESS: How could it be caused?

MR. HOCHFELDER: In how many ways might it be caused?

THE COURT: Answer the question.

MR. APPLETON: How could it be caused, if you know?

THE WITNESS: The injury could only be caused, as I said before, by some blunt instrument penetrating the child

BY MR. HOCHFELDER:

Q Will you kindly describe to this Court and jury just what kind of blunt instrument might cause this injury?

A The male organ.

Q And that you call a blunt instrument? A Yes, sir.

Q Now, will you give us your idea of another blunt instrument? A Well, I could not describe exactly what blunt instrument might have caused it.

Q And then, Doctor, you mean to say, as far as your familiarities with objects is concerned, the male organ is the only blunt instrument that you know of? A No, I would not state that.

Q Well, tell us what you mean. A Oh, I could not state every blunt instrument.

Q I don't want you to state such a blunt instrument, but tell us what you mean?

MR. APPLETON: Oh, I cannot see the object of that. The jury know---

THE COURT: I will let the doctor state, if he knows. (To the witness:) What other blunt instrument might have caused that?

THE WITNESS: Well, the number of blunt instruments that might have caused that, that might have entered the child, I would call a candle a blunt instrument.

BY MR. HOCHFELDER:

Q Well, would a finger be a blunt instrument? A A finger?

Q Yes. A A finger of a grown up person?

Q Yes. A Yes, but not of a child.

Q Now, a finger of a young person would not be a blunt instrument? A I would not call it that. It is too soft and elastic.

Q You would say that the blunt instrument would necessarily have to be yielding, you said that before? A Yes, sir.

Q Well, would the finger of a young person, say twenty years of age, be classified as a blunt instrument? A It would.

Q A fifteen year old person? A Well, we cannot limit any demarcation of age.

Q Now, you cannot-- in that list of blunt instruments you have enumerated a candle. For instance, that might cause the injury, a similar injury? A Yes, sir; a blunt instrument of sufficient size.

Q And a candle is a blunt instrument of sufficient size,

a candle of ordinary size might cause that injury? A Well, it might; yes, sir.

Q Well, you cannot enumerate, of course, more than half a dozen blunt instruments? A Well, not offhand.

MR. APPLETON: Wait a minute. It is not blunt instruments, it is a blunt instrument that would have caused such an injury as he saw.

Q You cannot, can you? A Well, I could not enumerate any more offhand than I have.

Q Now, Doctor, sliding upon a banister, as children sometimes do, and reaching the end with force, would some inflammation be caused by such a travel on the banister? A In that case you would have abrasions and the skin would be off.

Q That is, if the body and sexual organs were not covered with clothes? A Well, contact with a banister would not cause the injury I have observed.

Q Well, the injury might be caused by sliding down a banister? A Yes, sir, certain kinds of injuries might be caused by that, but not the ones which I saw.

Q Doctor, I wish to inform you, that we have in mind to bring about a state of facts that that particular injury might be caused in a certain number of ways? A Yes, sir; the injuries.

Q Now, if the clothes were on the little girl, that particular injury might be sustained?

MR. APPLETON: Now, I object. He has already answered and said that that particular injury could not be caused in such a manner.

THE COURT: Objection sustained.

BY MR: HOCHFELDER:

Q It could not be caused in any manner by sliding down a banister? A No, it could not.

Q It could not? A No, because there is always a contusion of the external parts. There was no contusion of the external organs.

Q Then, when the clothes are on the body-- A Even when the clothes are on the body, if there is any injury there, it shows on the skin.

Q Did you examine the hymen of the little girl? A Yes, sir; what was left of it.

Q What was left of it? A Yes, sir.

Q Well, what was left of it? A Just a few little pieces.

Q Was that broken? A Surely it was broken.

Q Might that be caused by the insertion of the little girl's finger? A No, not with her fingers. She would have had to put her whole hand in.

Q I asked you whether that might be caused by the insertion of the little girl's finger. A No.

MR. APPLETON: He has answered it.

MR. HOCHFELDER: He did not answer it in any certain way.

Q Now, if the hymen-- around the hymen you found no blood?

A Not blood, but contusions.

Q Contusions?

BY MR. APPLETON:

Q By contusions you mean bruises, do you, Doctor? A The tissues were swollen, inflamed, that was what we call contusion.

Q There was no excretion of any matter at all? A No what?

Q No blood. A Not on the surface.

Q Nowhere? A A contusion is a congested condition of the blood vessels.

Q Yes, but there wasn't any discharge. A There wasn't any discharge on the outside.

Q You would have had to use a microscope.

THE COURT: It was internal? It wasn't on the surface. It was on the inside.

A There was no such thing on the surface.

BY MR. HOCHFELDER:

Q Did the little girl tell you anything about how she got these injuries? A Yes, sir; she related to me how the thing occurred.

Q. She did? A. Yes, sir.

MR. APPLETON: What was the answer? I should
hear it?

(Answer read by stenographer.)

BY MR. APPLETON:

Q. That is, the little girl herself did? A. Herself.

MR. HOCHFELDER: That is all, Doctor.

ARLANDEN C. BRIDGES? called as a witness on
behalf of the People, being duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. APPLETON:

Q. You are a duly licensed and practicing physician and
surgeon under the laws of the State of New York? A. I am.

Q. And you have been such for how long? A. 25 years.

Q. And during that time have you practiced your pro-
fession in the City of New York? A. Except what time I was
in Europe; yes, sir.

Q. En our studying? A. Yes, sir.

Q. And you have learned your living by means of the prac-
tice of your profession; is that correct, sir? A. I have.

Q. Now, in the month of February of this year did you
examine a little girl, Louisa Williams? A. I did.

Q. Where you called at their house, 122 West 28th street?

A. I was.

Q How many children did you examine there? A Two.

Q What two children did you examine? A I examined

Louise Williams and the other---

MR. HOCHFELDER: May I ask, your Honor, simply to allow the jury to confine itself to this particular person and not to any other person?

R. APPLETON: Don't say anything about the Giordano girl.

MR. HOCHFELDER: I wish Mr. Appleton would not persist in this line of examination the Court.

THE COURT: Yes, strike out any reference to any examination of any other child.

BY MR. APPLETON:

Q What day was it you examined Louise Williams? A It was on the 10th of February, as far as I remember it.

Q The 10th of February? A The 10th of February.

Q That was one day after Dr. Nagel had examined the child?

A Yes, sir.

Q Now, will you please state to the Court and jury what you observed-- what part did you examine first? A The private parts, the genital organs.

Q You examined the private parts, the genital organs?

A Yes, sir.

Q Now, will you please state to the Court and jury what

you observed from your examination of this child, Louise Williams, on the 10th day of February, 1908? A I found no particular bruises on the outside parts, but on the inside parts, corresponding to what we call the hymen, and the inside of the lips, I found those parts bruised, what we call bruises and reddened. There was no discharge particularly at that time, and so far as I was able to make out there was no complete perforation. What we call the hymen was more or less intact. It was not completely broken. The injury was brought against the parts, the surrounding parts.

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Q That was on the inside of the lips? A Yes, on the inside, but on the inside of the lips.

Q And the hymen was somewhat broken, but not completely?

A No, it was a very small perforation, as far as I could judge at the time.

Q You did not open the opening further at the time?

A No, I did not. I did not consider that was necessary.

Q You did not consider that that was necessary at the time? You did not want to increase the opening any more than possible? A No.

Q As I understand it, doctors are very careful about breaking or injuring, in breaking in the hymen, is that correct? A We leave it alone as far as we can.

Q But the bruises, the inflammation, was not on the outside of the genital organs, but on the inside? A Not on the outside, but on the inside, as far as I can remember. The mucuous membrane, what we call the mucuous membrane.

CROSS-EXAMINATION BY MR. HOCHFELDER:

Q Doctor, you did not find the hymen punctured, torn, did you? A As far as I remember, there was not a complete perforation, but there was a little hole.

Q Now, Doctor, little girls of the age of seven, do you find little holes in the hymen?

MR. APPLETON: I beg your Honor's pardon. I object to that, the form of the question.

THE COURT: Read the question.

(Question read by stenographer).

THE COURT: Objection sustained to that form of question.

BY MR. HOCHFELDER:

Q Doctor, do you find little holes in hymens, little openings for the discharge of anything? Does nature provide a little opening in the hymen? A It should.

Q It does? A It should.

Q It should? A Yes, sir.

Q And if nature works properly, it invariably does leave a little hole in the ymen, to the center of it? A It is liable to.

Q Yes, and what particular function or duty does that little hole perform in the hymen? A At that age it has none. Later on it has.

Q Now, at the age of seven, you would find such a little hole there, as you found in the hymen? A Well, there should be an opening, a puncture there, at least an opening.

MR. APPLETON: He asked you if you would find such a one as you did find there.

THE COURT: You can have the Doctor later. Proceed.

BY MR. HOCHFELDER:

Q Now, such as you did find, would you consider it to be normal? A No.

Q Now, why not? A In the first place, the opening was reddened, the edges of the opening, or the edges of the membrane, as we call it, the edges were reddened, and what we call lacerated, I mean by that, very slight tear. It was opened more or less. It was congested. It was not normal. The whole membrane was reddened, congested, bloody, if you please. I do not mean fresh blood, but it looked as if blood had been there on that.

BY THE COURT:

Q Do you mean by that contusion? A Contusion of the mucuous membrane, not the same as we find on the skin.

BY MR. HOCHFELDER:

Q Doctor, in how many ways could such a contusion be accomplished, as you found? A There are various ways that could happen.

Q Can you enumerate some, please? A Well, that could be done--- the child could hardly do that herself. It could be done by falling against a blunt instrument, perhaps the round of a chair, or the top of a chair. I say it might. It was not done by any sharp instrument, but it looked as if it were done by some blunt instrument.

Q It might be accomplished by sliding down bannisters?

A No, hardly.

Q Well, it might be accomplished by the insertion of a candle? A Well, that could do it; yes, sir.

Q And any such sharp instrument---- A Any blunt instrument that is not too hard, might do it.

Q That particular object which might cause it, need not necessarily have a yielding nature, need it, unless the yielding nature be elastic? A It would necessarily have to have a slightly yielding nature. A hard substance would tear and lacerate it, but the injury that was done here was not done by a hard substance.

Q Now, look at that man there, Mr. Monbrun, could you--- would you say that it could have been done by his male organ when it was in a state of erection? Would it tear it or otherwise---

MR. APPLETON: Now, one question at a time, your Honor: "Could it have been done by his male organ when it was in a state of erection". I have no objection to that. That is one question.

THE COURT: Yes.

THE WITNESS: That is possible, yes.

BY MR. HOCHFELDER:

Q And do you think that it would cause a greater injury than that which you had examined, by the insertion of his male organ? A On the outside parts, no.

Q Well, on the inside parts, would it break the hymen through? A If it had gone all the way through; yes, sir.

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Q Now, the hymen is not very far removed from the vagina, is it, in a little girl seven years of age? A That is the beginning of the vagina; that is the curtain.

Q Yes, it is almost together, in close proximity, the entrance of the hymen, and the entrance of the vagina?

A Well, in a way, it is.

Q Well, then, if he entered this little girl's hymen, he would enter it with about how many inches in depth? A I claim that it did not enter that. I say that the perforation and the laceration was not sufficient for complete entrance. I say that the inflammation, the contusion which was there was only on the ~~xx~~ outside. The ~~mm~~ tear was not sufficient for a complete entrance.

Q Now, Doctor, from the wall of the membrane that you examined, to the wall outside, to the skin, to the epidermis, to the fleshy part of the outside body, how far is the distance? A That would depend. Perhaps in this child, it rose naturally into the parts. Perhaps, you might say a half inch, not an inch.

Q A half inch? Then, in order to cause an entry, his male organ would enter only half an inch about, and then come in contact with the wall only about half an inch in? A That could be possible.

Q Now, I want to ask you this question. In a state of erection, of a man of that development, of his development,

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of his development, how long, or how lengthy, is his male organ, about? A Well, I should have to guess at that. I should imagine, perhaps five or five and a half, possibly six inches.

Q And ~~may~~ may the hole five inches penetrate that wall of that membrane? A Assuming that the hymen were completely ruptured, I say it is not impossible. Assuming that the hymen were ruptured, or torn completely, I would say that is not impossible. I do not say it would happen, but I say it is not impossible at that age.

Q To have caused that injury? A No, I do not say that. That is not the question you asked me.

Q Now, Mr. Stenographer, will you kindly read that question, please?

MR. APPLETON: I object. The jury heard the question and answer.

(Last two questions and answers read by stenographer)

MR. HOCHFELDER: Now, if your Honor please, I did not quite understand that, and I do not think the jury did.

MR. APPLETON: I did, and I think the jury did.

THE COURT: The Doctor may repeat his answer.

THE WITNESS: I say that a complete hymen, I say that it is impossible for the organ to have entered five or five and a half inches. I have turned it around. I say that a complete hymen with no more perforation than in

this case, it is impossible for the organ to have made that distance. I say that at eight years, for a reasonable organ to make entrance, that is what I said, it is impossible. And that is what I meant. It is unusual, but I say that it is possible.

BY MR. APPLETON:

Q. Unusual, but possible? A. Unusual; yes, sir; but I say it is possible.

BY MR. HOCHFELDER:

Q. Now, if you will now assume that the hymen is intact, in that little girl of that age, and a person, as we have described, would enter the vagina, and come in contact with the hymen, would he break that hymen, would he penetrate all the way through? A. Not necessarily so. That depends upon the violence or force. It does not depend upon the---

Q. But he could, Doctor, he could break it entirely through? A. Certainly.

Q. Certainly, and he would cause great injury? A. Yes, sir.

Q. An injury such as you will kindly describe, some injury?

MR. APPLETON: Oh, I object to that. We are taking a condition as we find it, sir. And he has a right, as I apprehend, on cross-examination, to show what might have caused that injury, but he should not go beyond the evi-

dence which was described.

THE COURT: What is the question, Mr. Stenographer?

(Question read by stenographer).

MR. APPLETON: That is, if by some chance the defendant entirely penetrated and broke the hymen?

THE COURT: Yes, objection sustained.

BY MR. HOCHFELDER:

Q Now, in answer to the question that great injury would be sustained, what else would happen? Will you tell us, so that we may be enlightened, besides breaking the hymen?

MR. APPLETON: I object.

THE COURT: Objection sustained.

MR. HOCHFELDER: That is all, if your Honor please.

RE-DIRECT EXAMINATION BY MR. APPLETON:

Q Did that injury look to you to be a recent or aged injury? A That was rather recent, I should say, from my examination.

Q Now, in a case of a full grown man taking a child of that age, and pressing his private parts into the lips and against the ~~by~~ hymen, and possibly playing there, the injury would not be expected to be any more than it was? A Not at all, for the child would resist when it came to actual pain.

Q But if the penetration had been complete, and the organ had gone entirely in, the child would have cried out with pain, that is what I am getting at? A She should have; yes,

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sir.

