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Peter P. McLoughlin,
Official Stenographer.

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New York December 1, 1910.

I N D E X.

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:BEFORE:

: HON. OTTO A. ROBALSKY,

and a Jury.

Indictment filed August 9th, 1910.

А р р е а г а н с е в:

For the Defendant: Mr. Samuel J. Siegel.

Peter P. McLoughlin,
Official Stenographer.

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(The jurors were severally called, examined and sworn).

MR. SIEGEL: I make the request that all the witnesses for the prosecution and the defense be excluded.

THE COURT: Motion granted.

MR. SIEGEL: Now, if your Honor pleases, the defense has subpoenaed from the New York Central Railroad Company various papers, and I ask your Honor to have an announcement made that the representative of the New York Central, who may have the papers, will turn them over to the counsel for the defense.

THE COURT: How can I direct him to do that.

MR. SIEGEL: For use during the trial.

THE COURT: I cannot direct that. You may subpoena them on the trial but I cannot direct him to turn the papers over to you.

MR. SIEGEL: There are various statements of physicians and reports.

THE COURT: You may have the papers when you need them but I shall not direct the party to turn the papers of the company over to you. You can have them during the trial.

MR. SIEGEL: I want them for use during the trial;

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that is all.

THE COURT: You may use them when they become necessary. I shall direct that they be filed with the clerk and you may examine them in presence of a representative of the District Attorney.

MR. SIEGEL: Won't your Honor have them filed with the clerk?

THE COURT: Yes.

Mr. Robert C. M. Cormick opened the case on behalf of the People as follows:

Mr. Foreman and Gentlemen of the Jury:

I will now give you the briefest kind of an outline of the testimony which will be produced by the People of the State of New York, upon which they expect to obtain a verdict of guilty against this defendant.

She stands charged by the grand jury of this county with the crime of grand larceny in the second degree.

We will show you that in the month of November 1905 she presented to the New York Central Railroad Company a claim for damages in the sum of \$1500.; that this claim was based upon an alleged injury which she sustained in descending the stairs of the New York Central at 125th Street and 4th Avenue or Park Avenue on the 19th day of October, 1906.

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The Grand Jury charge that in representing that upon that day she fell upon a skin of a fruit, I think it was a banana peel, she ruptured herself, and that the rupture was caused by an was the result of that fall and that prior to that fall she never was ruptured; that the hernia for which she claimed damages did not exist prior to the date of that fall; and that by color and aid of the false pretenses and representations, she then and there feloniously and fraudulently obtained from the Railroad Company the sum of \$500. in settlement of that suit.

Now we will show you that she did not rupture herself at that time, but that prior to that time she was afflicted with the hernia for which she claimed damages growing out of this fall that she sustained on these stairs.

We will show you, gentlemen, that on the very day previous to the day she fell on the stairs of the New York Central Railroad she claimed to have fallen, in the same manner, by stepping on a banana peel, on the 33rd Street Elevated Station of the 6th Avenue Elevated Railroad, and that subsequent to that alleged injury she filed a claim against the Interborough----

MR. GIESEL: Now, if your Honor please I object

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to this statement by the District Attorney in his opening because it may develop that the District Attorney will not be permitted to prove such facts. I don't think, in advance of your Honor's ruling that the District Attorney should state these facts to the Jury.

THE COURT: In the case of M'ayer against the People alias New York and the pawnbroking case of Weissberger 73 Appellate Division, the Court of Appeals and the Appellate Division held that you may prove prior and subsequent acts as bearing upon the question of intent with which the particular act charged in the indictment ^{was} submitted, not that the prior or subsequent act establishes the guilt of the act in question. Evidence of other acts is no proof of the guilt of the particular charge laid in the indictment but has a bearing upon the question of intent.

MR. SUGGEL: The question of proof of similar offences---but there is no proof and will be no proof that these, in any way, are offences or violations of the law, but merely that she claimed that an accident had occurred, which is certainly not an offence, not a similar offence.

THE COURT: As I understand it, the District Atto-

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ney claims he will be able to show---of course they will be obliged to show as bearing upon the intent that she made certain false representations as to an existing fact, to wit, that she sustained hernia as the result of an accident. Is that what you intend to prove?

MR. McCORMICK: Yes sir.

THE COURT: It might be well, however, as counsel suggests, to refrain from stating, in your opening, what you intend to prove because questions of law might arise which I cannot determine in the course of the opening.

MR. McCORMICK: Then I take it your Honor directs me not to state these facts.

THE COURT: You see it is difficult at this time to rule upon the evidence. I do not want the District Attorney to make a statement in the opening which is susceptible to objection and where the court will be called upon to rule whether the evidence would be competent or not. When the evidence is presented I think there will be sufficient time for me to rule. Unless you state that you will be able to show that they are similar transactions. I do not want any prejudicial remarks made to the jury that afterwards may have to be stricken from the record.

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MR. McCORMICK: Well I may mention that they are similar transactions; that they were always against transportation companies, and that they were never against the same company twice, and that she always tripped on some---

MR. SIEGEL: I object to that statement.

THE COURT: I think you had better confine yourself to this case.

MR. McCORMICK: Then, gentlemen, I will in a few words leave it in this manner; That as bearing upon this defendant criminal intent we will bring before you the most convincing proof that when she presented that claim to the New York Central Railroad Company she did it with a criminal intent, and when she received that \$500. she committed the crime of Grand Larceny beyond any question of doubt whatever.

M A R C U S . A . D O W, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. McCORMICK:

Q Your address? A Buffalo, New York.

Q What is your occupation? A District Claim Agent of the New York Central Railroad in Buffalo.

Q Did you hold that position in the month of November

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1906? A A similar position; I was assistant claim agent in New York.

Q New York Central and Hudson River Railroad Company;

A Yes sir; New York City.

Q Did you see this defendant in the month of October 1906? A I first saw her in November 3rd.

Q November 3rd? A Yes sir.

Q Where? A At the Gilsey House on Broadway.

Q Now how did you happen to go to see her? A Well Dr. Morrissey, our Company's surgeon, at 126th Street called up the office and said that Mrs. Strula was in his office and wanted to see a claim agent.

MR. SIEGEL: I object to that and ask that it be stricken out.

THE COURT: Strike it out. Do not say what the Doctor said to you.

Q Pursuant to a telephone message from Dr Morrissey, was it? A Yes sir.

Q Did you go to the Gilsey House? A No sir, I talked first with Mrs. Strula on the telephone.

MR. SIEGEL: If your Honor please the representative of the Railroad Company says he delivered certain of the papers, that I subpoenaed to the District Attorney and certain of them to the witness on the

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stand.

MR. McCORMICK: I received some papers from him.

THE COURT: When it becomes necessary for you to have possession of these papers I will direct that you be given the papers.

MR. SIEGEL: Yes sir.

MR. McCORMICK: Will you kindly specify the papers you want.

MR. SIEGEL: I want the report of Dr. Coley to the Railroad company; the report made by Mr. Dow to the Railroad Company and the report that Dr. Morrissey made to the Railroad Company, and the statements of any witnesses that were obtained by Mr. Dow as to the accident.