BY THE COURT:

Q Just a minute, Doctor. From the condition in which you found the sexual organs of the little girl here, and of the hymen, would you say, in your opinion, that there had been a penetration to that extent by some blunt instrument? A To the extent, I should assume that there had been.

Q What? A I do not claim that there was a penetration. I claim that there was a force directed against it, and of course, the hymen being elastic and resilient, that gave against it, and that was where the bruises came from on the parts, but if there was a penetration of the parts by the male organ of another, as very easily could have been, as I have seen, there would have been a hemorrhage.

Q In your opinion, Doctor, in order to have a penetration into the sexual organs-- I do not say what distance, but I say a penetration ~~into~~ into the organs--- is it necessary that the hymen should have been destroyed? A Not always.

S O P H I A W I L L I A M S, called as a witness in behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. APPLETON:

Q Will you please speak in a loud enough tone for the last juror to hear? Are you the mother of Louise Williams?

A Yes, sir.

Q How old is she? A She is seven. She will be eight on the second of May.

Q She will be eight on the second of May of this year?

A This year.

Q Are you a married woman? A Yes, sir.

Q Have you any other children? A Yes, sir.

Q Do you live with your husband? A Yes, sir.

Q And where did you live with your husband on the 8th day of February, 1909? A 132 West 28th Street.

Q Do you live there now? A Yes, sir.

Q How long ~~have~~ had you lived there at that address up to the 8th of February, 1909? A Going on eight years.

Q What kind of a house is that, describe it? A It is a flat house.

Q How many stories high? A Four stories high.

Q How many flats on a floor? A Three.

Q Which floor do you live on? A On the top floor, in the rear.

Q How many rooms do you have? A Four rooms and bath.

Q And there you lived at that time, and do live now, with your husband and child? A Yes, sir.

Q On the 8th of February, 1909, about supper time, we will say, did you go out of your house? A Yes, sir.

Q Was there anybody with you when you went out of your

house? A Yes, sir; my little girl.

Q Was your husband home at that time? A Yes, sir.

Q Where was he? A He was sitting in the parlor all covered with blankets, at the radiator. He had been very sick.

Q And you and your little child Louise went out? A We went out to the store to do some marketing.

Q And do you recollect about what hour it was? A Well, about half-past six.

Q Well, did you return to your house after doing your marketing? A Yes, sir.

Q Around what time was it when you returned to your house? A Well, it was quite near seven o'clock.

Q Did you go upstairs? A Yes, sir.

Q Did anything happen on the way upstairs to your floor?

A Yes, sir; my little girl asked me if she could go into the rooms of Mr. Monbrun. She heard two other little girls in the room that lived on the top floor, and she went in to ~~the~~ Mr. Monbrun's room with the other little two girls that he always used to call, and pick up and kiss. He had promised my little girl a balloon, and she says, "Mama, can I go in to see if he has got my balloon?" So, I said, "Yes, you can", because she had been in there, and because I thought no harm about it. I let her go in. So I let her go in because this gentleman was standing at the door--

Q When you say this gentleman, do you mean the defendant,

Mr. Monbrun? A Yes, sir.

Q You saw him standing in the door? A Yes, sir; my little girl went in. So I went on up the stairs.

Q Now, do you remember whether the door was closed after your little girl went into the room? A No, sir.

Q Did you observe whether the door was opened or closed when you went upstairs? A No, I did not.

Q Now, about how long did your little girl stay there before anything else happened? A Well, I guess about half an hour.

Q What were you doing in the meantime? A Cooking my supper.

Q Then did you do something about that time with respect to your child? A Well, I went and called her to come upstairs.

Q You went out into the hallway? A The hall, and leaned over the bannisters and called for her to come upstairs, for supper.

Q What happened then? A The little girl came out, and said that Mr. Monbrun said she will be right upstairs.

Q That is the little girl that was in here? A Ida Giordano.

MR. HOCHFELDER: May it please the Court, the defendant was not present.

MR. APPLETON: I consent that what the little girl said be stricken from the record.

Q Did you observe whether Ida, the little girl, opened the door when she came out? A No, I did not.

Q At all events, Ida Giordano, came out and said something to you? A She said----

Q Yes, or no? A Yes, sir.

Q Now, after Ida came out, what did you do? A Well, I thought----

Q Never mind what you thought.

MR. HOCHFELDER: If the defendant was not present, I ask that that be stricken out.

MR. APPLETON: I am not asking for anything that was said.

THE COURT: No, if it is of a character that should not go in, it will not go in.

Q Now, don't say what you thought, but just answer my question. If you will only answer my questions as briefly as possible, just yes or no, we will get along much better. After you called downstairs to your daughter, and after Ida Giordano came out of Mr. Munbrun's room, what did you do? A I went back into my room and finished my supper.

Q Well, how long were you doing it? A I should say ten or fifteen minutes.

Q Then, what did you do next? A I came out and called again. Then she came running upstairs.

Q Just a minute. Don't go too fast. You went out

from your rooms? A Yes, sir.

Q And called down the stairs? A Yes, sir.

Q Do you recollect what you called? A Yes, sir.

Q What did you say? A I called, "Louise, come upstairs."

Q Then as you called Louise, what happened? A She came running upstairs, and was all excited.

MR. HOCHFELDER: I object to the word "excited",
unless the witness says how she was.

BY THE COURT:

Q How did she appear to be? A All excited.

Q What makes you say she was excited? A Well, she was nervous.

MR. APPLETON: I consent that that be stricken out.

THE COURT: Yes, strike out excited and nervous.

Q What did she say or do? A She came running up the stairs and said, "Oh, mama, mama, papa", and ran right past me.

Q Now what else did she say when she came running past you, what else did she say? A She said she wanted to tell me something that Mr. Monbrum had done to her.

Q She said that as she was running upstairs past you?

A Yes, sir.

Q And did she keep on running past you? A Yes, sir; and ran on into the parlor to my husband, sitting at the radiator.

Q Did you follow her? A Yes, sir.

Q Now, what was her condition when she reached her father's side? A Her condition was so she could not hardly speak at all, and her father was asking her what was the matter

Q Now, did you hear what she told her father? A Yes, sir.

Q What did she tell him? A She said Mr. Monbraum had taken her and put her--

MR. HOCHFELDER: I object to that.

THE COURT: Yes.

MR. HOCHFELDER: May I ask Mr. Appleton, a learned District Attorney, not to persist in asking such ques-

tions.

THE COURT: Yes, you have your objection when objectionable questions are asked.

BY MR. APPLETON:

Q Just answer this with a yes or no. Did your child, Louise, in our presence, tell to her father what she claimed the defendant, Mr. Monbraum, had done to her? A Yes, sir.

Q Now, when Louise came upstairs from Mr. Monbraum's rooms, did you see Mr. Monbraum in the room? A Well, I could not look into his room because he lives below and in the front.

Q You saw him in the room when you went upstairs? A I did; yes, sir.

Q Now, ^{after} ~~when~~ your child, Louise, ^{said} ~~told~~ something to your husband, did your husband speak to you? A Why, of course.

Q Now, don't tell me what he said; just yes or no.
A Yes, sir.

Q And did you have a conversation then with your husband? A Yes, sir.

Q What was the next thing that happened after your conversation with your cousin, so far as the defendant Monbraum is concerned? A Well, my husband, he had Mr. Monbraum in the hall and called him upstairs.

Q Your husband called Mr. Monbraum upstairs? A He called Mr. Monbraum upstairs; yes, sir.

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Q Did he come upstairs? A Yes, sir.

Q Did your husband speak to Mr. Monbrum? A Yes, sir.

Q What did your husband say to Mr. Monbrum? A He asked him what he had done to his child.

Q He asked him what he had done to the child? A And he said he had done nothing, and my husband said that my child had told him he had done so and so.

Q Wait a minute. You have got to tell it. A He was talking to him in French.

MR. HOCHFELDER: I object to that unless the defendant was present.

MR. APPLETON: Why, of course the defendant was present. He was talking to him.

Q Can you understand French? A I can understand French, but I did not understand that part.

Q I did not ask you whether you understood French, but I asked you whether you understood what your husband said to Mr. Monbrum. A No, I did not understand that.

Q Now, you have told all that. What did Mr. Monbrum say to your husband?

MR. HOCHFELDER: Now, I object to that if that answer was in French.

BY THE COURT:

Q Did he answer in French or English? A In French.

Q What did he say? A He said that he had not touched the child.

Q Well, what did he say in French? A I cannot speak French, but I can understand it.

Q Do you remember the words that he used? A No, I do not.

THE COURT: Very well; strike that from the record.

BY MR. APPLETON:

Q Did your child say anything at that time? A Yes, sir.

Q Do you recollect what was said? A Yes, sir, she told me---

Q She told you in French or English? A Well, she spoke partly in French and partly in English. She cannot speak very good French.

Q Did you observe the defendant while there? A I did.

Q Will you describe his action and demeanor on the occasion when your husband asked him what he had done to his child?

A He was all excited and ran right out of the room.

MR. HOCHENFEDER: I object to the word "excited."

MR. APPLETON: I consent that it be stricken out.

THE COURT: Tell what he did.

BY MR. APPLETON:

Q Your eyes rested upon the defendant? A Yes, sir.

Q And he did something that caused a conclusion in your mind?

MR. HOCHFELDER: I object to that as leading.

THE COURT: Yes, you can't tell what he did do, and how he appeared to be.

THE WITNESS: Why, he was all like this (indicating.)

BY THE COURT:

Q Like what? A Nervous.

Q He did what? A Well, he was all worked up like that.

Q Why do you say that? A I cannot express myself in any other way-- in a trembly way.

Q Oh, he was trembling? A Yes, sir.

BY MR. APPLETON:

Q Now then, did you examine your daughter's private parts that night? A I did.

Q And what did you do with them? A I washed them.

Q After that, the next day, did you call the doctor?

A Yes, sir.

Q How many doctors? A I called Dr. Nagel first.

Q And then afterwards? A I called my own home physician, Dr. Bridges.

Q Two days afterwards? A The next day afterwards.

Q You called Dr. Nagel the first day after? A Yes, sir.

Q And then Dr. Bridges the day after that? A Yes, sir.

Q So that you called Dr. Bridges two days after the occurrence? A Yes, sir.

Q That is correct? A Yes, sir.

Q How long was the defendant in your apartments on that occasion? A It was not five minutes.

Q And what did he do? A He went and went to the lady in front.

Q Who is that? A That is Mrs. Giordano.

MR. APPLETON: You may cross-examine-- oh, just one other question, unless it is conceded that the defendant is not married to Louise Williams?

MR. HOCHFELDER: Oh, yes, we will concede that.

CROSS-EXAMINATION BY MR. HOCHFELDER:

Q Now, Mrs. Williams, your little daughter, of course, does not speak French? A She speaks a little French.

Q You do not know how much because you do not ~~understand~~ ~~French~~ know yourself how to speak French? A No, I do not.

Q Now, after you returned from the market, you began to make your supper? A Yes, sir.

Q And on your way up, on the third floor, you left your little child, did you? A Yes, sir.

Q And the little child entered the apartments of Mr. Monbraum? A Yes, sir.

Q And you saw her go in? A I did.

Q And before she entered, before the little girl entered, did you see any other girls there? A Two.

Q And where were they, the two? A In the room.

Q They were in the room? A Yes, sir.

Q Were they on the bed playing? A No.

Q Or where were they, exactly? A Playing around in the room.

Q Playing in his room? A Yes, sir.

Q And the door was open when you came up? A Yes, sir; the door was open.

Q And invariably, if you remember, the doors of Mr. Monbrom's apartments are always open, are they not?

MR. APPLETON: I object to that.

THE COURT: What was the question, Mr. Stenographer?

(Question read by stenographer.)

THE COURT: I will allow the answer.

MR. APPLETON: What is the answer?

(The Court then admonished the jury in accordance with section 415 of the Code of Criminal Procedure, and adjourned the further trial of this case until tomorrow morning, Wednesday, April 7, 1909, at 10:30 o'clock a.m.)

THE PEOPLE vs. EDWARD MONBRUM.

New York, April 7, 1909.

TRIAL CONTINUED

MR. HOCHFELDER: At this time, may it please the Court, I will renew the motion to have all the witnesses re-excluded for today.

THE COURT: Yes.

SOPHIA WILLIAMS, recalled:

DIRECT EXAMINATION BY MR. APPLETON (Continued)

MR. APPLETON: If your Honor please, I find on looking over the testimony that there was an omission of a question which I intended to ask.

THE COURT: You may ask her now.

Q Madame, when your little child Louise, went into the room of the defendant, what was her condition as to nervousness?

MR. HOCHFELDER: Why, one moment, if your Honor please, I object to that.

MR. APPLETON: I withdraw the question.

Q You said when your little child came upstairs she was trembling and excited and crying? A Yes, sir.

Q Now, with that in mind, what was her condition when she went into the room of the defendant?

MR. HOCHFELDER: I object to that as incompetent.

BY THE COURT:

Q How did she appear to be when she went into that room, if you know? A She appeared to be all right.

BY MR. APPLETON:

Q Just normal and right? A Just normal and right.

MR. APPLETON: That is all.

CROSS EXAMINATION BY MR. HOCHFELDER:

Q Mrs. Williams, you are not a lady of French birth?

A No, sir.

Q And you do not speak the French language? A No, sir.

Q Your husband does? A Yes, sir.

Q And on the night of February the 8th, do you remember the exact hour when you returned from your marketing tour?

A Not the exact hour, no, I do not.

Q Approximately, around what time? A Well, it was about half past six, twenty minutes after, possibly.

Q Was it nearer seven? A Near seven, about half past six, from between that time and seven o'clock.

Q Now, you have stood upon the landing or floor of the fourth floor quite frequently, of your house, have you not?

A Yes sir; I have.

Q And of course you could not see into Mr. Monbrum's room? A No, I could not.

Q And that is because of what fact? Is it because there is a turn to the ~~main~~ hall which leads into Mr. Monbrum's apartment? A Well, I live in the front and he lives in the back, and there is a private hall, so that I cannot look in there.

Q Yes, there is a private hall, and you have to enter the private hall before you come to Mr. Monbrum's room? A Yes sir.

Q Now, if your little daughter testifies that you were standing on the top floor and you were talking to her when she was in Mr. Monbrum's room, and that you could see her, that would not be correct would it?

MR. APPLETON: I object to that.

THE COURT: Please read the question.

(Question read by Stenographer)

THE WITNESS: No, it would not.

MR. APPLETON: Will you not please wait. I move that the answer be stricken out.

THE COURT: Strike out the question and answer.

BY MR. HOCHFELDER:

Q Mrs. Williams, you never talked to Louise while you were standing on that top floor and looking into Mr. Monbrum's room, have you looked at your daughter?

MR. APPLETON: I object to the form of the question.

THE COURT: I will allow the question.

Q You never did talk to her that way? A Speak to her when she was in his room?

Q And see her face to face? A Why, how could I when I was on the top landing.

Q Now, it is a physical impossibility to do that, isn't it? Your eye could not see around the corner and see the little child?

MR. APPLETON: I object to that.

THE COURT: Objection sustained.

Q Now, after you made your supper you and your husband had supper together, did you? A No, we did not have our supper together.

Q You had it alone? A No.

Q Well, how did you have it? A We waited until the child came upstairs.

Q That is not my question? Did you have supper after you made it? You made supper on the evening of February 8th, did you not? Now, did you eat that supper? A No, I did not.

Q Well, did you make it for yourself? A No, sir.

Q For whom did you make it? A For my husband and child.

Q You did not eat supper? A I was not feeling well.

Q Your husband was waited on by you, you served the dishes? A Yes, sir.

Q You served the dishes for little Louise? A Yes, sir.

Q And she ate her supper? A No.

Q Oh, she did not? A No.

Q Well, where was Louise after you commenced to serve supper?

MR. APPLETON: I object to that because she never stated that she commenced to serve supper at all.

MR. HOCHFELDER: Why, she did say she served supper for her husband.

THE COURT: Then make that statement in your question.

BY MR. HOCHFELDER:

Q Well, you served supper for your husband, did you not?

A Yes, sir.

Q Now, while you were serving supper for your husband where was Louise? A She was --

Q Downstairs? A Downstairs, while I was getting him served.

Q And how long did she remain downstairs? A She remained downstairs for about half an hour, twenty minutes or half an hour.

Q And until around what time? A Well, I could not really swear to that.

Q Well, you commenced to make supper around what time, if you remember? A About a quarter to seven.

Q And did it take you about fifteen minutes to make the

supper ready? A Oh no, it would take me about twenty minutes or half an hour.

Q And then she remained downstairs about half an hour?

A Something like that.

Q She remained downstairs until about half past seven?

A Something like that.

Q Don't you remember that it was about eight o'clock?

A Oh, no.

Q About half past seven? A About that time.

Q And then you called her, did you? A Well, I called her twice.

Q And she came upstairs? A Yes, sir.

Q Supper was over, was it? A No, it was not.

Q Your husband had already eaten? A No, he had not eaten yet.

Q Well, do you remember whether he commenced eating his supper about 7:15 P. M.? A No, I could not swear to that.

Q Let us see, at a quarter to seven you made your supper and you say it took you say it took you about twenty-five minutes? A About that.

Q Well, that would be about ten minutes after seven. You are sure you did not serve supper about fifteen minutes later? A My husband did not eat. He was waiting for Louise to come upstairs.

Q He did not? A He was waiting for Louise to come

upstairs.

Q Now, what was the first thing Louise did when you called her, you called her twice? A Yes, sir.

Q And you did not go downstairs? A No, I did not.

Q Well, what did she do when she came? You told her, "Louise, your supper is ready"? A Yes, sir.

Q What did she do? A Well, when I called her the second time she came running upstairs all frightened.

MR. HOCHFELDER: I ask that that word be stricken out.

THE WITNESS: Well, I do not know how to say it otherwise. I could not say it otherwise.

BY THE COURT:

Q How did she appear to be when she came upstairs?

A Frightened, and she had a little shawl over her head and it was all kind of like fussed with.

BY MR. HOCHFELDER:

Q What kind of a shawl?

THE COURT: Now, answer that question, please. What did she do? That is the question that is asked you, when she came upstairs.

THE WITNESS: She came running upstairs, and says,

Mama

"Oh, /I want to see Papa, I want to tell him what Monsieur Monbrum did to me." So she ran into her Papa sitting in the front room by the radiator in the Morris chair covered up with blankets, because he had been sick. So I went in directly

and heard what Mr. Monbrum had done to her and I was so astonished I did not know what to do.

BY MR. APPLETON:

Q What did your child do?

MR. HOCHFELDER: I object to that part that she was astonished and did not know what to do.

THE COURT: Yes, strike out what she did.

THE WITNESS: She went in to her Papa and told him what Mr. Monbrum had done.

Q What did she do? A So when she told her Papa what Mr. Monbrum did, so when I came in she repeated it to me and he heard Mr. Monbrum downstairs in the hall.

THE COURT: Now, that is not as to what the little girl did.

THE WITNESS: That is all she did.

THE COURT: Tell us what happened? Did she do anything else? Where did she go after that?

THE WITNESS: She came to me. She was crying. She said, "Mama smell my hands." She says, "Mama he put something on my hands." So I says, "You go right straight to the toilet and wash your hands." Then she, of course, went and washed her hands.

MR. HOCHFELDER: I object to that. The child did not testify as to his putting something on her hands.

THE COURT: You asked her what the child did. It is in answer to a question as to what the child did. Now, everything that the child did after she came upstairs on that evening is perfectly competent as a response to your question.

MR. HOCHFELDER: But not what this witness did.

THE COURT: Now then, tell what the child did?

MR. HOCHFELDER: May I beg your Honor's pardon?

THE COURT: Yes.

MR. HOCHFELDER: This part, what this witness is now testifying to, that the child said, now, she can only tell about what the child said, if the child has already testified to that particular thing.

THE COURT: Well, continue, and allow her to tell what the child did. (To the witness) Not what you did, unless what you did was necessarily a part of what the child did.

THE WITNESS: So then she asked to go to bed. She said she wanted to go to bed. She had been continually going. So then I went and examined her and washed her.

MR. HOCHFELDER: I object to that and move that it be stricken out.

THE COURT: Yes, strike that out.

THE WITNESS: And then --

THE COURT: And I direct the Jury to pay no attention to anything she did unless it was necessarily a part of what the child did.

THE WITNESS: So that was all. She would not eat anything. So she went to bed.

BY THE COURT:

Q Is that all? A That was all.

BY MR. HOCHFELDER:

Q Do you remember how long she slept that night? A Well, she slept until about midnight, towards morning she woke up and she started to cry, and she said she had pains in her stomach. So then my husband said it was best to call for the Doctor.

MR. HOCHFELDER: I object to that and ask that that be stricken out, and I ask that the Jury be directed to disregard it.

THE COURT: Yes.

MR. HOCHFELDER: Impressions of this kind are hurtful to this defendant, and I am going to ask your Honor to instruct this witness not to make these remarks, and I will ask the District Attorney not to elicit any such facts.

MR. APPLETON: I think the statement of counsel is entirely improper. I have been very silent during the

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last few minutes.

THE COURT: It is the privilege of counsel to object to any answer of a witness and move to strike it out that he thinks is improper, or any improper question of the District Attorney of a witness. I have stricken out the answer, and whatever instructions should be given by the Court will be given.

MR. HOCHFELDER: Thank you.

THE COURT: Proceed.

BY MR. HOCHFELDER:

Q Now, on the next morning, February the 9th, you went somewhere with the child? A I did what?

Q Did you go to the police station? A No, I did not.

Q Well, did some one else go to your own knowledge?

THE COURT: What time?

Q In the morning or in the afternoon? A I guess it was towards afternoon, when the doctor came. He went to the station house.

Q He went with the child? A No, he did not.

Q He went alone? A He went alone.

Q Do you know at what time he went to the station house alone? A I could not tell that.

Q Did he come to see you in the morning?

MR. APPLETON: What morning?

MR. HOCHFELDER: February 9th, I am speaking of that

particular day.

THE WITNESS: The next day.

Q What particular time did he come the next day? A I could not swear to that.

Q What hour? A I could not swear to the hour.

Q Was it eleven o'clock? A I could not swear to that.

Q Was it before your dinner? A I think so.

Q Did you send for the Doctor? A Yes, sir.

Q He is your regular house doctor? A No sir; he has been waiting on my husband.

Q Your husband had been sick for a long time prior to this? A No, only a week, that is all.

Q And he was not your regular doctor? A He is a lodge doctor.

Q He was a lodge doctor? A Yes, sir.

Q He was your husband's doctor before, Dr. Nagel?

A Yes, sir.

Q Some two or three occasions perhaps? A Well, about that I guess.

Q Was he doctoring him for some particular disease?

A No, only a cold.

Q How many times was the Doctor in your apartment, was he there twenty times? A No, not twenty times.

MR. APPLETON: I object to that. It is so immaterial.

THE COURT: Objection sustained.

Q At whose request did Dr. Nagel go to the police station?

MR. APPLETON: Oh, I object to that.

THE COURT: Read the question again, Mr. Stenographer.

(Question read)

MR. APPLETON: I withdraw the objection.

Q Did he go at your request?

MR. APPLETON: The question is, "At whose request or suggestion did the doctor go to the police station."

THE WITNESS: Why, I think it was my husband's.

Q Aren't you sure it was not at your request? A At my request?

Q That it was not at your request, that is, that you did not ask him, but that your husband asked him? A Dr. Nagel asked my husband what we thought about it, if we did not think that we ought to have this man arrested, and so we of course, said yes.

Q And you were present at the time? A At the time.

Q And do you remember whether your husband said, "No, we don't want to make any trouble"? A No, he did not. He said yes.

Q Sure about that? A I am sure about that.

Q Absolutely sure? A Absolutely sure.

Q Well, the Doctor went to the police station? A Yes, sir.

Q About what time the next day? A Well, I could not tell you that. He went the same day.

Q The same day? A Yes, sir.

Q After your dinner? A Well, I don't know whether it was right after. I told you before I could not swear to that.

Q Did you see the Doctor and Louise go out that afternoon? A He did not take Louise. Louise stayed at home. The Doctor went to the station house himself, and almost immediately afterwards the detective came to the house and questioned the child.

Q Yes, and then the detectives took the child away? A No, he did not.

Q What did he do? A He arrested Mr. Monbrum.

Q He arrested Mr. Monbrum? A Yes sir; and then we went to the station house.

Q Well, now, when for the first time did the child go to the station house? A That day.

Q That same day?

MR. APPLETON: Oh, I do not see how this is material.

It is a waste of time.

THE COURT: Object to it then.

MR. APPLETON: I object to it.

THE COURT: Yes.

BY MR. HOCHFELDER:

Q You were in the police court with the child? A The police court, yes.

Q Was your husband there too? A Yes, sir.

Q And that was on the 9th of February, the next day?

A Yes sir, the next day.

Q And were you with the child subsequently? A Yes, sir.

Q And in the police court again? A Yes, sir.

Q And how many visits did you and the child make to the police court? A Twice.

Q The child was walking along the street in her ordinary manner? A Yes, sir.

Q Now, Mrs. Williams, you have no illfeeling against Mr. Monbrum? A What? How could a thing like that be done to my child and me not have any illfeeling?

Q Pardon me, I meant before you did not? A Not before, I did not.

Q Have you ever had any feeling against Mr. Monbrum?

A No.

Q Before the arrest and accusation? A No.

Q How long had you been living in that house? A Eight years.

Q How long have you been living in that house? A Eight years.

Q And how long, to your knowledge, did Mr. Monbrum live in that house? A Oh, I could not tell you?

Q It was not eight years? A No, indeed.

MR. APPLETON: It was three months, I believe.

Q Did he ever visit your apartments, your rooms? A Once, just came in the door.

Q He never played a game of cards or drank anything there, anything of that kind? A No, no such thing.

Q And sometimes you noticed the defendant upstairs on the fourth floor? A Yes, sir.

Q And your little girl was present sometimes? A Yes, sir.

Q Did he ever embrace or take her up in his arms? A Oh, yes sir.

Q And he kissed her too, I believe? A I believe so.

Q And you were very angry about that? A Yes, sir.

Q And you told him to desist, or at least, you told him to stop it? A I told the child not to do it again, not him.

Q It was in your presence? A Yes, sir.

Q You were very angry about that, weren't you? A I was.

did
Q And the defendant, Monbrum, disobey your instructions about that?

MR. APPLETON: Now, I object to that.

THE COURT: Objection sustained.

Q Well, were you ever so angry that it caused you to threaten him, Mrs. Williams? A Not for that.

Q That you would invoke the arm of the law? A Not for that.

Q That you would have him punished? A Not for that.

Q You made no threats of any kind? A No, I did not.

Q That if he did not stop that, you would have him arrested? A I --

MR. APPLETON: Don't answer.

THE COURT: Don't answer that.

MR. APPLETON: I object to that.

THE COURT: Objection sustained.

Q In your presence, Mr. Monbrum frequently gave the child little tokens, little childish playthings? A Yes.

Q You never objected to that? A No, I did not.

Q And you allowed him to give them to the child? A Yes, sir.

Q And she has them now, I suppose? A No, she hasn't them now.

Q They are broken up, I suppose? A Yes sir; paper things that he would bring home from work, he worked in a

restaurant.

Q Did he give them to her as often as a dozen times?

A No, not as often as that.

MR. HOCHFELDER: That is all.

BY THE COURT:

Q I do not recall, Madame, what you testified about the girl going into the room. Did you see her going into the rooms of the defendant? A Yes, sir.

Q On that occasion? A Yes, sir.

MR. APPLETON: And did she see the defendant in the room?

Q And you saw the defendant in the room? A Yes, your Honor.

MR. HOCHFELDER: May I interject a question?

THE COURT: You may.

BY MR. HOCHFELDER:

Q And that was when you returned from your shopping tour, is that right? A Yes, sir.

Q And the door was open? A Yes, sir.

Q And the other little girl was playing on the floor?

A Inside.

Q And as you saw another little girl in there, you allowed Louise to go in?

MR. APPLETON: I object to that as improper re-direct

examination.

THE COURT: Yes, we went all over that yesterday.

ISIDORE WILLEMS, called as a witness in behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. APPLETON:

Q Mr. Willems, you are the father of Louise Willems, the witness who testified yesterday? A Yes, sir.

Q And the husband of the woman who just left the witness stand? A Yes, sir.

Q You say you live at 122 West 28th Street in the County of New York? A Yes, sir.

Q On which floor? A On the Fifth Floor.

Q The fifth floor? A They call it the fifth floor, it is four flights up.

Q Four flights up? A Yes, sir.

Q Now, on the 8th of February, 1909, were you at home? A Yes, sir.

Q Had you been home for some time? A Yes sir; I was sick for about four or five days.

Q And in the evening ^{between} six and eight o'clock where were you? A I was sitting in the Morris chair in my front room.

Q Did your little child Louise come upstairs to you? A Yes, sir.

Q Can you tell about what time it was she came in?

A It must have been between seven and eight. I cannot tell exactly.

Q Were you still in the front room? A Yes, sir.

Q Speak loud enough so that the twelfth juror may hear you, louder? A All right.

Q Was your child walking or running when she came into your room? A She came running in.

Q Will you please state what you observed as to the physical and mental condition of the child when she came into your room? A She came running in.

Q Will you please state what you observed as to the physical and mental condition of the child at that time? Don't give any conclusions, but give what you observed, what was there about her that made any impression on your mind, if anything? A I observed that she was excited and wrinkled up.