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Q What was that last answer?

THE COURT: Of my own motion I strike out the answer that the witness made as to a conversation with the defendant, unless it be established that the witness was able to recognize and identify the voice of the person with whom he had the conversation over the telephone.

BY MR. McCORMICK:

Q Are you able to identify the person with whom you talked over the telephone on the 3rd of November?

THE COURT: Not the person, but the voice.

Q Are you? A No, sir.

Q Afterwards did you call at the Gilsey House? A I did.

Q On what date was that? A On November 3rd.

Q Did you see the defendant there? A I did.

Q What part of the Gilsey House was she in? A In the parlor.

Q Did you have any conversation with her? A Yes, sir.

BY THE COURT:

Q November 3rd, what year? A 1906.

BY MR. McCORMICK:

Q Who else was there?

THE COURT: Is that the charge in the indictment?

MR. McCORMICK: The date referred to in the indictment is November 17th. That is the date the

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money was paid. There are various conversations which took place between November 3rd and the 17th.

THE COURT: I understand, but you are now offering evidence concerning the charge in the indictment?

MR. McCORMICK: Yes, sir.

BY MR. McCORMICK:

Q The first conversation was at the Gilsey House? A Yes,

sir.

Q On November 3rd, 1906? A Yes, sir.

Q What persons were there in that room? A Mrs Strula and myself.

Q What was the conversation? A She told me that she had come down from Mount St. Vincent on one of the New York Central trains, and had alighted from this train, she said.

Q On what date? A October 19th.

MR. SIEGEL: I object to that. I ask that the District Attorney not to lead the witness, but let her tell the conversation as he recollects it.

THE COURT: The District Attorney did not lead.

He simply interrogated the witness as to the date.

Q October 19th? A October 19th, 1906. She said that after alighting from this train she was going down the exit stairway at the 125th street station, and she slipped on something on the stone steps and fell. She said that a gentleman assisted her up, and picked up a paper containing

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banana skins, and asked her if that was not what she slipped on.

Q Is that all that she told you? A She told me that she felt a sharp pain in the region of her abdomen; that she was taken to the Harlem Hospital, and that it was found she had sustained a rupture.

Q Is that all she said that you remember? A She said that the stairs were dark and she could not see this object that she stepped on, until it was called to her attention afterwards.

Q Did she say anything about her condition after coming down the stairs, and before coming down the stairs? A She told me that she had not had this injury prior to falling on the stairs on that day.

BY THE COURT:

Q Did she specify the injury? A She told me ---

BY MR. McCORMICK:

Q She said she hadn't had this rupture prior to that day?

A Yes, sir.

Q Did she use that language? A Yes, sir.

Q Did she describe the injury she sustained? A She said there was a large swelling on her abdomen.

Q Did she say on what part of the abdomen that swelling was? A She said it was on the front.

Q Was there anything said about any previous injuries by

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either you or her in that conversation? A I asked her if she had had this swelling before and she said she had not.

Q Is that the entire conversation? A Yes, sir.

Q And that was on November 3rd? A Yes, sir.

Q Now after that did you have another conversation with her? A Yes, sir.

Q When was the next conversation? A The next one that I recall was at the Hotel St. Denis, when I settled the case with her.

Q Do you remember the date? A That was on November 17th.

Q Do you remember that conversation? A Pardon me, I first met her on November 16th, and we agreed upon the settlement and the settlement was consummated on the 17th.

Q What was said on the 16th of November, do you remember? A I told her we had investigated the case, and were prepared to take the matter up with her; that the settlement she demanded, \$1500. ---

Q What did you say? A I told her all the railroad company would pay was \$500. We discussed the matter for some time; I don't recall the conversation in detail; she finally accepted the proposition we made her.

Q Was there anything said by you or her about any medical examination? A On our first interview on November 3rd, I arranged for a medical examination.

THE COURT: What was said, not that you arranged,

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that is a conclusion. What did she say about the doctor.

THE WITNESS: I told her to go to our Company's doctor, Dr. Coley, and have him examine her.

Q What did she say? A She consented.

Q Was there anything said as to the purpose of having your physician examine her, or the Company's physician? A I told her we wanted to find out if what she said was true as to the injury.

BY MR. McCORMICK:

Q Was there anything said about any witnesses? A She gave me the name of a witness by the name of Fisher, who she said was behind her when she fell.

Q Fisher? A Yes, sir.

Q Do you remember anything else she said? A She told me that she had been at Mount St. Vincent to see a girl who was in the college, or something of that kind, up there.

Q Did she say anything about the time of day that the accident occurred? A It was about six o'clock, in that neighborhood, just after dark.

Q Did you have any talk with the defendant after she visited the physician's office on November 16th? A On the 17th?

Q Did you have any talk with her concerning the doctor's visit? A No, sir.

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Q Did you have any further talk with her on any of these dates, other than you have already testified to? A Only that some person called on the 'phone and said it was Mrs. Strula.

MR. SIEGEL: I object to that and ask to strike it out.

THE COURT: Strike it out.

Q That is all the conversation you had with her? A Yes, sir.

Q And the only times you saw her up to the time that the money was paid was on those three dates, November 3rd, 16th and 17th? A Yes, sir; that is all I recall.

BY THE COURT:

Q Did you pay the money to her? A Yes, sir.

BY MR. MCCORMICK:

Q How did you pay her? A In cash.

Q Do you remember what the denomination of the bills were? A They were large denomination; I don't remember whether they were hundred dollar bills or fifty.

Q And the total was \$500? A Yes, sir; the total was \$500. I took her receipt.

Q Have you that receipt now? A It is among the papers.

Q Where did you get that money? A From the Treasurer's office in the Grand Central Station.

Q The Treasurer of the New York Central & Hudson River Railroad Company? A Yes, sir.

Q What was his name? A The Treasurer was Mr. Rossiter; I obtained it from one of his deputies.

Q But the money belonged to the New York Central? A Yes, sir.

Q I now show you a document and ask you whether you ever saw that before? A Yes, sir.

Q Where? A This was the receipt I took from Mrs. Strula when I paid her the money.

Q Is her signature on that? A Yes, sir.

Q Was that signed in your presence? A Yes, sir.

Q You saw her sign it? A Yes, sir.

Q On the date that it purports to have been signed? A Yes, sir.

Q That was November 17th? A Yes, sir.

Q You say she delivered this to you? A Yes, sir.

MR. McCORMICK: I offer it in evidence. Is there any objection?

MR. SIEGEL: No objection.

The receipt referred to is admitted in evidence and marked People's Exhibit 1.

MR. McCORMICK: This is a voucher for \$500, executed by the defendant and delivered on the 17th of November, 1906. "New York Central & Hudson River Railroad Company. Cash advanced by Treasurer to Anna H. Strula, November 15th, 1906. Address,

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Wyckoff, New Jersey, which amount is agreed to be accepted in full settlement of all claims against the New York Central & Hudson River Railroad Company by reason of or arising out of personal injuries, loss ^{of} or damage ^{to property} sustained by me at 125th street station, New York City, October 19th, while a passenger, caused by falling on the stairs of the said station, - \$500?
Signed by Anna H. Strula.