MR. HOCHFELDER: I object to that.

THE COURT: Strike it out. You must tell how she appeared to be and what she did.

A She was very pale and cried.

BY MR. APPLETON:

Q What? A She was very pale when she came in and cried.

Q She was very pale and cried? A Yes, sir.

Q And she was running to you? A She ran to me.

Q Did she say something to you? A Yes sir; she says,
"Papa what do you think Monsieur Mombum did to me?"

Q And then did she tell you what Mr. Mombum had done to her? A Yes, sir.

Q What was her condition then, was she still crying?

A Well, she was still crying, but she stopped when she started to tell the story.

Q And then did anybody come in right then? A My wife came in right then.

Q Did the child then tell her what she had already told you? A No, the child told me.

Q But after the child told you, did she again tell it to your wife? A Yes sir; she tells the story twice over.

Q And what occurred after the child told the story to your wife? A MY wife she did not know what to do. She went out and fixed up the supper and I wanted to start to eat, but I could not eat.

Q Was the child there? A The child was there.

Q Did the child eat? A NO, she did not eat.

Q Did she say why she could not eat? A Yes sir; she said she could not eat.

Q And then what happened? A Then she went and laid in side on the bed in the next room.

Q Your child went and laid on the bed inside the next room? A Yes, sir.

Q And then what happened? A A little while after I heard Mr. Monbrum's voice on the stairs.

Q This defendant at the bar? A Yes, sir.

Q And then what occurred when you heard Mr. Monbrum's voice on the stairs? A I put a big blanket over me and went out into the hall and leaned over the banisters and called him to come up? Q Did Mr. Monbrum come up? A He came up; yes sir.

Q Now, I want you, from that time when Mr. Monbrum was in your rooms, and in his presence, to state in the most minute detail everything that was said by Mr. Monbrum and everything that was said by you, and if anybody else said anything to Mr. Monbrum in your presence, state what that other person said, and what Mr. Monbrum replied. I want it in the most minute detail, in a loud tone. A When Mr. Monbrum came in I said to him, "Mr. Monbrum, I am very much surprised. Are you able to do a thing like that, that my little girl accuses you of doing?" He says, "What is it?" I says, "She accuses you of assaulting her and abusing her." He got kind of shaky.

MR. HOCHFELDER: Your Honor, I object to that and move that it be stricken out.

THE COURT: Let it go. What was his answer?

THE WITNESS: His answer was, "Why, Mr. Willem, I would not be able to do a thing like that." So I said to him, "Mr. Monbrum, I am going to look into that, it may cost you dear," in French.

BY MR. APPLETON:

Q You spoke in French? A Yes, sir.

Q Was your child present? A When he said he did not do it I called my child and I said, "Louise, what did Mr. Monbrum do to you?" So she said, "Yes, Mr. Monbrum, you took off my drawers and put your thing into my thing and put your dirty tongue in my mouth," and then she started to cry again.

Q What did the defendant do when she said that? A He did not say anything but turned and walked away to his friends in the front part of the house.

Q He did not say anything but turned around and walked away? A Yes, sir.

MR. HOCHFELDER: No sir; he did not say that.

THE COURT: Yes, the records stands.

CROSS EXAMINATION BY MR. HOCHFELDER:

Q Now, when you accused him, what did he say? A He said he was not able to think that he could do a thing like that.

Q He denied it, didn't he? A He denied it; yes sir.

Q Now, Mr. Nagel, has been doctoring you for some time, has he not? A Yes, sir.

Q And he is your Lodge Doctor? A He is my lodge

Doctor.

Q And on the evening your wife had her supper, of course?

A No, she did not eat.

Q And the child had its supper? A No, she did not eat either.

Q And you did not eat either? A I had a little bite, I could not finish it.

Q You were sick? A I was sick, I had the grippe.

Q What was the matter, tonsillitis? A No, I had the grippe.

Q You could not swallow? A No, but I did not feel like eating after I heard that story.

Q Now, just about what time did Mrs. Willems come in on the evening of February 8th, after hearing this story? A It must have been about half past six, I cannot tell exactly what time it was.

Q Did you hear Mrs. Willems call for Louise downstairs?

A Yes, sir.

Q That was just about the time your wife had supper on the table? A Yes sir, it was while she was getting the dinner.

Q That was about half past seven? A It was half past six or a quarter to seven. I could not tell exactly the time, I was sick and did not pay very much attention to it.

Q It was about a quarter past seven? A It may have

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been seven, and it may have been a quarter past seven.

Q Now, when Dr. Nagel, - that was on the 9th of February, was it not? A February the 9th, yes sir.

Q And did you tell Dr. Nagel that you did not want to make any complaint against the defendant? A I did not.

Q Did you tell Dr. Nagel to make a complaint in this case? A I asked Dr. Nagel what he should think I should do about it.

Q Yes. A And Dr. Nagel used this expression, "Have that monster arrested right away."

Q He said "Have that monster arrested right away."

A Yes, sir.

Q And then you proceeded to do something? A Yes, sir. I called my wife, and said, "You dress yourself, we will go to the Thirtieth Street station house", and Dr. Nagel said to my wife, "Don't bother I will go there myself."

Q Was that on the 9th of February? A That was on the 9th of February,

Q About four o'clock or two o'clock? A Yes sir; between half past three and four.

Q About that time? A Yes, sir.

Q And then somebody else visited the house. A Yes, sir.

Q And arrested Mr. Monbrum? A The detective came about twenty minutes or half an hour afterwards.

Q Mr. Monbrum was arrested and the child Louise was there when he was arrested? A He was arrested --

Q Was he arrested in his house? A No, he was arrested across the way where he boarded.

Q You mean where he got his meals? A Yes, sir, he boarded with these people across the way.

Q Of course Mr. Monbrum had a room in your house? A The people that lived there had a flat in the same house.

Q Do you know how many rooms he had, one or two? A Well, I could not say.

Q Well, on the 9th of February, did you see the son of Mr. Monbrum who is now in court? A Yes, sir.

Q And he came to see you? A He came to see me.

Q What did he ask about his father? A He asked me why I had his father arrested, why I had him arrested.

MR. APPLETON: I object to that.

MR. HOCHFELDER: I think that the witness should be allowed to reply.

MR. APPLETON: I will withdraw the objection if you are trying to lay a foundation there for something?

MR. HOCHFELDER: I always try to lay a foundation for something. There is a reason.

BY MR. HOCHFELDER:

Q Now, Mr. Willems, you had a conversation with the son

of Mr. Monbrum, did you? A I did.

Q And did you tell him, "Why, I did not want the man arrested," the father arrested? A I did; yes sir.

Q Now --

THE COURT: Continue, your full answer.

THE WITNESS: I told him I did not want to have him arrested right away because I knew him, I had been working with him for three years and I did not want to do anything too hasty, before I was sure.

BY MR. HOCHFELDER:

Q Did you say that you were sorry that he was arrested? A I did not.

Q What did you say about that arrest? A I told him that --

MR. APPLETON: What the man said about the arrest?

MR. HOCHFELDER: To Mr. Monbrum?

MR. APPLETON: Why, I object to that.

THE COURT: I sustain the objection.

BY MR. HOCHFELDER:

Q Did you say that you were very sorry that he was arrested, and that you would like to have avoided it in some way--

MR. APPLETON: Don't answer that.

THE WITNESS: No, I did not.

THE COURT: That will do now, Objection sustained,

strike out the answer.

Q Mr. Willems, you had been treated by Dr. Nagel before, hadn't you, before this?

MR. APPLETON: Don't answer. I object to that. It is immaterial whether he has or not.

THE COURT: What is the question, Mr. Stenographer?
(Question read by Stenographer)

THE COURT: Yes, objection sustained.

Q How long have you known Dr. Nagel? A I have known him for about nine years, because he is the Doctor of my Society.

THE COURT: That is all. Don't volunteer any information.

MR. HOCHFELDER: That is all.

MR. APPLETON: That is all, your Honor. The people rest.

THE PEOPLE REST

MR. HOCHFELDER: I will ^{recall} the child, Louise.

MR. APPLETON: I do not see why the child should be recalled. She was put through a long cross examination yesterday.

THE COURT: We will hear the evidence. We will hear the questions. What is your object?

MR. HOCHFELDER: Just to ask a few questions that I consider important, and I assure your Honor that if I did not deem them important, I would not burden this Court or the Jury with it.

LOUISE WILLEMS, recalled:

RE-CROSS EXAMINATION BY MR. HOCHFELDER: (Continued)

Q Now, Louise, when Mr. Monbrun put his thing into your thing, you knew that was wrong, didn't you?

MR. APPLETON: Don't answer?

THE WITNESS: Yes, sir.

THE COURT: Overruled, question allowed.

Q Your Mama called you, Louise, on that day, that afternoon, to come up, twice, did she?

MR. APPLETON: I object to that, it was all gone into on cross examination.

THE COURT: Objection sustained.

MR. HOCHFELDER: There is just one question that I want to ask.

THE COURT: Objection sustained as to that question.

Q Louise, if Mama had not called you -- one moment, Mr. Appleton. Don't place your hand on the child's face until I am through with the question.

THE COURT: Don't you answer any questions until Mr.

Appleton objects or I tell you to answer. You understand that?

THE WITNESS: yes, sir.

Q Now, Louise, if Mama had not called you to come up, -- she called you twice I understand?

MR. APPLETON: Don't answer.

Q Would you have remained in Mr. Monbrun's room a little while longer, or any length of time?

MR. APPLETON: I object to that.

THE COURT: Objection sustained, don't answer.

Q Louise, you went up to Mama -- Mr. Appleton, may I respectfully ask you to desist from those motions to the child -- you would have stayed there, wouldn't you, Louise?

THE COURT: What is the question?

(Question read by Stenographer)

THE COURT: Objection sustained.

MR. HOCHFELDER: May I have an exception?

THE COURT: Yes. There has been no new question asked since this child came into the room.

Q Louise, Mr. Monbrun took you and put you on the bed?

MR. APPLETON: I object, sir.

THE COURT: Objection sustained. There is no new question.

MR. HOCHFELDER: If your honor will entertain me, I

have several motions to make?

THE COURT: You may make them.

MR. HOCHFELDER: I respectfully ask that your Honor dismiss the indictment because of the following grounds:

First, that the rule of evidence is plain concerning a proposition of law, and it is this, that when a person's conduct is in issue, is deemed relevant to the issue, statements made in his presence and hearing by which his conduct is likely to have been affected, are deemed irrelevant if the person be incapable of hearing or understanding the statements, though these are made in his presence. This has been decided in the case of

Second, that evidence of the particulars or details of the complaint are held not to be admissible; People vs. O'Sullivan, 104 N. Y. 481, and Blatch vs. People, 41 N. Y. 265. That evidence is not deemed as corroborative, or res gestae, or as evidence of the truth of the things alleged, or solely for the purpose of disproving acts, but for the more general purpose of conforming with the testimony of the ravished girl.

I ask your Honor to dismiss this indictment because of the fact that under Section 392 of the Code, a child's testimony must be supported by other evidence; and because of the fact that the evidence that has been adduced clearly

shows that it is not legal evidence. It therefore, maintain that it cannot be supportable evidence, and that therefore there is no evidence.

I ask your Honor to dismiss on the further ground that under Section 283, that no conviction can be had for abduction, compulsory marriage, rape or defilement on the testimony of the female defiled, compelled or abducted, unsupported by other evidence, and if there be no legal evidence there cannot be other evidence, and therefore this complaint stands unsupported by proper legal evidence.

MR. APPLETON: Shall I reply?

THE COURT: Just a moment, he has not finished.

MR. HOCHFELDER: I ask your Honor upon the further grounds to dismiss, that where the facts in this case or any other case are not disputed, your Honor has the discretion or power to take away from the consideration of the Jury any count mentioned in the indictment, and your Honor has a right to dismiss the indictment where there is no other testimony, and inasmuch as there isn't any other and no corroborative testimony, there cannot be a conviction. It is solely upon the statements made by the child to another person, to whom she would naturally complain, but that alone is not corroborative that the crime was committed, but simply corroboration of the

complaint made by the child to its own kind, and to whom she might naturally complain, and although that bears to the issue
vant simply as admissible, that there is a corroboration of the complaint, ~~that is~~ that ipso facto is no corroboration of the crime, nor that the defendant committed the crime, and, therefore, the defendant is entitled to a reasonable doubt; and your Honor has the power, I respectfully submit, to take the case away from the Jury.

That is all, if the Court please.

THE COURT: Motion denied.

MR. HOCHFELDER: Will your Honor give me an exception to each of those?

THE COURT: Yes.

Mr. Hochfelder opens case to the jury in behalf of the defendant.

D E F E N S E ' S T E S T I M O N Y

E D W A R D M O N B R U M, called as a witness in behalf of the defendant, being duly sworn, testified as follows: through Mr. O'Hare as Interpreter:

she lives, from the floor above.

Q And on which floor do you live in that house? A On the third floor.

Q And do you know where she lives? A The fourth floor.

MR. APPLETON: That is three flights up.

Q Well, she lives on the fourth, is that nearest the roof of the house? A She lives next floor to the roof.

Q How many rooms do you keep or occupy in that house? A There are four rooms.

Q But how many are for your own use, how many do you occupy? A I had one room alone for my own use.

Q Now, on the 8th of February, last, was Louise in your room about -- I don't know the time, I will ask you the time? A Not until the day in question when she came up.

Q Now, was the door of your room open or shut? A It was open.

Q What time was it? A It was about a quarter past six or half past six in the afternoon, in the evening.

Q Was there another little girl in your room about that time, half past six? A Not in my room at that time, but she was in the corridor, in the hall.

Q Now, did you see the mother go upstairs about half past six or a quarter after six on that day, the mother of Louise? A No.

Q Well, did you see Louise about a quarter after six?

A I did.

Q Where did you see her, Mr. Monbrum? A When she came upstairs. She came upstairs I saw here in the hall. She joined the other little girl in the hall at the moment that I saw them.

Q Did you see the little girl and Louise go anywhere?

A They went upstairs to their mothers' apartments.

Q Did Louise come into your room? A She came right at the threshold of the door, but no further.

Q And did you see her go away with the other little girl?

A They both went upstairs, without delay to the rooms of the mother of one of them.

Q Now, did you see them after that time, about a quarter after six, any time between a quarter after six and nine o'clock anywhere? A I did not see them about that time.

Q Now, where did you go, Mr. Monbrum, after a quarter after six, after you saw this girl? A About half past six I went upstairs to Madame Giordano's apartment.

Q And how long did you stay there? A One minute.

Q And where did you go after that time? A At that time time a gentleman named Mr. Willem called me.

THE COURT: Mr. O'Hare, so that there may be no trouble about the interpretation of all this, Mr. Willem is the father of the complaining witness.

THE WITNESS: Mr. Willems called me at that time.

Q Now, you stayed there about a minute at Mrs. Giordano's house? A I remained at Mr. Giordano's apartment.

Q Now, did you go downstairs after that?

MR. APPLETON: Now, just a minute. If your Honor please, it seems to me it would be better to ask what happened and what he did at that time instead of leading now.

MR. HOCHFELDER: Now, I am going to ask, Mr. Appleton, where he did go.

Q Where did you go after that?

MR. APPLETON: I object to that.

Q Well, did you go downstairs? A I went downstairs to go to 117 West 28th Street.

Q And what is that, what is there conducted there?

A There is where I take my dinner in the evening.

Q And after you -- before you went upstairs for a minute did you close your room? A Before I went upstairs to Mrs. Giordano's I closed my door. I locked and closed my room.

Q Did you lock anyone in there? A There was no one within.

Q What did you do at this place on 28th Street, across the street isn't it? A It is across the street. I went there to dine.

Q And about what time did they have dinner?

MR. APPLETON: I object to that, sir. It is what time he dined there that night.

MR. HOCHFELDER: I ask that that other question be withdrawn.

THE COURT: Yes.

BY MR. HOCHFELDER:

Q What time did you dine there that night? A At seven o'clock, and that is the dinner hour.

Q That is the regular dinner hour? Did you dine with any particular people there, or with anyone? A The proprietor of the establishment and several freinds were there dining at the same time.

Q Do you know the name of the proprietor and also of those friends? A John Maisorable, is the name of the proprietor.

Q And what are the names of the friends? A Mr. Dustin, Mr. Ezac. There were several others whose names I do not now recall.

Q Now, before you dined, had your dinner, what did you do in that place? A We played a game of billiards with Mr. Dustin.

MR. APPLETON: Are those witnesses in the court room?

MR. HOCHFELDER: Oh no, I would not be so unkind as that.

MR. APPLETON: No, I did not ask that.

BY MR. HOCHFELDER:

Q Now, how long did you remain in that place? A Until about half past nine.

Q Until about half past eight?

MR. APPLETON: I object to that as leading.

THE COURT: Yes.

BY MR. HOCHFELDER:

Q And at that hour what did you do and where did you go?

A I went home to sleep.

Q Did you see any one of the family of Willems when you returned that night? A I saw nobody of that family that night.

Q Did anyone accuse you of having put your male organ into the little girl's private parts on that night, and if so, who accused you? A No, not that way.

Q Well, you went up Madame Giordano's room? A Yes, sir.

Q And someone called you. Will you kindly tell me who it was? That is, before you went to the restaurant?

MR. APPLETON: I object to that, sir. He has already--
The objection is he asked one question, which, of course, was objectionable. I did not object to it and the witness gave his answer. He now asks a leading question. At all times I have been willing and ready to have this witness

testify to what happened, but I certainly do object to his being led.

MR. HOCHFELDER: Mr. Appleton --

MR. APPLETON: I did not address counsel, sir. I trust the Court --

THE COURT: I will allow the question.

THE WITNESS: Mr. Willem.

Q And what did he say to you? A He told me that I had embraced or caressed his daughter.

Q I ask you whether he asked you whether you kissed the girl?

MR. APPLETON: Now, wait. I object to that. What was said?

THE COURT: Yes.

THE WITNESS: He told me that his daughter complained to him that I had embraced her. I told him that I had not. That was about all. And at once I left.

BY MR. APPLETON:

Q At once who left? A I left, and after that I went to dinner.

BY MR. HOCHFELDER:

Q After you left Mr. Willems, did you go into the lady's room, the lady's house, Madame Giordano, or did you then go away to the restaurant? A Yes, I went to the lady's rooms.

Q And then you left? A Yes sir; then I left.

Q Now, did Mr. Willem say to you, "Mr. Monbrum, I will look into this matter. You had better be careful, I will find out," or some such conversation?

MR. APPLETON: Oh, I object to that.

THE COURT: Objection sustained.

Q Did he make any threats to you, Mr. Monbrum?

MR. APPLETON: I object to that. What did he say, sir, or use the exact words of the witness.

THE COURT: Yes, objection sustained, as to the form of the question.

BY MR. HOCHFELDER:

Q What did he say to you, Mr. Monbrum, did he make this statement, that you embraced the girl? A He said nothing to me whatever.

(At this point Mr. O'Hare was relieved by Official Interpreter DeVille.)

Q Now, did you ever take the little girl's drawers off in your room, or any place?

THE COURT: That is not the question in the evidence, as I remember it.

MR. HOCHFELDER: That he took the drawers off, if your Honor please.

THE COURT: That he unbuttoned the drawers, as I understood it.

MR. HOCHFELDER: I thank your Honor for the connection.

THE WITNESS: I did not.

BY MR. HOCHFELDER:

Q Did you put this child on the bed in your room? A I did not.

Q Did you put your private parts into that little girl's private parts? A I did not.

Q Did you lie on top of her? A No.

Q Did she lay on top of you? A No, she was not on top of me.

Q Did you have your face to her face upon the bed? A No.

Q Did you see her lying upon your abdomen, upon you in your room? A She was not.

Q Did you lie on the bed this way, for instance, (indicating) on your back? A Not at all.

Q Did she lie upon her back upon your bed? A She did not.

Q Was there any little girl playing in your room when this little girl Louise was standing on your threshold?

A Not in the room. She was in the hall playing.

Q Was there any girl playing in your room when Louise was standing on the threshold? A There was nobody inside the room, but there was the little girl in the hall.

Q Did you put your tongue into the girl's mouth? A I

did not.

Q Did you take your private male organ and put it into the hands of this girl? A NO.

Q When , for the first time, were you apprised that you were charged with the crime of having placed your private parts into the private parts of the girl?

MR. APPLETON: Now, just a moment. Your Honor, the testimony here is that the father accused him of assaulting the child. Now; he has testified what the father said at the time.

THE COURT: Yes, objection sustained.

BY MR. HOCHFELDER:

Q When were you apprised that you had committed an assault on this girl?

MR. APPLETON: I object to that, sir.

Q When, for the first time, were you apprised that you had committed an assault on this girl?

MR. APPLETON: I object to that. He has told what the conversation was between the father and himself. It is for the jury to say whether or not that was a charge of assault upon the girl. I should say that if anybody had kissed my girl in that way, and embraced my girl in that way, he had committed an assault.

MR. HOCHFELDER: May it please the Court, he is only wasting time.

MR. APPLETON: Thank you. I objected to the word "assault". It is a conclusion.

MR. HOCHFELDER: I ask for your Honor's ruling upon that.

THE COURT: You may ask when for the first time he was charged with anything against this girl.

MR. HOCHFELDER: Will you ask him that question?

(Question put by interpreter)

THE WITNESS: On the 8th, in the evening.

BY THE COURT:

Q At what time? A At half past six in the evening, at the moment when I was going out.

BY MR. HOCHFELDER:

Q That was when you were leaving Madame Giordano's room?

MR. APPLETON: I object to that. He has outlined to the Jury when that was.

THE COURT: Objection sustained.

BY MR. HOCHFELDER:

Q And after that were you arrested? A On the Tuesday, yes.

Q About what time? A Four o'clock in the afternoon.

Q Now, Mr. Monbrun, were you ever convicted of any crime, anywhere in this country or France? A Never.

Q Were you ever arrested for any crime other than this

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crime? A Never.

Q Now, Mr. Monbrum, did you ever stand on the fourth floor and look into your room while the door was open?

MR. APPLETON: I object to that as immaterial.

THE COURT: Objection sustained.

MR. HOCHFELDER: That is all, if your Honor please.

CROSSEXAMINATION BY MR. APPLETON:

Q The child, Louise, came upstairs and stopped at your door, did she not? A She did come up, but she stopped to look at the child that was playing in the hall.

Q Oh, I understood that was your statement, but will you answer my question?

MR. HOCHFELDER: May I ask your Honor not to allow Mr. Appleton to couch his language ⁱⁿ such terms as to convey an impression to the jury that he is not telling the truth. I ask your Honor to instruct Mr. Appleton not to do it.

MR. APPLETON: Will you read the question?

(Last two questions and answer read by the Stenographer.)

THE WITNESS: She came up and stopped in the hall when she saw the child. She stopped and played with her.

Q Always playing with the child in the hall on that occasion?

MR. HOCHFELDER: I ask your Honor to allow that

question to be divided, "Always playing with the child in the hall on that occasion?"

MR. APPLETON: You are getting most pathetic.

MR. HOCHFELDER: Will your Honor ask Mr. Appleton to divide that question?

THE COURT: Continue, Mr. Appleton.

MR. APPLETON: Repeat the question, Mr. Stenographer.

(Question read by Stenographer)

THE WITNESS: Yes.

BY MR. APPLETON:

Q She did not go into your room at all? A On the threshold of the door.

Q She came to the threshold of the door? A Yes, sir.

Q Was your door open then? A Open wide.

Q Did you speak to the child, Louise, then? A I chased her away from the room because I was going away at that moment.

Q Were you alone in your room? A Alone.

Q And the door between your room and the apartments of your landlord were locked, or was locked, was it not? A Yes sir; locked.

Q And there was no one else in the room but yourself, while you were there that night, was there? A That is right.

Q Now, didn't --- bring Ida Giordiano into court please.

(Ida Giordano is brought into the court room)

Q While you were down in your room, and while the two children were on the same floor -- we will put it -- then didn't Mrs. Willem call her child Louise? A No, sir.

Q And when Mrs. Willem called her child, Louise, did you not tell this child, Ida Giordano, to tell Louise's mother that Monsieur Monbrum says that she would be up in a minute?

A No, no.

Q And didn't this child, Ida Giordano, go out into the hall and call up to Mrs. Willem and say, "Mrs. Willem, Monsieur Monbrum says let Louise stay a few minutes. She will be up in a few minutes."

MR. HOCHFELDER: One moment, before you answer that. I ask that that answer be stricken out. It is not binding on the part of the defendant what this child said.

MR. APPLETON: I asked him if he did not hear her state that.

MR. HOCHFELDER: I ask for the same ruling, whether he heard it or not.

THE WITNESS: No.

BY MR. APPLETON:

Q You understand this little girl's name is Ida Giordano, do you not? A Yes sir, Ida Gregorio is the right name.

Q She is known as Ida Giordano? A It may be, but that Giordano is not her father.

Q But Giordano is the family that you went to visit that night? A This child is a child by her first husband, that is why I said that the name is Gregorio.

Q That is what I wanted to get at. She lives now with her mother who has married a man by the name of Giordano?

A Yes, sir.

Q And she is now known as Ida Giordano? A Yes, sir.

Q So that when I called the child Ida Giordano, you knew to whom I referred, did you not? A Yes, sir.

Q Now, did you put your private parts into the private parts of Ida Giordano, the same as you did the other girl, Louise?

MR. HOCHFELDER: I object to that and ask that it be stricken out.

THE COURT: Objection sustained.

MR. APPLETON: On cross examination as to the question of credibility?

THE COURT: You are referring to the --

MR. APPLETON: I am referring to this little girl, Ida Giordano, only.

THE COURT: Question allowed.

MR. HOCHFELDER: Will your Honor give me an exception?

THE COURT: Yes.

THE WITNESS: It is impossible, no.

BY MR. APPLETON:

Q Did you not do it the same day you did it to Louise?

Willem? A No.

Q Didn't the Doctor examine Ida Giordano the same day he did Louise Willem?

MR. HOCHFELDER: I object to that.

THE COURT: Objection sustained.

MR. APPLETON: If you object to that I will withdraw it.

BY MR. APPLETON:

Q So you did not hear Mrs. Willem call to Louise a second time, after Ida had spoken to Mrs. Willem? A Oh, no.

Q You did not hear any of that? A No.

Q But just a few moments after the child Louise had gone upstairs, you went upstairs did you not? A When the child came in the hall I was ready to go out, and I wanted --

Q Oh, of course I know that, I remember your testimony.

MR. HOCHFELDER: Wait a moment, I object.

THE COURT: Now, Mr. Appleton, that is not necessary.

BY MR. APPLETON:

Q You also testified on your direct examination that the children went upstairs, did you not?

MR. HOCHFELDER: One moment please, do not answer that. He did not testify that they went upstairs. He said they went somewhere.

MR. APPLETON: The jury remember it, that he said the children went upstairs.

THE COURT: He has a right to ask where they went, if he knows.

BY MR. APPLETON:

Q Now, after the children went upstairs, you went upstairs did you not? A Yes, sir.

Q And then Mr. Willem called you, did he not? A Yes, sir.

Q And he then charged you with doing something to his child, did he not? A Perfectly.

MR. APPLETON: That is all.

MR. HOCHFELDER: May I ask a question now, or shall I wait?

MR. APPLETON: There is one other question.

THE COURT: Continue.

BY MR. APPLETON:

Q You never had any trouble with Mrs. Willem before that, did you? A Not that I know of.

Q You knew of the husband, Mr. Willem? A Yes sir; he had worked at one time in Martin's. I knew him.

Q You were on good terms with him, were you not? A Yes, ordinary common relations.

Q And you had never had any trouble with him before that occasion? A No.

Q He never accused you of doing anything to his child before that night, did he? A No.

Q That was the first time he ever charged you with

bothering his child, was it not? A Certainly.

Q On that occasion? A But I said to him, "No, it is not true," and this charge it is not true.

Q I know you said it was not true, but you were friendly before that? A I was not friendly. I was not an enemy either. We were ordinary common acquaintances.

Q Can you give any reason why Mr. and Mrs. Willem would charge you with this crime?

MR. HOCHFELDER: One moment. May it please your Honor I object to that question.

THE COURT: Objection overruled.

THE WITNESS: I have no reason to give. I do not know why they accused me of that.

MR. APPLETON: That is all.

MR. HOCHFELDER: No other questions.

THE COURT: Just a moment, is that all, Mr. Appleton?

MR. APPLETON: Yes, your Honor.

BY THE COURT:

Q Now, in what language did Mr. Willem talk to you when you went upstairs on that occasion? A I did not go up, I went up on their floor and then they talked to me.

Q Yes, I understand, in what language did they talk?

A In French.

Q Did you see the little girl at all when you were up

there in Mr. Willem's rooms? A I saw her when Mr. Willem opened the door to call me.

Q Yes, that is to say when you went upstairs in answer to Mr. Willem's call, did you see the little girl up there in Mr. Willem's apartment? A I saw the child in the kitchen at the moment Mr. Willem had the door open talking to me.

Q And Mr. Willem talked to you? A Yes, sir.

Q And who else was there when Mr. Wilhem was talking, at any time? A It was about half past six. I only perceived a man seated in the kitchen of Mr. Willem's apartments. I might be able to recognize him if I saw him again.

Q Did the little girl say anything in your hearing after Mr. Willem called you upstairs? A While I was telling the father that I had not done anything of the sort, the child says, "Yes, it is true." And then I answered, "You know it is not true."

Q The child said what was true? A That I had embraced her, or kissed her.