Q Did you receive the report of any doctor who examined the defendant? A Two of them.

Q Who were those doctors? A Dr. Morrissey and Dr. Coley.

Q Were those reports received by you prior or subsequent to the date of this voucher? A Prior.

Did you pay this \$500 on the strength of those reports?

MR. SIEGEL: I object to that.

THE COURT: What reports?

MR. MCCORMICK: Of the two doctors who examined the defendant.

THE COURT: The case of the People against Her-
rick, in 13th of Wendell, determined that.

MR. SIEGEL: The objection is to the form of the question as calling for a conclusion, and for the exact question that the jury is called upon to pass upon.

THE COURT: "It is indeed competent to establish a reliance upon false representations ---"

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MR. SIEGEL: That is not the question, if your Honor please.

THE COURT: "By direct interrogation."

MR. SIEGEL: That is not the question. The question asked by the District Attorney is did he pay the money relying upon the reports received from their physicians. That is the question.

THE COURT: Upon the representations made by the defendant.

MR. SIEGEL: That is not what the question calls for.

BY MR. McCORMICK:

Q Did you pay that money relying upon the statements made by the defendant? A I did.

Q As to what? As to the manner in which she had sustained this injury and the extent of the injury? A I did, very largely, yes, sir.

BY THE COURT:

Q Did that have a material influence on you? A Her statement did.

Q Her statement that she sustained the hernia, as the result of falling or slipping on a bannana skin?

MR. SIEGEL: I object to the Court's question on the ground that it is immaterial, irrelevant and incompetent.

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Objection overruled. Exception.

A Yes, sir, I paid the money largely on her representations.

Q That she sustained the hernia? A Yes, sir.

Q As the result of an accident occurring on the premises of the Railroad Company?

Objected to. Objection overruled. Exception.

A Yes, sir.

THE COURT: The objection is overruled on the authority of the People against Herrick, 13th of Wendell, and another case in the 83rd New York.

BY MR. McCORMICK:

Q When you had a conversation with her about a physician examining her were the names of any physicians mentioned?

A Except Dr. Coley, that is the only one.

Q Who mentioned the name? A I did.

Q To the defendant? A Yes, sir.

Q She agreed to permit him to examine her? A Yes, sir; said she was willing to have any one examine her.

CROSS EXAMINATION BY MR. SIEGEL:

Q Is your memory any better now, Mr. Dow, than it was when you were a witness before the Grand Jury? A I have refreshed it a little bit.

Q Is that right? A I have looked the papers over, yes, sir.

Q You have refreshed it because you have looked the papers

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over in the case? A Yes, sir.

Q You would not have been able to tell us a single, solitary thing about it unless you had read over your reports away back in 1906? A Yes, sir, I would.

Q You would? A Yes, sir.

Q Did you read your reports over when you were a witness before the Grand Jury? A No, sir.

Q You did not? A No, sir.

Q You state now that the first conversation you had with the defendant was at the Gilsey House? A Yes, sir.

Q And you could not remember the name of the Hotel when you were before the Grand Jury, could you? A I could not remember the name of that hotel, no, sir.

Q You could not? A No, sir.

Q Well, what makes you remember it now? A Because I have seen the hotel since.

Q What is that, - because you have looked at the hotel? A Yes, sir.

Q You want this Court and jury to understand that you can remember the words that this defendant uttered on the 3rd day of November, 1906, over four years ago? A In substance, yes, sir.

Q In substance? A Yes, sir.

Q Did she make a statement to you that she had struck her left side? A Yes, sir.

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Q She did? A Yes, sir.

Q Do you remember that? A I do.

Q Do you remember that very well? A I do.

Q You testified to that effect before the Grand Jury, did you not? A I presume I did.

Q Well, I will refresh your recollection. You said she said she struck her left side on what? A On one of the steps.

Q Now, you were a witness before the Grand Jury on two occasions, were you not? A Yes, sir.

Q Do you remember being a witness before the Grand Jury on the 8th day of August 1910? A Somewhere around there, yes, sir.

Q Do you remember this question being put to you by the District Attorney, Mr. Clark, and you make the following answer: "Q State briefly what she said? A She said she had slipped on a bannana skin on the stairway at the Harlem station, had fallen and struck on her right side, and said she had sustained an umbilical hernia." A That is correct.

Q Did she say she fell on her left side or on her right side? A She said she fell on her left side, as I recall it.

Q As you recall it? A Yes, sir.

Q That is your best recollection now? A Yes, sir.

Q Your recollection is better now than it was on August 8th, when you appeared before the Grand Jury? A Possibly

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some of the details are fixed better in my mind now.

Q But you have the detail fixed in your mind that she said this accident caused the rupture, have you? A Yes, sir, I have.

Q That is firmly fixed in your mind? A Yes, sir, very firmly.

Q How did you have it firmly fixed in your mind since November 3rd, 1906? A Because it was a very unusual case.

Q How many cases --- A It was unlike any case I had handled before or since.

Q How long had you been a claim agent up to that time?

A I have been a claim agent eight years.

Q Up to that time? A Nearly four years.

Q This is the first case you had where the injury sustained was a rupture? A Yes, sir.

Q That isn't very unusual, is it, Mr. Dow? A It was unusual to me because I never had such a case.

Q Did you go to Jersey to see the defendant? A I did not.

Q Did one of your representatives go to Jersey? A No, sir.

Q Have you got your statement here that you gave to the Railroad Company at the time? A I believe the District Attorney has it.

MR. SIEGEL: Can I see it, Mr. District Attorney?

I have subpoenaed it, if your Honor please. While

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that is being looked for, let me ask you this: I have subpoenaed this papers from the Railroad Company, not from the District Attorney, and I don't see why I should not have it. The Railroad Company was subpoenaed to produce this particular statement in this Court.

MR. McCORMICK: I will give it to you in the morning. We are busy now in the trial of the case, and I want to keep my mind on the examination of this witness.

BY MR. SIEGEL:

Q Did you take the statement of the witness Fisher, whose name you have mentioned? A Yes, sir.

Q Is that with the papers? A Yes, sir.

Q Is the statement which Dr. Morrissey gave to the Railroad Company at the time with the papers? A His letter, yes, sir.

Q And Dr. Coley's report? A Yes, sir.

Q Now, tell this Court and jury --- now, you testified, Mr. Dow, that the defendant said to you that she sustained a pain in her abdomen? A Yes, sir.

Q And had a large swelling in the front? A Yes, sir.

Q Is that what she said? A The front region, yes, sir.

Q Front region of what? A Of her abdomen.

Q Is that what she said? A Yes, sir.

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Q Now, tell us what else she said to you in reference to any injuries she had sustained? A She said she had slightly injured her knee as well; skinned it, or something of that sort.

Q Now, is that all she said to you about the injuries she had sustained? A She said she had never had it before.

Q Never had what before? A The swelling that she spoke of.

Q The swelling? A Yes, sir.

Q Now she said that she had a swelling, a large swelling in the front of her abdomen, and sustained pain in the region of her abdomen, is that right? A Yes, sir.