Q Yes, certainly. Now, what was the language, what word in the French language did the father use when he accused you of any impropriety with his daughter, what word did he use?

A I cannot hardly recollect the exact words, your Honor, that his child --

Q The exact words? A Embrace.

THE COURT: Now, the correct and exact word which he used was?

THE INTERPRETER: "Embrasser,"kiss.

THE COURT: Now, wait a moment. I want to know what the word "embrasser" meant to him?

THE WITNESS: Kiss.

THE COURT: The Interpreter will state what are or what is the meaning of the word "embrasser" in French, which word he says the father used, and whether it has more than one meaning.

THE INTERPRETER: It has several meanings, your Honor. "Embrasser" means to place the arm around the person's neck or body and hugging, or squeezing the person. That is called "embrasser". "embrasser" means also "kiss", in the ordinary speech, it is a figurative speech.

MR. HOCHFELDER: Interpreted for "kiss".

THE COURT: Has it any evil signification?

THE INTERPRETER: No sir; there is another word that has an evil signification.

THE COURT: I know, but ~~is~~ not the word "embrasser" sometimes used to indicate an improper thing?

THE INTERPRETER: Never, your Honor.

THE COURT: Now, wait a minute. I want to know his exact answer to the father, in the exact words he used.

THE WITNESS: I told him I had not done a thing.

similar to the one he accused me of.

THE COURT: Similar to what one thing did he accuse you of?

THE WITNESS: To have caressed his child.

Q Now then, did you say that it was impossible for you to do the thing that you were charged with doing? A I said, "Yes, I was incapable of such a thing," and then I left.

Q Did you say that it was impossible for you to do the thing, that you were incapable of doing it? We want to know just what word you used in French? What word did you use in French? A That I was incapable.

Q Of doing the thing that he charged you with? A Perfectly well.

Q Had you ever kissed that little girl in your life before? A Never. She never came into the room, or near the room. This was the first time;

Q Well, any place at all, did you ever kiss her any place at all? A I never frequented them. I never was in their company, and I never saw them. Sometimes I would meet them in the hall.

Q When the little girl charged you with the impropriety, or whatever it was, just what did the little girl say? Did she speak in French or not? A I was not there when she spoke to her father.

Q I know, but I am -- A The child also spoke in French,
She said, "Yes, it is true."

Q What was true, again? A That which she had already
told her father.

THE COURT: Yes, that is all.

RE-DIRECT EXAMINATION BY MR. HOCHFELDER:

Mr. Monbrum, when you stated to Mr. Willem that it was
impossible for you to do such a thing --

MR. APPLETON: He did not say that.

THE COURT: Objection sustained. The word, according
to the witness, which was used was that he was incapable.

MR. HOCHFELDER: Incapable?

THE COURT: Yes.

Q When you stated that you incapable of doing such a
thing to which question did you make that reply?

MR. APPLETON: I object. It has all been gone over
in cross examination and in direct examination, and it is
improper re-direct examination.

MR. HOCHFELDER: I thought that your Honor wanted to
bring that out, that your Honor was very painstaking on
that.

THE COURT: Yes, I think that has all been gone
over, but I think I will allow it again.

(Question read by Stenographer)

THE WITNESS: That was in answer to the query put by

the father that I had taken advantage of the girl. That I had embraced her, or kissed her.

MR. APPLETON: Might I ask the interpreter if he interpreted the exact words that the defendant used in his answer to that question?

THE COURT: Yes.

MR. APPLETON: Did you give the exact interpretation of the last answer of the witness to you?

THE INTERPRETER: Yes, sir.

MR. APPLETON: The exact interpretation of it?

THE INTERPRETER: Yes.

THE COURT: Give me the exact language he used to you in French.

THE INTERPRETER: Give me the English of it. I am a machine, your Honor.

MR. APPLETON: No, repeat the question to him.

(At this point the Court, Witness and Interpreter conversed in French.)

THE COURT: The answer, as I take it, is correct "Having taken advantage of." He used the word "profite," which is properly translated by "taken advantage of".

LOUIS DUSTON, called as a witness on behalf of the defense, being duly sworn, testifies as follows:
DIRECT EXAMINATION BY MR. HOCHFELDER:

Q Where do you live? A 138 West 62nd Street.

Q And where are you employed? A By the Panhard Automobile Company.

Q In what capacity? A What, sir?

Q What do you do? A I keep the books in the repair shop.

Q Do you know Edward Monbrum, the defendant in this proceeding? A Yes, sir.

Q How long have you known him? A About six or seven months.

Q Do you recall February 8th, 1909 of this year?

A Yes, sir.

Q Do you know whether you saw Edward Monbrum at the Cafe of one -- 117 West 28th Street? A Yes, sir.

Q And do you frequent that place? Did you go to that place? A Yes sir; I went to that place that day.

MR. APPLETON: No, the point is, do you go there often?

THE WITNESS: Well, about once a week for my meals, that is, once or twice a week.

BY MR. HOCHFELDER:

Q And do you remember having met Edward Monbrum there on February 8th, 1909? A Yes, sir.

Q At about what time? A At about twenty minutes or a quarter to seven.

Q Did you dine there? A Yes, sir.

Q About seven o'clock, or a little after seven.

Q Did you see Edward Monbrum dining there? A Yes sir;
he dined with me.

Q He dined with you? A Yes sir; with me and two or
three more people.

Q And between twenty minutes to seven and seven o'clock
did you see him, Edward Monbrum? A Yes, sir.

Q Was he in your company? A Yes, sir.

Q And in the company of your friends? A No, he was
with me playing billiards.

Q He was playing billiards with you? A Yes, sir.

Q Did you play one game or two games? A We played one
game before dinner.

Q Before dinner? A And we played another game after
dinner.

Q You played another game of billiards after dinner?
A Yes, sir.

Q And how long were you in his company, or he in your
company that night after dinner? A He left at about nine
o'clock.

Q And did you see him there all the time? A Oh, yes,
he was with me all the time. I left him there at nine
o'clock. I went away with my boy.

Q What time did you leave your place of business on that

day, afternoon, night? A At five o'clock every day.

Q And you are sure that you met him there about twenty minutes to seven?

MR. APPLETON: No, I object to that. He has testified that he did.

MR. HOCHFELDER: That is all.

CROSS EXAMINATION BY MR. APPLETON:

Q Now, you keep pretty good time of what you do? A Yes sir; that is very easy, and I will tell you why, because--

Q I did not ask you that. I see you have a reason?

A Yes, sir.

Q We will give you a chance probably to do it?

A Yes, sir.

Q Did anybody tell you you had better have a reason for telling so? A Yes sir; I have one reason --

MR. HOCHFELDER: Now, I think, your Honor, that this is unfair on the part of the District Attorney.

RE-DIRECT EXAMINATION BY MR. HOCHFELDER:

Q Now, Mr. Duston, the District Attorney has asked you a question about a reason? A About what?

Q About a reason, about the time and so on? A Oh, yes.

Q Now, did anyone speak to you about this case?

MR. APPLETON: Don't answer that nor shake your head.
Will your Honor direct the witness that when I hold my hand
out I am polite enough to interrupt the counsel?

THE COURT: Yes, don't answer until the proper time.

BY MR. HOCHFELDER:

Q Will you give us the reason why you think it was about
twenty minutes to seven?

MR. APPLETON: I object to that as improper re-direct
examination.

THE COURT: Yes.

BY MR. HOCHFELDER:

Q Do you know other people that know Mr. Munbrum? A Yes
sir; I know them.

Q About how many do you know?

MR. APPLETON: I object to that as improper re-direct
examination.

MR. HOCHFELDER: I might say that I am trying --

THE COURT: You may continue, but the particular
question is immaterial.

BY MR. HOCHFELDER:

Q And do you know the reputation of Mr. Monbrum?

MR. APPLETON: For what?

MR. HOCHFELDER: We will say that -- his general re-
putation.

MR. APPLETON: For peace and quietness, truthfulness.

and veracity or what?

MR. HOCHFELDER: His general reputation, but I will say his reputation for morality, purity of soul, decency?

THE WITNESS: Well, for the time I know him, I never noticed anything wrong with him. That is all I can say about it.

MR. HOCHFELDER: That is all.

MR. APPLETON: That is all.

J E A N M A Z I N A B I, called as a witness in behalf of the defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HOCHFELDER:

Q Now, you speak a little English, but you prefer to have the assistance of an interpreter, is that right? A Yes sir.

Q How long have you been in this country? A Two years.

Q Are you the proprietor of the cafe and billiard parlor at 117 West 28th Street? A Yes, sir.

Q Do you know this Monbrum, this defendant in this case?

A I know Mr. Monbrum for the last six or seven years.

Q Does he frequent, does he visit your place of business?

A He was usually calling there. He used to call there and he is frequently in my house.

Q What time? A The dinner hour is at seven o'clock, but sometimes he would get there earlier.

Q And do you recollect February 8, 1909, and tell me at what time he got to your place? A He came in a few minutes before seven.

Q Did you see him there from -- did he have dinner with you at seven o'clock?

MR. APPLETON: I object. The question is, what took place .

THE COURT: Objection sustained.

Q Did you have dinner with him on February 8th, 1909?

A Yes, sir.

Q At what time, please? A We were eight at the table. It was seven or five minutes past seven in the evening.

Q Was he one of the party at the table?

MR. APPLETON: "He", I suppose refers to defendant?

MR. HOCHFELDER: Yes, sir.

THE WITNESS: Yes, sir.

Q Did you see him after dinner? A Yes sir; he played a game of billiards with Mr. Duston.

Q Did he play any game of billiards before dinner?

A Yes sir; one game.

Q And did you get any money for the use of this billiard table?

MR. APPLETON: I object to that, sir, it is immaterial.

THE COURT: Objection sustained.

BY MR. HOCHFELDER:

Q Do you know how long he was in your place that night after dinner? A It was about nine, or a quarter after nine when he left my place. I do not know the exact hour of it.

Q Do you know other people that know Mr. Monbrum? A Yes sir.

Q Do you know what his reputation is for morality, purity of mind and heart?

MR. APPLETON: Oh, I object to that. That is new, your Honor, absolutely. As to what ^{it} is for morality and reputable citizenship, but as for purity of mind and heart, I do not know.

THE COURT: Let us have the question as the gentleman wishes to have it. How do you wish to have it?

MR. HOCHFELDER: I think we would like to have the words "purity" in.

THE COURT: All right, if the gentleman has a reputation for purity, let it in.

THE WITNESS: For all the long time I have been acquainted with him I have always known him to be a good man, of good conduct, of very good conduct.

Q Well, do you know anything about his morality?

MR. APPLETON: No, I object to the question as already answered.

THE COURT: Yes.

MR. HOCHFELDER: Well, I think that will be sufficient on that point.

MR. APPLETON: Have you finished?

MR. HOCHFELDER: That is all.

CROSS EXAMINATION BY MR. APPLETON:

Q You have so little business you do not have many people come to your place, do you? A At times I have more. I have families come in there, and at times there are a great many more than that.

Q And the defendant roomed at your house at 132 West 28th Street on the 8th day of February, 1909, didn't he?

A Yes sir; we had an apartment

Q Now, I did not ask that. Did he live there, yes or no?

THE COURT: Did he live there or did he not?

THE WITNESS: Yes, sir.

Q And you do not know what time he left your restaurant that night?

MR. HOCHFELDER: May it please the Court, I object, your Honor, he said that he did know.

MR. APPLETON: Oh, it is all right then. Are you afraid to have him answer the question?

MR. HOCHFELDER: Why, he has said that he left at a quarter after nine.

MR. APPLETON: Go ahead. I don't want to ask him

after you have told him.

H E N R Y I S A A C , called as a witness in behalf of the defense, and being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HOCHFELDER:

Q What is your business? A Salesman.

Q Employed where? A Mirabel Wine Company, 112 West 14th Street.

Q Is that firm of yours exporters or importers? A Importers; yes sir.

Q Now, do you know Edward Monbrum, the defendant?

A Yes, sir.

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

Q Do you know the cafe at 117 West 28th Street? A Yes, sir.

Q And what is the name of the proprietor? A John Mazinabi.

Q And are you a married man? A Well, my wife is dead.

Q You are a widower? A Yes, sir.

Q Have you any children? A No, sir.

Q Now, do you remember the night of February 8th, 1909?

A Yes, sir.

Q Do you remember having seen Mr. Monbrum anywhere that

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night? A Yes, sir.

Q Where? A 117 West 28th Street.

Q And what time did you go to that place? A I entered the place about half past six.

Q How long had you been in there when Mr. Monbrum came in?

MR. APPLETON: If he knows.

Q If you know? A Well I was there about five or six or seven minutes, and then I noticed Mr. Monbrum come in.

Q And did you see him for any period of time after that?

A After that; yes sir.

Q Any place? A Yes, sir.

Q Were you in his company? A I was in his company.

Q What were you doing? A We took supper together. We sat down at the table at seven o'clock or five minutes after seven.

Q And before supper time were you engaged in any --

THE COURT: Ask him what happened, if he knows, before supper. What he saw there and what took place, if anything before supper.

THE WITNESS: Mr. Monbrum was playing a game of billiards with a gentleman by the name of Duston. I know the gentleman but I am not sure that that is his name.

Q And were you playing a game too? A No, sir.

Q Did you see him after supper? A Yes, sir.

Q And for how long a time did you see him there? A I
minutes
left the place about nine or five/after, and he was there.
He remained there.

Q Did you leave with Mr. Monbrum or did you leave alone?

A I left alone.

Q Do you know other people that know Mr. Monbrum?

A What is that?

Q Do you know other men, woman, that know Mr. Monbrum?

A Yes, sir.

Q Well, do you know what his reputation is as to moral-
ity? A Well, I know nothing bad about him.

Q Nothing bad about him? Well, can you tell us any
more than that?

MR. APPLETON: I object to that, sir. It is an im-
proper question. Does he know his reputation, yes or
no.

THE WITNESS: I know his reputation.

Q Is it good or bad?

THE COURT: A reputation for what?

MR. HOCHFELDER: For morality?

THE WITNESS: It is good.

MR. HOCHFELDER: That is all, if your Honor please.

CROSS EXAMINATION BY MR. APPLETON:

Q How often do you dine there at that cafe? A It
happens that I go in there on Monday nights.

Q It just happens that you dine there on Monday nights?

A Yes, sir.

Q Did you dine there last Monday night? A No.

Q Did you dine there the Monday night before that?

A No, sir.

Q Did you dine there Monday night two weeks ago? A I cannot just recollect. I know I was there the two Monday nights. I generally dine there on a Monday night.

Q Just listen to the question if you can? Do you know when you dined there last on a Monday night? A About three weeks ago.

Q That is the best answer you can give, about three weeks ago? A Yes, sir.

Q Do you know what time you got there at that time?

A I got there about six or a quarter past six that night.

Q You got there about six or a quarter past six, but supper is not ready until seven? A I don't just go for the supper. I go there and maybe play a game of billiards or pool myself.

Q And do you know who dined with you the last time?

A There was very few of us.

Q You don't know who they were? A Yes sir; there was Monsieur and Madame Mazinabi and Mr. Duston, I think, but I am not sure.

Q You think Monseieur Duston, but you do not know? A No.

I do not know.

MR. APPLETON: That is all.

MR. HOCHFELDER: That is the defendant's case.

THE DEFENSE RESTS

MR. HOCHFELDER: Is the District Attorney going to recall any witnesses, or any new matter?

THE COURT: The District Attorney has not indicated to me his desires. The defense has the right to a rebuttal.

THE PEOPLES' REBUTTAL

MR. APPLETON: Ida Giordana.

Now, if your honor please, this is a very small child as you see. I do not insist upon having this child testify. I brought out on cross examination certain facts. I merely make the offer to have this child testify if the Court thinks proper or the jury would like to have the child do so.

I D A G I O R D A N O, called as a witness in behalf of the People in Rebuttal, testified as follows:

BY THE COURT:

Q What do you speak? A French and English and Italian.

Q You speak French, English and Italian? A Yes, sir.

DIRECT EXAMINATION BY MR. APPLETON:

Q Now, how old are you, Ida? A What?

Q How old are you? A Five years old.

Q Do you know Monsieur Monbrum?

MR. HOCHFELDER: May it please your honor at this juncture, I do not think the testimony of this child should be received. The child is of such tender age.

THE COURT: I will allow the questions to be put.

BY MR. APPLETON:

Q Do you know Monsieur Monbrum? A Yes, sir.

Q Now, were you ever in Mr. Monbrum's room? A Yes, sir.

Q Did you ever -- or do you know Louise Willem? A Yes, sir.

Q Did you ever see Louise Willem in Mr. Monbrum's room?
A Yes, sir.

Q Now, did anything happen at any time -- well, I won't put it that way. Do you know Louise Willem's mother? A Yes, sir.

Q Did you ever hear Louise's mother call Louise while Louise was in Mr. Monbrum's room? A Yes, sir.

Q Now, what happened when Louise's mother called her, did Mr. Monbrum say anything to you? A Yes, sir, he said "Louise is coming right away."

BY THE COURT:

Q Who said that? A Mr. Monbrum said, "Tell Mrs. Willem Louise is coming right away."

Q To whom did he say that? A He said that to me.

THE COURT: Go ahead.

BY MR. APPLETON:

Q What did you do when Mr. Monbrum said that to you?

A Well, my mother called me and then I went upstairs, so I put my coat --

Q Never mind that, but when Mr. Monbrum told you to tell Louise's mother that she would be up right away, did you tell Louise' mother? A Yes, sir.

Q What did you say to Louise's mother? A I said, "All right, Mrs. Willem, she is coming right away upstairs."

MR. APPLETON: Now, you can cross examine her.

MR. HOCHFELDER: Under our rules of evidence it is most improper for the defendant to cross examine, and I shall not cross examine her, and I will further ask that this testimony be entirely disregarded as it is entirely inadmissible under our laws, the child being of such a tender age, only five years.

MR. APPLETON: I did not press it, your Honor.

THE COURT: Just one moment. I call your attention to Rule 392 of the Code of Criminal Procedure: "The rules

of evidence in civil cases are applicable also to criminal cases, except as otherwise provided in this Code. Whenever in any criminal procedure a child actually or apparently under the age of twelve years offered as a witness does not in the opinion of the court or magistrate understand the nature of an oath, the evidence of such child may be received, though not given under oath, if in the opinion of the court or magistrate such child is possessed of sufficient intelligence to justify the reception of the evidence." Now, my opinion is pretty well shared. Both these children are intelligent enough to give answers to questions here by way of evidence, but the rule follows, in one sentence: "But no person shall be held or convicted of an offense upon such testimony unsupported by other evidence."

Now then, if you are reasoning that her answers to questions given in this proceeding are not a character of evidence, then you are mistaken according to the rule.

The child has, in the judgment of this Court, a sufficient amount of intelligence to answer the questions which have been put to her, and it is, therefore, your privilege to cross examine if you care to.

MR. HOCHFELDER: Now, if it please your Honor, I ask for an exception in this case.

THE COURT: You may have it.

MR. HOCHFELDER: More than that, if your Honor please, the laws of this great State have gone further than that, I think, and say that the evidence of a child under seven years of age is entirely incompetent and may not even be brought before the jury for the purposes that your Honor has allowed it.

THE COURT: Yes.

MR. HOCHFELDER: And that is more than --

THE COURT: And I shall so hold, notwithstanding the unusual intelligence manifested by these children, that their evidence is insufficient to convict unsupported by other evidence. I will hold that.

MR. HOCHFELDER: May it please your Honor, your Honor has had great experience before this bar and I have the highest respect for our Honor's opinions --

THE COURT: Yes, but we can afford to leave these one side.

MR. HOCHFELDER: Now, I want to say this, your Honor is unfortunately in error in the matter of discretion, and the law specifically lays down that your Honor cannot exercise discretion --

THE COURT: Will you please point out where that is?

MR. HOCHFELDER: I will.

THE COURT: In the rule of 392?

MR. HOCHFELDER: There is another provision of the

Code.

THE COURT: Then if you cannot point it out in ^{the} rule, we do not care for that.

MR. HOCHFELDER: The common law and the statutes are that the evidence may not be admitted.

THE COURT: We are willing to take the statutory law for our guide in this proceeding.

MR. HOCHFELDER: Will your Honor then give me an exception.

THE COURT: Certainly.

MR. HOCHFELDER: Would your Honor -- I merely suggest it -- ask this child a few questions to see whether she knows the nature of an oath, and some such questions that your Honor has put to the little girl, Louise?

MR. APPLETON: She has not taken an oath.

THE COURT: She has not taken an oath. I will simply examine her to see if she is intelligent enough to testify. I did not, under the circumstances, think that was necessary.

MR. HOCHFELDER: But I ask your Honor --

MR. APPLETON: The point of that is, that she has not been sworn, and it is in the discretion of the Court to permit a witness under 12 years of age to testify, and if the witness is not sworn, it is not necessary for the Court to examine the witness.

THE COURT: No, because I am not going to put her under oath.

BY THE COURT:

Q But I will ask you this little girl. Do you know who is the father of the world, who made the world? Do you know anything about god? A Yes, sir.

Q Do you pray to him? A What?

Q Do you say prayers to him sometimes? A Yes, sir.

Q You say prayers, do you? A Yes, sir.

Q Now, what do you call this sort of a thing, a person tells anything that is not true. What is that, if you should tell a thing that is not true, what would you call that? Do you know the difference between a true story and one which is a lie? When does a person tell a lie, do you know that? A You go in fire.

Q You go in fire if he tells a lie? A Yes, sir.

Q Well, what do you mean by telling a lie? To tell something which is what? A (No answer)

Q Now, suppose you said that you saw Louise yesterday, and you did not see her. What would that be, a lie or would it be the truth, if you did not see Louise and you said you did see her? Would that be telling a lie? A Yes.

Q Is it wrong to tell a lie? A Yes, sir.

Q Why do you think it is wrong to tell a lie? What would happen if you told a lie? A We will go in fire.

Q You will go in fire? Well, who will put you in fire?

A The devil.

Q The devil?? Well now, there is -- this idea of this girl is a pretty prevalent idea as to what follows as the result of falsehood. And you think it is wrong to tell a lie, do you? A Yes, sir.

Q And it is right to tell what? A To tell the truth, is that what you mean? A To tell the truth.

Q To tell the truth, and that is what you will do, and that is what you have done here when they asked you questions, you told the truth, you gave a true answer? A Yes, sir.

Q And that is the kind of an answer you are going to give all the time? A Yes, sir.

THE COURT: Now, you may proceed to cross examine.

MR. HOCHFELDER: Well, your honor, I cannot avail myself of a right which I do not possess. It is incompetent and inadmissible.

BY THE COURT:

Q Let me see, you said that you told -- what is the little girl's name?

MR. APPLETON: Louise.

Q Louise, that you told her Mama that she was going to go right up, right away? A Yes, sir.

Q Who said that? A Mr.

Q You said it to whom? A To Mrs. Willem.

Q Well, who told you to say that? A Monsieur Monbrum.

Q Monsieur Monbrum told you to say that? Now, where was Louise when Monsieur Monbrum told you to say that? A She was in the room.

Q Whose room? A Mr. Monbrum's room.

Q Who else was in there? A My sister.

Q Oh, and was there anybody there besides your sister?

A No, and Louise.

THE COURT: That is all.

MR. APPLETON: The people rest.

MR. HOCHFELDER: The defense rests.

BOTH SIDES REST

MR. HOCHFELDER: If your Honor please I ask for this permission, to reserve the right after recess to make motions and also to bring to your Honor's attention the authorities I have in mind.

(The Court then admonished the jury in accordance with Section 415 of the Code of Criminal Procedure and took a recess until 2:15 P. M.

R E C E S S

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AFTER RECESS
TRIAL CONTINUED

MR. HOCHFELDER: May it please your Honor I renew my motion to dismiss the indictment on the ground that the evidence adduced in behalf of the people of the State fails in every way to corroborate the evidence of the complaining witness. That is my only motion just now.

THE COURT: Motion denied.

MR. HOCHFELDER: I take an exception.

Mr. Hochfelder sums up to the jury in behalf of the defense.

Mr. Appleton sums up to the jury in behalf of the people.

THE COURT: Gentlemen, at this hour, so near to the hour of adjournment it is not the intention of the Court to submit the case to you this evening. I shall charge you in the morning at half past ten.

The Court then admonished the jury in accordance with Section 415 of the Code of Criminal Procedure and adjourned the trial of this case until tomorrow, Thursday, April 8th, 1909 at 10:30 A. M.

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THE PEOPLE AGAINST EDWARD MONBRUM.

New York, April 8, 1909.

T R I A L R E S U M E D

C H A R G E .

O'SULLIVAN, J.-

Gentlemen, the defendant at the bar, Edward Monbrum, is charged with rape in the first and second degrees.

Rape in the first degree has been charged against the defendant in the first count which is submitted to you for the reason, as alleged in the indictment, that on the 8th day of February, in the year 1909, in the County of New York, that he with force perpetrated upon a certain female, not his wife, to-wit, Louise Willem, an assault and act of sexual intercourse with her, without the consent and against the will of the said Louise Willem.

It is further charged that the defendant committed, against the said Louise Willem, an act of sexual intercourse at a time when the said Louise Willem, by reason of her infancy, her immaturity rather, she did not then and there offer resistance to the criminal act charged against the defendant.

If you should find to your satisfaction, beyond a reasonable doubt, that the defendant was guilty of either one of these charges, it would be your duty to convict him of rape in the first degree.

The defendant is further charged with rape in the second degree in that on the day heretofore mentioned, and in the County of New York, he did feloniously assault the said Louise Willem and that he feloniously perpetrated an act of sexual intercourse with her, she being a person under the age of seventeen years, to-wit, of the age of seven years.

As you will notice in that charge which alleges rape in the second degree against the defendant, there is no question of consent or resistance. In fact, under that count, and under our statute, there can be no question of consent according to the terms of the statute under which he is charged and with the violation of which he is accused in the indictment. All it will be necessary to find, if you find guilt at all under this section, is, was there sexual intercourse by and between the defendant and Louise Willem? Was she under the age of eighteen at the time and was the act of sexual intercourse perpetrated?

If you find that he is guilty of any or either of these charges, it would be your duty to convict him in your verdict of that charge in the indictment which you

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find sustained by the testimony. That is to say, if you find him guilty at all, you would return a verdict according to your finding of rape in the first degree or rape in the second degree.

Before you proceed to an examination of the testimony, you must be instructed that a defendant in a criminal action is presumed to be innocent until the contrary is proven, and in case of a reasonable doubt whether his guilt is satisfactorily shown, he is entitled to an acquittal; but should the evidence in the case satisfy you beyond a reasonable doubt that the defendant is guilty, it will be your solemn duty to find him so, and in your verdict declare him so, of any one of the charges against him.

In considering the evidence you are to have in mind certain rules, and in this case exceptional rules; that is, rules, which are peculiar to cases of rape, and again a rule with regard to the evidence of children, who, in the judgement of the Court, are incapable of understanding the nature of an oath but who are permitted to testify without taking oath.

The rule to which I refer is this; that no conviction can be had for rape or defilement upon the testimony of the female defiled unsupported by other evidence. That is to say, if in a case of this character there was no

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other evidence of the defendant's guilt than the evidence derived from the testimony of the girl who complained, the case would not be given to you. You could not convict upon it and the defendant would have to be acquitted. That is one rule.

Now, there is another, as stated to you, that whenever in any criminal proceeding, a child actually or apparently under the age of twelve years, is offered as a witness, does not, in the opinion of the Court, understand the nature of an oath, the evidence of that child may be received though not given under oath, if, in the opinion of the Court or Magistrate, such child is possessed of sufficient intelligence to justify the reception of her evidence. That is to say, while it may be that, in the opinion of the Court, this child under the age of twelve did not understand thoroughly the nature of the oath, if the Court believed her to be of sufficient intelligence to tell her story and give her testimony without taking the oath, we would be justified in receiving her evidence; but if there was no other evidence to support her, no conviction could be had because the rule is that in such a case as I have stated to you, of a child of immature

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years testifying, and not under oath, no person shall be held or convicted of an offense upon such testimony unsupported by other evidence.

Now, that will apply to both of these children who testified, to Louise Willem, the complaining witness, and the Giordano girl. That rule applies to both of them; that their testimony is not sufficient to convict unless it is supported by other evidence.

As I have stated to you, unless there was other evidence in the case than the evidence of this child, unless there was evidence in the case other than the evidence of this girl who complains of having been ravished by this man, the case would not be submitted to you, but it is for you to say, and not for me, whether the other evidence in the case, if there be any, supports the testimony of these girls, supports the testimony of Louise Willem to an extent sufficient to convict.

What is the rule with regard to that? What evidence, other evidence, is of a character which will support the testimony of the child, the testimony of Louise Willem? The rule as stated by our courts of last resort is that the supporting evidence, sometimes called the corroborative evidence, must at least be of a character and quality tending to prove the guilt of the accused by connecting him with the crime, but the rule goes further

than that. The supporting or corroborative evidence must extend to every material fact essential to constitute the crime. That is to say, it would not be sufficient, if there were supporting evidence, and it only went in the direction of supporting one element or one factor necessary to constitute the crime. It is not necessary, though, that the supporting evidence be of such a character as by itself, standing alone, would convict the defendant. It is enough if it supports the material elements of the charge against this man. It is not necessary in any case that the evidence should be direct. That is to say, that a person should have seen the thing done in order that you might determine whether or not it was done. It would be enough if it were circumstantial evidence satisfying you, together with the evidence of the child, that the defendant is guilty. You are not directed to cast away the evidence of the child. You are directed to take that and consider it in connection with whatever other evidence there may be to support the charge against the defendant. As the Court of Appeals has said, it need not be, in itself, convincing or conclusive. That is, the supporting testimony need not be convincing or conclusive, but it must corroborate and support the evidence of the female.