Q That is all she said about injuries, excepting some slight injury to the knee? A Yes, sir.

Q Sure about that? A That is all, yes, sir.

Q She didn't say anything about a rupture, did she, she didn't use the expression rupture, did she? A I think she did, yes, sir.

Q You think she did. This jury wants to know if she did, we don't want what you think. A I am quite positive she did.

Q Quite positive now? A Yes, sir.

Q Why didn't you tell me that just now when I asked you if the only thing she said about the injuries was the pain in the region of the abdomen and the large swelling in the

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front of the abdomen? A She spoke of the swelling and called it a rupture.

Q Did she call it a rupture? A Yes, sir.

Q Tell us what else she said about any injuries? A I don't recall anything else.

Q You don't recall anything else? A No, sir; she told me she had been operated upon some years ago.

Q She told you she had been operated on some years before, for this rupture, did she not? A No, sir; she did not.

Q What did she tell you she had been operated for some years ago? A She said she had been operated on for a slight ovarian trouble.

Q Did she tell you the kind of the injury? A No, sir.

Q She did not? A No, sir.

Q Quite sure about that? A Quite sure.

Q Your memory is just as clear to-day as it was when you were a witness before the Grand Jury? A I think so.

Q You did not mention the knee proposition before the grand jury, did you? A No sir.

Q Why did you state to the Grand Jury "She claimed to be suffering from umbilical hernia"? A That was the term the doctors gave it.

Q That was the term the doctors gave it? A Yes, sir.

Q But she did not say that to you, did she? A I don't know that she did.

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BY THE COURT:

Q Did she use the term hernia? A No, sir, she used the term rupture.

Q Rupture? A Yes, sir.

BY MR. SIEGEL:

Q She used the term rupture? A Yes, sir.

Q Did she say that the accident had caused a protrusion of the intestines? A She said that the linings had bursted.

Q And a new protrusion, did she not? A Possibly, I don't remember that.

Q "Possibly, I don't remember that." Is that the best answer you can give, Mr. Bow? A I don't remember that she used the word "Protrusion". I don't know that she used that word.

Q You have been quite positive about the conversations you had with this defendant in 1906. The jury wants to know what she said. Now, isn't it a fact that she said that a new protrusion was caused, and the lining of the stomach had burst? A I recall she said the linings had burst, but as to the word "protrusion", I don't know whether she used it.

Q You don't know, as a matter of fact that she did not say that the accident caused a protrusion of the intestines, do you? A No, sir.

Q You say in your examination in chief that you made investigations after you talked with the defendant on the 3rd day of November 1906. Did you personally make those investigations? A Yes, sir.

Q Tell us what investigations you made? A Interviewed two or three witnesses.

Q Yes. A Took their statements.

Q Took their statements? A Yes, sir.

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Q What other witness besides Fisher, as to the accident?

A There was a man named McLean.

Q Yes? A And a man named Adelbert Bowen.

Q Those were the statements of witnesses who had seen the accident? A Yes sir.

Q Did you ascertain whether she had been taken to the Harlem Hospital? A She told me that herself.

Q Didn't you investigate that? A I did not go to the hospital, no sir?

Q You did not? A No sir.

Q Did you get a report from any of your men showing that she had been there? A No sir.

Q Where did you get the names of the witnesses Bowen, Fisher and McLean? A She gave me Mr. Fisher's card, or gave me his name, I don't recall which. The names of McLean and Bowen were taken by our Station Agent.

Q Did Dr. Morrissey report to you that he had ordered her to be taken to the Harlem Hospital? A He did.

Q Did not his report show that she stayed there from October 19th until the evening of October 20th when the hospital authorities discharged her? A I don't know how long she was there.

Q You don't know? A Yes sir.

Q Did you ever ascertain that fact from the papers at

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all. A I understand from the papers she was there a few days, I did not go to the hospital to find out.

Q When you said to her that you wanted her to submit to an examination by Professor Coley she readily consented, did she not? A Yes sir.

Q You have stated to the District Attorney that you saw Dr. Coley's report prior to the time that you paid her that money? A Yes sir.

Q What did you want Dr. Coley's report for? A To see what he said.

Q You wanted to see if what she was saying about the rupture was true? A Yes sir.

Q Is that right? A Yes sir.

Q Did you ascertain by Dr. Coley's report whether what she had said was true or false? A I found out she had a rupture.

Q Previously, did you not? A Previous to what?

Q Previous to this accident; didn't you learn by Coley's report that she had a rupture and that rupture existed before this accident? A Dr. Coley didn't say that, no sir.

Q Did you see his report? A I did.

Q Did you read his report? A Yes sir.

Q Have you got that here? A Yes sir, I believe it

is in the papers.

MR. SIEGEL: Will you let me see it? Where is that report, Mr. Dow, that the Railroad Company received from Dr. Coley.

THE WITNESS: It is in a bundle of papers pertaining to that case.

Q Where is it? A The District Attorney has them.

Q I show you these papers, Mr. Dow, and ask you if this is a report that you gave to the Railroad Company at the time? A Yes sir.

Q Did you make this statement in your report to the Railroad Company: "She had already been examined by Dr. J. J. Morrissey, the Company's surgeon in Harlem, and states that immediately after her fall he found a rupture of the abdominal muscles, and a large protrusion of the bowels but he could not state whether it was caused by the fall or was of old origin." Did you so report? A Yes sir.

Q "But he could not state whether it was caused by the fall or was of old origin". That he also found a scar of an old operation at the outer edge of the rupture where she had been operated upon previously". Did you make that report to the Railroad Company? A Yes sir.

Q Then you did know these facts, the report was made

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before you settled the case, was it not? A Yes sir.

Q Then you did know from your own physician that this injury that you say the defendant represented to be new was, in fact, an old injury, did you not? A I did not.

Q What did you mean by the statement in your report to the Railroad Company? A I was quoting the doctor.

Q What did you say? A I quoted the doctor.

Q Didn't you rely on what Doctor Morrissey reported to the Railroad Company in preference to what the defendant represented to you? A I did not.

Q You did not? A No sir.

Q Did you rely more on what Dr. Coley said to you than on what the defendant said to you? A No sir.

Q This woman whom you had never seen before, and only had one conversation with in your life, you say you relied more on what she said than what your own physician told you. Is that what you want this jury to believe. A I relied upon her statement in determining what to do in the settlement of this case.

MR. SIBBEL: I ask that that be stricken out.

THE COURT: Strike it out.

Q (Question repeated) A Not exactly.

Q Did you rely on the physician's report? A I relied upon the physician's as well as her statement.

Q Yes. On which did you rely more on, on the physician's report, than on her statement? A No sir.

Q You did not? A No sir.

Q You gave her as much weight as your own physicians that were examining and reporting for your own company? A Yes sir.

Q So that when Dr. Coley, your own physician, and Dr. Morrissey, your own physician, reported to you it was an old injury you still believed the defendant's statement it was a new injury, is that right? A I don't believe the Doctors reported it was an old injury.

THE COURT: The doctor could not tell whether the rupture was produced as a result of a fall or whether it was an old injury.