In this case there is a double reason for supporting evidence. That is to say, that the testimony of the female complaining that she has been ravished must be supported by other evidence in order to find a conviction. Further than that, the testimony of children who are of such an immature age that they are permitted to testify without oath, must be supported by other evidence; but I charge you that that other evidence, need not, of itself, be of such a character as to convince you that it, standing alone, is enough for a conviction. You are to take all of the testimony in the case and you are to say from it all whether, beyond a reasonable doubt, the defendant has been proven guilty.

Now, you are to take his denial. You are to consider his testimony. You are to consider the other testimony and balancing the one against the other, and investigating fairly and impartially, you are to say whether or not the defendant is proven guilty. If there be an element of reasonable doubt arising from all of the case, from his part of it and from the other, there is not evidence enough to convict him. In that case he is entitled to an acquittal.

It was so recently that this case was laid before you that there hardly appears to be any necessity for a resume

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of the testimony, but in order that we may be able to draw the proper conclusions and judgments with regard to the testimony of the girls, with regard to the testimony of other witnesses, it may be well to refer briefly to the substance of the testimony which we are discussing.

You remember the child's testimony that in West 28th Street, she lived in an apartment, on the fourth floor of a building there, with her father and mother; the defendant occupying rooms on the floor below; that on the day alleged, the girl and her mother returned about half past six from the market. The girl testifies, and you may remember the testimony of the mother with regard to that, that she went into the room occupied by this defendant. You will remember the mother's testimony with regard to that and say whether or not the going in of this child into that room is supported by any credible evidence.

You will also remember the defendant's own story, that he occupied these rooms alone; that there was no intercourse between the adjacent apartments and his; that this girl did not come into his room but that on that evening he was alone in the room. There is also some testimony from witnesses for the defendant about his playing billiards at a certain hour, about half past six o'clock, and having taken supper at another place nearby at about

six or seven or half past six o'clock that evening.

Now, you remember the story told by the child and referring to the count against the defendant charging him with rape in the first degree in that he did feloniously have an act of sexual intercourse with her, the said Louise Willem, against her will and against her consent; the law generally requires before a conviction can be had on the charge of rape in the first degree, that the complaining witness or female defiled, did resist the act of the defendant; that the act of intercourse was against her will and without her consent is usually required. That is to say, in order to prove a conviction, in order to prove guilt, it must have been shown that her resistance is forcibly overcome. Now, the ordinary requirement is that the female must have resisted to the extent of her ability. In order to show that it was against her will, it is required that she make such resistance as she is capable of making. That is, she should resist to the extent of her ability, to the utmost extent of her ability, and if it was with her consent, there is no crime committed in the first degree.

But submission, gentlemen, may not always be consent, and you are to say what resistance, if any, this child, the complaining witness, could make in the hands of such

a man as the defendant. The charge is that it was against her will and consent. You may determine from the circumstances surrounding the case whether that is the fact, and while the declaration or the complaint which the little girl of seven says that she made to her father and mother immediately after the alleged attack upon her, does not corroborate her story, you are permitted, from the evidence in the case, to investigate whether or not her resistance was overcome, or whether it was with her consent the act was performed by any testimony which shows what her mental and physical condition was immediately after it. I say that you may consider that. whether she was in a state of agitation, whether she was pale and trembling and weeping immediately after the alleged encounter, is proper evidence for you to consider. It is also proper in this case for you to consider the relative strength of this man and that child; whether in such a place, according to her strength, such as she could exert, any opposition was made against him and whether or not she was seized and subjected to the uses of this man in a criminal way against her will and without her consent.

But there is another count in the first degree, gentlemen, which alleges that on account of the immaturity of Louise Willem, being of the immature age of seven, she

did not then and there offer resistance to the said act of the defendant, namely the act of sexual intercourse with her. You have seen the infant and you have heard her testify and from her testimony and all of the other

testimony in the case concerning this act, you are to say whether or not this defendant did commit an act of

sexual intercourse against Louise Willem, who, at the time and place and during the said act of sexual intercourse, on account of her immaturity, did not then and there offer resistance, and if you find that that charge is supported to your satisfaction beyond a reasonable doubt, it would be your duty to convict the defendant, therefore, of rape in the first degree.

The other charge against the defendant is of rape in the second degree; namely, that on the day and at the time heretofore mentioned the defendant did perpetrate an act of sexual intercourse with Louise Willem, she being an infant under eighteen years of age and not the wife of the defendant.

If you find that to be true, it will be your duty, as heretofore instructed, to convict the defendant. There is an expression used in that statute-- that is to say, "Under circumstances not amounting to rape in the first degree." While the circumstances there referred

to are consent generally, it also refers to resistance or non resistance, but under that charge there is no question and there can be none of consent or resistance. You are simply to find from the testimony whether or not there was an act of sexual intercourse between this defendant and Louise Willem at that time and that place, he not being her husband, she being an infant under eighteen years of age.

Now, as to the act of sexual intercourse itself; it is enough if there was the slightest penetration by the defendant's male organ into the pudendum or female organ of the complainant. That is to say, was it at all inserted? You are to determine that from the evidence, and if you find that there was such a penetration into the organ of the female complainant here, no matter how slight or what depth, you would find that the act of sexual intercourse had been perpetrated.

Now then, taking the testimony, you are first properly to consider the testimony of the children. Then, having considered that testimony, it would be your duty to find if it were supported by other evidence in the case. First, was there an act of sexual intercourse? Consult the testimony of the physicians concerning the condition of the girl within twenty-four hours, or there-

abouts, of the alleged act. Were there signs of violence, signs of rupture, signs that the female organ had been penetrated by a blunt instrument within a very recent time? And you will declare whether or not that condition, from the evidence, was the result of sexual intercourse, and if you find that there was sexual intercourse, your next question will be by whom?

If the evidence of the girl were left alone with regard to that you could never find by whom, but is her testimony alone? Is there other testimony which will guide you in determining by whom sexual intercourse was perpetrated, if it was perpetrated? Was the girl seen at or about the time in the quarters occupied by the defendant? Was the defendant the only person in the room at the time? If not, who was the other person? Was there another capable of committing such an act on the defendant? You will have to look for testimony to find that the girl's evidence with regard to that is supported. You may look into whatever testimony there is with regard to her having been seen, if she was seen, in the quarters of the defendant, at or about the time of the alleged perpetration of the outrage.

We are now following the testimony to determine whether or if there had been an act of sexual intercourse perpetrated. You may follow from the room. The girl's

alleged complaint of what occurred there is not corroborative evidence, but there may be other circumstances tending to show that she was there. You may look into the other testimony.

Now then, what was her condition, if the testimony shows it, before she went into that room, her physical condition? What was her physical condition, if the testimony shows it, shortly after, almost immediately after she left the room, if the testimony shows it? If that little girl went into that room unimpaired in her physical virginity and came shortly after from that room with her physical virginity impaired and signs of violence upon her private parts and pudendum, it is for you to determine who did it and where it was done.

Now then, were there any examinations made? If so, who made them? Examine the mother's testimony. Examine the Doctor's testimony. But while you are doing all that, you are not to neglect the defendant's testimony. You will recall that when the father charged him with having taken advantage of the daughter, he declared, according to his own testimony, "I am incapable of that." What, if anything, he declared, if the child accused him in the father's presence, is for you to find in the testimony. These accusations are allowed in evidence to show,

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by the answers and the demeanor of the defendant, what is the likelihood, what is the reasonableness of imputing guilt to him? That is not enough of itself, because many men may act in different ways under serious accusation, but it is allowed to you for the purpose herein stated.

There has been evidence of good character, testimony from various witnesses. I tell you with regard to that that evidence of good character may create a reasonable doubt, it may cause a reasonable doubt to arise in a case-- I do not say that it must cause a reasonable doubt -- that is with you gentlemen, to say whether there is any evidence of such a character concerning the reputation of the defendant as to raise in your minds a reasonable doubt that a man of such a character is guilty, or could be guilty of the charge made here against him.

It is fortunate for the prevalence of justice that we are not limited to direct evidence. Crime would go unwhipped of justice, if it could be detected and convicted only upon direct evidence. You are to use your judgement as reasonable men in determining whether or not, according to the first count against this man, the resistance, if any, of this girl was overcome by him, and if you find that there was no resistance,

you are to determine whether it was because of the circumstances that resistance would have been useless, that resistance would have been worthless. You are to compare the relative strength of the child and the man; you are to compare her age with his determining whether or not in such relations any resistance on her part could have effected any good whatever. But, you are not limited to that.

If, under the law, you find that there was not even that amount of resistance which perhaps a child of that age might have used, you are then to consider the next charge; namely, that on account of her extreme infancy, her immaturity, seven years of age, an act of sexual intercourse was perpetrated against her, she having made no resistance on account of her immaturity, immaturity in intellect, immaturity in years.

That a child of her condition and her age had an act of sexual intercourse perpetrated against her and made no resistance is submitted to you as a count, the second count of the charge of rape in the first degree; and if you find that by reason of her immaturity, she did not then and there offer resistance to the said act, and the said act was committed against her by this man, it would be your

duty to find him guilty of rape in the first degree.

If there is any reasonable doubt in your minds of guilt under either of these charges, you are to go to the charge of rape in the second degree and find whether or not, on the date alleged, the defendant did commit an act of sexual intercourse with the complaining witness, Louis Willem, a child under the age of eighteen, and not the wife of the defendant. If you do so find, it would be your ^{to} duty/find the defendant guilty of that degree. But you are to find him guilty of no degree if you cannot find that that crime has been established beyond a reasonable doubt. The defendant would be entitled to the benefit of such a reasonable doubt and you would have to acquit him, but if, from all the testimony, the testimony of the children and the testimony of other witnesses supporting their testimony, you find, beyond a reasonable doubt that he is guilty of any one of these charges, either of rape in the first or rape in the second degree, it will be your solemn duty so to declare him guilty.

Are there any requests to charge?

MR. HOCHFELDER: I respectfully ask your Honor to charge that the mere reception of the testimony of the complainant does not of itself establish that the testimony is true in every respect, and further that --

THE COURT: Now, one request at a time, please.

MR. HOCHFELDER: Yes, sir; thank you.

THE COURT: Now, your first request is?

MR. HOCHFELDER: My first request is as I have stated.

THE COURT: That has been already charged, and further it is for the jury to say whether or not any testimony in any case is believed by them. They are the complete judges of all the testimony submitted to them. I refuse to charge in the language of the request.

MR. HOCHFELDER: Further, that if that testimony be received, it must be examined by the jury according to all the rules of evidence of our law.

THE COURT: Yes, I so charge.

MR. HOCHFELDER: Thank, you.

The third request is that the resistance of the child, in order that the defendant might be guilty of rape in the first degree, need not be of physical resistance or strength, and that if the child was in close proximity of its natural gaurdian, its father and mother, one floor above, with the door open, that an outcry would have to be construed as resistance; and that it is for the jury to determine whether such opportunity could have been enjoyed or were present at the time of the alleged act.

THE COURT: I refuse to charge in that language.

MR. HOCHFELDER: Will your Honor give me an exception?

THE COURT: Yes.

MR. HOCHFELDER: Further, that the complainant might have availed itself of a cry if any other person were present in the room, and that cry too would be a nature of resistance.

THE COURT: I refuse so to charge.

MR. HOCHFELDER: I respectfully except.

Further, that the signs found upon the organ of the child do not of themselves raise a conclusion that sexual relations only could have caused the signs found there, and that they might have been caused by other blunt instruments.

THE COURT: I refuse so to charge. I refer the jury to the testimony in the case concerning that.

MR. HOCHFELDER: I respectfully except to that.

Further, that the defendant need not establish his innocence beyond all reasonable doubt.

THE COURT: I so charge.

MR. HOCHFELDER: I thank you.

Further, that the testimony received in evidence corroborative of the complaint of the child is not corroboration of the crime alleged.

THE COURT: I refuse to charge further on that point.

MR. HOCHFELDER: I respectfully except.

Further, that the evidence received is only corroborative that the complaint was made soon after an alleged act committed.

THE COURT: I refuse so to charge.

MR. HOCHFELDER: I respectfully except .

Further, that in view of the extreme and tender ages of these little girls, the jury may with more than ordinary caution and deliberation examine the testimony of the little girls for the purpose of establishing the reliability of the same.

THE COURT: I so charge.

MR. HOCHFELDER: Thank you.

Further, that the testimony of the witness, Dr. Nagel, may be scrutinized with great care because he was the instigator of this charge and that he was the private physician of the complainant's father.

THE COURT: I refuse so to charge.

MR. HOCHFELDER: I respectfully except.

Furthermore, that the exercise of discretion by his Honor in allowing the reception of the testimony of the child under Section 392 of the Code does not of itself conclude that the testimony is true, but that the jury are the sole and exclusive judges of the truth of that

testimony.

THE COURT: Why, surely; I so charge.

MR. HOCHFELDER: I thank your Honor.

Furthermore, that the jury need not deliberate or regard any testimony adduced by the complainant's mother if such testimony had not been given upon the stand, and that such testimony is deemed to be irrelevant.

THE COURT: Well, if the jury understand that, they can have it. I so charge.

JUROR NO. 3: What do you mean by "Had not been given upon the stand?"

MR. HOCHFELDER: I mean this, Mr. Juror--

THE COURT: No, address the Court.

MR. HOCHFELDER: I beg your Honor's pardon.

I mean this, that if the complainant's mother spoke of any subsequent acts that she did with the child, washing the child, found something on the child, which the child in the beginning had not communicated to the mother or father, and such additional testimony, if given upon the stand by the mother, is not deemed to be admissible, relevant or competent.

THE COURT: I decline so to charge, and on the contrary say that it is absolutely competent.

MR. HOCHFELDER: May I say to your Honor that

I refer to extraneous matter.

THE COURT: I am inclined to ask you to submit your requests in writing if you are going on indefinitely.

MR. HOCHFELDER: I shall cease, your Honor. I shall not burden you with any more.

MR. APPLETON: No requests from the District Attorney.

THE COURT: Gentlemen, the case is with you. The jury retired.

The jury returned and rendered a verdict of guilty of rape in the first degree.

MR. HOCHFELDER: May it please your Honor, I respectfully move for a new trial for the reason that the evidence does not warrant the bringing in of a verdict in the first degree; and secondly, that the verdict is against the evidence and against the law; and I also move for a new trial on all the grounds mentioned in the Code of Criminal Procedure.

THE COURT: Motion denied.

Until what day do you desire to have the prisoner remanded?

MR. HOCHFELDER: About a week, if it is agreeable?

THE COURT: About a week?

MR. HOCHFELDER: Well, at your Honor's convenience then.

THE COURT: All right, make it a week from
today.