MR. SIGGEL: Yes, sir.

Q Now have you got Dr. Coley's report? A (No answer)

Q Now after you got Dr. Coley's report you made the settlement, is that right? A After I got his report and the rest of the facts, yes sir.

Q What was your official position with the Railroad Company at the time? A I was assistant Claim Agent.

Q Assistant Claim Agent? A Yes sir, I was at that time.

Q Who was your superior? A W. H. Failing.

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Q Was he the District Claim Agent? A He was at that time.

Q Who was the general claim agent, his superior?
A H. B. Dwyer.

Q The conversations you had with Mrs. Strula you embodied in the report and you reported those facts to your superior, did you not? A I did.

Q You were not the one to determine whether this claim should be paid or not? A No sir.

Q Or to determine whether the claim should be adjusted or not---you simply were acting under instructions of your superiors? A Yes sir.

Q Is that right? A Yes sir.

Q Whatever they told you to do you did? A Yes sir; that is right.

Q Irrespective of what the defendant told you? A That is right.

BY THE COURT:

Q Who recommended the payment of the claim?

MR. SIEGEL: I object to that question as irrelevant, incompetent and immaterial and not binding upon the defendant in any sense.

THE COURT: If you were familiar with one of my own cases, the People against Eaton, you would recognize

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that a corporation is an entity and acts through its agents.

Question withdrawn.

BY THE COURT:

Q Did anybody recommend the payment of this claim? A Yes sir.

Q Who? A W. H. Failing.

Q Is he here as a witness? A No sir.

THE COURT: Strike out the answer.

BY MR. McCORMICK:

Q You say he is here? A No sir.

THE COURT: Strike out the answer and the jury will disregard the same.

BY MR. SIFUEL:

Q What were your duties in connection with this transaction? A To investigate the case and then I received instructions to settle it.

BY MR. McCORMICK:

Q You were to make a recommendation to Failing, were you not? A I make my report to Failing and he made the recommendation to the Chief Claim Agent.

Q Your report is the customary basis for settlement?

MR. SIFUEL: I object to the District Attorney interrogating the witness at this time.

THE COURT: You can take that matter up later.

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BY MR. SIEGEL:

Q Isn't it a fact, Mr. Dow, that on the second occasion that you saw the defendant you offered her \$300. to settle?

A I think I did, yes sir.

Q You say that at the time she demanded \$1500. was on the first occasion that you saw her? A Yes sir.

Q Is that right? A Yes sir.

Q Did you state that fact to the grand jury when you testified before that body? A I don't know.

Q What do you say? A I don't know.

Q You don't remember what you testified to before the Grand Jury on August 8th, 1910. A I don't think I mentioned the amount she demanded.

Q Do you recollect what you testified to before the Grand Jury in August 1910? A Yes sir.

Q If you do remember tell us if you told the grand jury that she demanded from you \$1500. on the first occasion that you saw the defendant? A I think I did not.

Q Why didn't you tell the grand jury all about this case, as you recollected it? A I was not asked to.

Q Did you remember it---or are you testifying to that fact now because you have read over your statements for the purposes of this trial? A No sir, I remember that fact.

Q You do? A Yes sir.

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Q When did you first hear that there was to be a prosecution of this defendant? A Well, during the past Spring.

Q Who was the first person that ever talked to you about this case last Spring?

MR. MCCORMICK: I object to that as immaterial and irrelevant.

Objection overruled. Exception.

A I think Mr. Clark of the District Attorney's office.

Q Were you able to tell Mr. Clark on that occasion the exact words that the defendant used almost four years previous to that time? A He did not ask me.

Q What is that? A He did not ask me.

Q When did anybody first ask you to repeat the conversation? A Here to-day.

Q What is that? A Here in the Court room to-day.

Q You did testify to the conversation you had with the defendant before two grand juries that found the indictment, did you not? A In a general way, but not as to details.

Q You testified as best you could recollect at the time did you not? A Yes sir.

Q What do you say? A Yes sir.

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Q You did testify to conversations you had with the defendant before two Grand Juries that found the indictment, did you not? A In a general way, but not as to details.

Q You testified as best you could recollect at the time, did you not? A Yes, sir.

Q What do you say? A Yes, sir.

Q But you are more positive to-day as to the conversation, are you not? A In some things.

Q Why? A Because I have read the report since.

Q That is what I am trying to get you to tell me. Isn't it a fact that you read your report for the purposes of this trial to-day? A I think I told you that already, yes, sir.

Q You think you did, but you did not.

MR. MCCORMICK: I object to any statement like that. Your Honor, he has no right to browbeat this witness. The witness says that he did say it before and I remember that he did.

MR. SIEGEL: Counsel is not trying to browbeat the witness, and I don't think that that statement is proper.

THE COURT: Proceed.

MR. SIEGEL:

Q Mr. Now, now, isn't it a fact that the reason why you can testify and tell this Court and jury the conversations you had with the defendant in 1906 is because you have read

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this report? A It has refreshed me on some points, yes, sir.

Q Refreshed you on some points? A Yes, sir.

Q Has it refreshed you as to hernias, ruptures? A No, sir, not particularly.

Q You remember them without anything refreshing your recollection? A Without question, yes, sir.

Q You thought this claim at the time you settled it was a good one, or a doubtful one, which? A I thought it was a doubtful one.

Q You thought it was a doubtful one? A Yes, sir.

Q Why did you think it was a doubtful claim? A I was suspicious of the woman.

Q And that is why you wanted the doctor's reports, is it not? A We investigate all cases.

MR. SIEGEL: I ask that the answer be stricken out as not responsive.

THE COURT: Motion granted.

Q That is why you wanted the doctor's reports, is it not? A No, sir.

Q Did you rely on Mr. Fisher's statement? A Not entirely.

Q Did you rely on Mr. McLean's statement or Mr. Bowen's statement? A Not entirely; to a certain extent on all of them.

Q Not entirely? A No, sir.

Q But very materially, did you not? A We relied on all

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the statements, yes, sir.

Q You relied very materially on Dr. Croley's statement, did you not? A It had its effect, yes, sir, in determining--

Q You relied very materially on Dr. Morrissey's statement, isn't that a fact? A Yes, sir.

Q And as a matter of fact you did not rely very much on what the defendant told you because you say, in your statement, it was a doubtful claim, isn't that the fact? A That is the fact.

Q As a matter of fact, Mr. Dow, - be fair with us, - isn't it a fact that you did not rely on her statement at all? A I did.

Q As to the facts and circumstances of the injury which she had sustained on the 19th of October, 1906? A I relied upon her statement in determining what to do with the settlement.

Q "You relied upon her statement in determining what to do with the settlement", what do you mean by that? A If she had not claim that she sustained this injury by falling down we would not have paid her the money.

Q You paid her the money because you investigated her claim and found it was substantiated, did you not? A I found that she had fallen on the stairway.

Q By reports from the doctors and by Fisher, McLean and Bowen? A Yes, sir.

Q Didn't your report or settlement depend somewhat upon the fact that she was in the Harlem Hospital for about a day and a night? A I don't see why it should, no, sir.

Stricken out.

Q Answer the question. A I don't think so, no, sir.

Q Now, you say that her statement, -- her statement you depended upon somewhat for the purposes of the settlement?

A I think we depended upon that entirely; if she did not claim this we would not have paid her the money.

Q After she made the claim then you investigated it, did you not? A To see whether she had fallen, as she claimed, yes, sir.

Q You ascertained that to be true, did you not? A Yes, sir.

Q And for the purpose of determining whether that was true you relied simply on the statement of Fisher, Bowen and McLean? A Yes, sir.

Q Then she said that she did sustain a rupture as the result of the accident you determined that that was true as a result of the statements that you had got from Coley and Morrissey, isn't that the fact? A No, sir.

Q What did you want the statements of Dr. Coley and Dr. Morrissey for? A We were trying to find out whether the woman was telling us the truth or not, as to whether she had the rupture.

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Q That is just what I wanted to know, and when you got these statements did you ascertain whether she was telling the truth or whether she was lying? A We were not satisfied she was telling the truth.

Q Then you did not even rely on these reports? A We did to the extent that we paid her five hundred dollars.

Q You just said you did not believe she was stating what was true -- why did you give her any money? A Because we thought we were taking a risk in letting it go.

Q The only inducement you had, then, for settling with her at all, was the fact that the Railroad Company was taking a risk if they let her go? A Because she threatened to sue us, yes, sir.

Q Then the fact that she threatened to sue you was the reason for your settling with her, and giving her the money?

A Exactly.

Q And not that she said she had sustained a rupture as the result of these injuries? A And the fact that she said she sustained a rupture as the result of this fall.

Q You relied upon that very slightly, isn't that the fact?

A Very largely.

Q Very largely? A Yes, sir.

Q You relied on that fact very largely? A Yes, sir.

Q Did you believe she was telling the truth? A I did not, personally.

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Q Then you did not rely on her statement at all, if you did not believe her, isn't that the fact? A I did not believe her.

Q You did not believe her? A No, sir.

Q Still you want this jury to believe that you relied upon what she said as true? A Well, she ---

Q (Continuing) Even though you did not believe her?

A The facts were such it was --- it would have been taking a risk to let the settlement go; we had to pay her the money.

Q That was the inducing cause of giving the money, wasn't it? A Certainly it was.

Q It was? A Yes, sir.

BY THE COURT:

Q The threat to sue? A Yes, sir.

MR. MCCORMICK: For the injuries sustained ---

MR. SIEGEL: I object to the District Attorney interrupting the counsel for the defendant in his cross examination.

BY MR. SIEGEL:

Q I will read you another paragraph, another statement in your statement, or your report, to the Railroad Company: "The case is a peculiar one, and made me suspicious of the woman. I have been unable to find that she has been untruthful in any statement she has made to me in the investigation I have made."

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MR. McCORMICK: I will consent that this report be put in evidence?

MR. SIEGEL: I want to cross examine this witness on the strength of his own statement.

MR. McCORMICK: Well, I don't want parts of it to go in evidence.

THE COURT: The District Attorney can offer it in evidence afterwards.

BY MR. SIEGEL:

Q What is the fact, Mr. Low, that you did not believe her, or did believe her? A I did not personally.

Q Why did you report to the Railroad Company that you did not find her untruthful in any statements she made to you? A I did not; I was not able to prove she was untruthful.

Q That is why you made that statement? A Yes, sir.

Q She had stated to you that it was a rupture, is that right? A Yes, sir.

Q She had stated to you that the accident had caused a large swelling in the front of the abdomen? A Yes, sir, near the front, yes, sir.

Q That was true, was it not? A Yes, sir.

Q The fact that it had caused the rupture, you ascertained that that was true, did you not? A Ascertained that she had a rupture.

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Q That she had a rupture at the time she spoke to you?

A Yes, sir.

Q You ascertained that as a result of this particular accident the lining of the stomach had burst? A I did not, no, sir.

You did not? A No, sir.

Didn't Dr. Coley so report? A Not that I recall, no, sir.

Q Is Dr. Coley's report here? A Dr. Coley said he could not tell positively.

MR. SIEGEL: I want his report. If your Honor please, he says he gave that report to the District Attorney, and I don't know why the District Attorney does not give it to me.

THE COURT: If the District Attorney has all these papers here he can hand them to you. Have you got that paper here?

MR. McCORMICK: I haven't any report here.

THE COURT: Have you subpoenaed the report?

MR. SIEGEL: Yes, sir.

THE COURT: Did you bring the report here?

THE WITNESS: I brought all the papers here.

MR. McCORMICK: Will you come and pick it out from this desk here if it is there.

THE COURT: We will take an adjournment now.

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The Court then admonished the jury, calling their attention to Section 415 of the Code of Criminal Procedure, and adjourned the further trial of the case until to-morrow, Wednesday morning, November 30th, 1910, at 10:30 o'clock.

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New York November 30th, 1910.

M A R C U S A. D O W a witness for the people resumes the stand.

MR. SIEGEL: I think there are some witnesses in court. Will your Honor please have them excluded

THE COURT: The witnesses will be excluded.

CROSS EXAMINATION CONTINUED:

BY MR. SIEGEL:

Q Now, Mr. Dow, yesterday at the close of your examination you stated that the reason why you settled with the defendant was because you were afraid she was going to start a civil suit. That is right. Is it not? A I believe I said that, yes sir.

Q And when the District Attorney and myself both asked you to repeat the conversations you had with her on the three occasions you mentioned in your direct examination why didn't you tell us that in those conversations she had threatened to bring suit? A I don't know.

Q What is that? A I don't know. I don't understand your question.

Q Let us see if I can make it plain. I want you to understand the question. I don't want to mix you or mislead you at all. You said yesterday, in your examination, that

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the reason why you settled with the defendant was because she threatened to bring a civil suit against the railroad company. Why didn't you say that she stated that to you when you repeated the conversations you had with her on the three occasions in November 1906? A Well, it did not occur to me, that is all.

Q It did not occur to you? A In any part of the conversation---

Q That was part of the conversation, wasn't it? A I believe it was, yes sir.

Q She had threatened at one of these conversations that she would bring suit if you would not settle? A She did.

Q She did? A Yes sir.

Q Now, if your memory better to-day concerning conversations you had with her than it was on the 15th day of November 1906 when you presented the statement to Mr. Failing, your immediate superior in the claim department? A It cannot be any better.

Q Was your memory better than it is now? A The day following this occurrence it must have been---

Q On November 15th 1906 was your memory as to the conversations had in November 1906 better then than now? A It might be as to details.

Q It might be? A Yes sir.

Q You cannot tell us definitely whether your memory is better four years after a conversation than within about twenty days after a conversation. A As to details it must be better.

Q It must have been better? A Twenty days after? Why, certainly.

Q You would assume that the statements contained in this statement would probably be more truthful than your memory to-day in relation to the conversations? A They would be correct, yes sir.

Q Do you remember making this statement in your statement "She states that she does not care to go into court about the matter"? A Yes sir.

Q Well did she threaten suit or did she say "She don't want to go to court"? A That she didn't want to go into court, but she would if the case was not settled.

Q Did you make that statement in your report to the company? A I don't know whether I did or not.

Q That she would ~~not~~ go into court if the case was not settled? A I don't know whether I did or not.

Q Look at your report and tell us whether you stated that. Do you want to look at your report? A Well, the report is there; that is what I said.

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Q If it is not in the report you did not state it to the company did you? A I might have said so verbally.

Q You might have said it verbally. This embodies the whole report made to the company, doesn't it? No sir, not all, that was my written report.

Q This is the report on which the company relied, isn't it? A Yes sir.

Q To Mr. Failing?

Objected to. Question withdrawn.

Q That is the best answer you can make, is it, Mr. Dow? A Yes sir.

Q Well, nevertheless it is a fact that she stated to you at that time that she did not care to go into court about the matter? A She did.

Q Then do you want this jury to understand that you settled with her because she threatened to go to court? A That is one of the reasons.

Q Now, will you be good enough to explain to the jury the inconsistency of these two statements, first, you say you settled with her because she threatened to bring suit, but you stated in the statement of November 15th 1906 that she said she would not bring suit? A I did not say anything of the kind. I said she didn't want to go into court; she did not say she would not.

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Q Is that statement made from memory or refreshed by this statement that you gave to the company in 1906? A I probably r-freshed my memory from reading that report over.

Q Your report only says that she does not care to go into court about the matter. Now do you want to tell this jury that you now recollect from memory concerning a conversation in 1906 that she also stated, in addition to this, ---she said she would go to court about the matter? A I do; I remember it distinctly.

Q Do you remember everything as distinctly as that?
A I remember that.

Q Do you remember everything as you remember that?
That is why you had to look at the hotel in order to be sure that that was the hotel that she was at in 1906? A I didn't have to go and look at it.

Q You stated in your direct examination that you went and looked at the hotel? A I had seen---I had seen the hotel since.

Q Since you testified before the Grand Jury in this case? A Yes sir; I walked past there several times.

Q You stated to the Grand Jury on the first day of June 1910 that you had forgotten the name of the hotel? A I did at that time.

Q That is a fact, isn't it? A Yes sir.

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Q Since you testified you went and looked at the hotel?

A I have seen the hotel, yes sir.

Q Did you go there particularly to see it in order to be able to state on this trial that that was the hotel?

A I did not, no sir.

Q What did you say? A No sir, I did not.

Q You did not? A No sir.

Q How did you come to recollect the hotel from the time you testified before the Grand Jury up to the date of this trial? A I told you I passed by there, and had seen it since.

Q Isn't it a fact that the reason why you can tell that is because you read your statement? A I remembered it before I read the statement.

MR. SIEBEL: The answer is no.

THE COURT: He said he remembered that before he read the statement or the report.

BY MR. SIEBEL:

Q Did you remember it before you read the report?

THE COURT: He has answered that.

Q Let me ask you, was this question put to you before the Grand Jury on June 1st 1910 and did you make the following answer "Q She was in good health before? A Yes."

Did you understand that to be the truth? A That was my belief

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at the time." A Yes sir.

Q Was that your belief at the time? A Yes sir.

Q I just want an answer to that last question. Did you so testify before the Grand Jury? A Yes sir.

Q That was your belief? A Yes sir.

Q Irrespective of the reports that you had received from the physicians? A Yes sir.

Q Now, you stated, Mr. Dow, in your examination yesterday---I asked you whether you relied on that statement or on the Doctor's statement in determining whether you should settle this claim and you said "I relied upon her statement in determining what to do in the settlement of this case" that is a fact, is it not? A Yes sir.

Q Did you testify---was this question put to you before the Grand Jury on August 8th, 1910 and did you make the following answer "Q You settled with her on the strength of what your doctor said? A And what she said also." Did you so testify? A Yes sir.

Q You did rely, as a matter of fact, on what your doctors had said? A It merely bolstered up what she had to say about it.

Q Bolstered up what she had to say? A Yes sir.

THE COURT: I wish counsel would look at the case of the People against Haynes ll Wendell and the

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case of People against Mayer 80th N. Y. and the People against Genet, during the Tweed days, 83 New York. You will find that the Court of Appeals in these authorities held that if the false pretenses or false representations materially influenced a party it is sufficient. Probably you can save considerable time if you consult those authorities.

MR. SINGER: There is no dispute about that.

THE COURT: You have been spending considerable time on a line of examination tending to show that this one employee of the concern, did not solely rely upon the representations made by this defendant, that as a result of an accident, occasioned by the negligence of this company, she sustained a hernia. It will be for the Jury to determine, upon all the evidence, even though the District Attorney should not directly question the witnesses concerning their reliance---the fact for them to decide would be whether or not there was a representation made as to an existing fact, made for the purpose or intending to defraud, because a mere representation without an intent to defraud is no crime.

MR. SINGER: The reason counsel is examining the witness is this---

THE COURT: You have been over an hour and a half.

MR. SINGER: Because the law is that if it material

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ly affected, not alone materially affected, but must be the predominant influence in moving the complainant to part with its money.

THE COURT: What decision holds that.

MR. SIEGEL: I will get your Honor that decision.

THE COURT: I would like to see it.

MR. SIEGEL: I will give it to your Honor at recess.

THE COURT: Can you give it to me now?

MR. SIEGEL: I haven't got it now. I will give it to you at recess. Besides that, even though the witness says that he was materially influenced by her representations, he has said that he did not believe what she said. Now, if he did not believe what she said he could not rely on what she said.

THE COURT: He said he had no authority to settle the matter. He made his report. A corporation acts through its agents.

MR. SIEGEL: It is a question of proof, if your Honor please. If they are able to prove that this representation she made to this witness was relied upon by the corporation---

THE COURT: Suppose they did not rely upon it.

MR. SIEGEL: Then the defendant is absolutely

entitled to an acquittal.

THE COURT: How about an attempt to commit the crime.

MR. SEIGEL: The crime has been consummated absolutely. They parted with the possession and title to the money.

THE COURT: That is true, but there are decisions to this effect, that where a defendant makes a false pretense or representation and it relates to a material existent fact, and it is made with intent on the part of the defendant to defraud, and made for the purpose of influencing the complainant to part with its money, and the complaining witness did believe the statements, the crime is nevertheless an attempt to commit the crime of grand larceny by false pretenses.

MR. SEIGEL: I beg to disagree with your Honor most respectfully. I think that the material element of this crime is that it was materially relied upon.

THE COURT: I beg pardon. As to the full offence there must be absolute reliance. The Court of Appeals, I think, in one of my own cases held that.

MR. SEIGEL: This is the witness to whom the false representation was made. It is a question for the jury to say whether he relied upon it.

THE COURT: "If the person to be defrauded does

not believe the pretenses to be true, still under the indictment an attempt to defraud may be maintained against the wrongdoer."

MR. SEIGEL: In an attempt.

THE COURT: That is what I have been talking about.

MR. SEIGEL: How can we have a discussion as to an attempt here when the crime has been fully consummated.

THE COURT: I disagree as to that. You are thinking of the case of the People against Jaffe. The trouble in the Jaffe case was that the goods were never stolen. The Court of Appeals there held that a man could not be guilty of intending to commit a crime when, under no circumstances, could the full crime be committed. Because there must be stolen goods before a person can receive them. The Jaffe case is no innovation in the law; but in the Gardiner case, the extortion case, the threat never inspired fear on the part of the person from whom the money was taken, and there the Courts have held that the attempt was sufficient. There is a case in Texas on the subject, and there are several English cases, Rex against Henschner; Rex against Pall; Rex against Francis; Rex against Roebuck.

MR. SEIGEL: But here, if your Honor please, the entire crime was consummated and the defendant gets the

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\$500.

THE COURT: I am not now ruling that the full crime has not been committed. I am only calling your attention to the fact that the People can proceed upon two possible theories. It makes no difference whether the money was given or not.

MR. SEIGEL: Well they have charged her with obtaining this property by false representations made with intent to deceive.

THE COURT: Concerning the injury which she sustained as the result of an accident. This witness is only one of probably thirty which the District Attorney says he is going to call.

MR. SEIGEL: But he is the only witness to whom the false representations as alleged in the indictment were made.

THE COURT: No, I beg your pardon. The false representations were made to the corporation.

MR. SEIGEL: Well, if they can prove that that is another proposition.

THE COURT: They are permitted to prove it. A corporation is an entity, it acts through its agents.

MR. SEIGEL: This is not an agent of the corporation. He is an assistant in the claim department.

As a matter of fact his own statement is "I am assistant claim agent. That does not make his such a representative of the corporation sufficient to have it a false representation made to the corporation.

THE COURT: You will find in the case of the People against Eaton 120 Appellate Division, one of own cases, that that question was passed upon.

BY MR. SEIGEL:

Q How many cases have you investigated Mr. Dow, since you have been connected with the claim department of the New York Central. A It is impossible to say.

Q What do you say? A That is impossible to say.

Q Well, can you give us the number approximately.

A No sir.

Q 100 cases? A More than that.

Q More than that? A Yes sir.

Q Can you tell us the first case you ever investigated?

A No sir.

Q Did you ever have any other case where the injuries were a rupture? A No sir.

Q Did you ever have a case where the injuries were an injury to the spine? A Yes sir

Q What was the last case? A I don't recall.

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Q What is that? A I have had a great many of them; I cannot recall.

Q Can you give us the name of the last case you ever had? A No sir.

Q Can you? A No sir.

Q Do you recommend settlements in cases? A I do now, yes sir.

Q Can you give us the name of the last case that you paid money in? A The last case that I paid money in?

Q That settlement was made? A Yes sir.

Q Now, you said to the Grand Jury, did you not "She claimed to be suffering from an umbilical hernia"? A I did not catch your question.

Q You stated to the Grand Jury, on June 1st, 1910 ---I will change the form of the question. Was the following question put to you and did you make the following answer before the Grand Jury of this County on June 1910 "Q What was she suffering from? A She claimed to be suffering from an umbilical hernia"? Did you so testify? A Yes sir.

Q The defendant stated to you during these conversations in November that she was suffering from an umbilical hernia? A Yes sir.

Q All the conversations and everything that you had

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with her it was your duty to report to your superior at the company, is that right? A Yes sir.

Q Now just look at this report there, Mr. Dow, and point out to me where you state therein that she said she was suffering from an umbilical hernia? Do you find it? A I don't find it on here, no sir.

Q You do not? A No sir, I do not, no sir.

Q Do you want this jury to understand that when you testified before the Grand Jury on June 1st 1910 that you were able to state accurately the conversation you had with the defendant, and you were able to do so better than on November 15, 1906 when you made your report to the Railroad Company? A I don't say that I could do it any better, no sir.

Q You never mentioned ~~it~~ to your superiors in your statement of about seven pages, giving the details of this accident case a word that she represented to you that she was suffering from an umbilical hernia, did you.

MR. McCORMICK: I object to that.

THE COURT: I will allow it.

A That was not all of the report that I submitted.

Q Answer the question. Did you? A I did submit it but not in that report.

Q What did you say, Mr. Dow? A It is not in that

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particular paper but it was submitted.

Q This paper that I showed you is your entire report, made by you to the Railroad Company? A Accompanied by other papers, it was.

Q Accompanied by other papers it was.

Q But this embodied everything concerning the accident, did it not? A Not exactly.

MR. SEIGEL: I offer this statement in evidence, if your Honor please.

MR. MCCORMICK: No objection.

(The statement referred to is marked Defendant's Exhibit A.)

(Mr. Moscovitz reads Defendant's Exhibit A to the Jury)

BY MR. SEIGEL:

Q Now was that the complete report, Mr. Dow? A It covered the matter in general, yes sir.

Q I asked you before whether you stated in your report that she was suffering from an umbilical hernia? A (NO answer)

Q What other part of your report would show that she said to you in November 1906 that this accident caused an umbilical hernia? A I don't know; it may be in some of the papers attached to that report.

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Q Would it be in her own statement? A It might be; I can't say now.

Q Look at it and tell us if it is. A She does not use those words, no sir.

Q Didn't you embody in that statement the conversations you had with her at the time? A The first conversation, yes sir.

Q The first conversation, on November 3rd, was the conversation at which she stated she was suffering from an umbilical hernia, isn't that so? A Yes sir.

Q What is the date of that report? A November 3rd.

Q On the very day you had the conversation and you made a note of it make a statement and use the words umbilical hernia? A No sir.

Q Now you state in your report, Defendant's Exhibit A that Dr. Coley states that she ought to be operated upon with out delay as there is danger of strangulation.

Q That you embodied in your report after you received a report from Dr. Coley? A Yes sir.

THE COURT: Did not the report mention something about Hernia or a rupture?

THE WITNESS: The Doctor's report yes sir.

BY MR. SEIGEL:

Q But his report as to the conversation he had with

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the defendant does not mention a word about hernia or rupture.

MR. McCORMICK: I offer this in evidence.

THE COURT: Not at this time. I want to get that point clear. You see this ~~the~~ case is going to be protracted and we don't want to have the issues become too much involved. As far as the report which this gentleman made to the company is concerned it is silent as to whether this defendant told him that she had a hernia or a rupture?

THE WITNESS: Yes sir.

Q Isn't that so? A Yes sir.

MR. MOSKOWITZ: But the report is not complete in these few pages. It attaches to the report various documents which, combined, will show the hernia. There is the Doctor's report, the report of two or three Doctors.

THE COURT: That is not the point. The question is: Did this defendant state to the witness that she had a hernia.

MR. McCORMICK: He so testified.

THE WITNESS: In the report I do.

MR. SEIGEL: The Doctor's report would not indicate the conversations between the witness and the defendant,

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will it Mr. District Attorney.

MR. MOSKOWITZ: That has not as yet been introduced in evidence. This is a particular document from which the defendant's counsel wants to cross examine the witness upon and in it there appears the statement that the abdominal lining of the intestines had been burst.

THE COURT: The report of the physician is not a part of his report to the Railroad Company?

MR. SEIGEL: In his statement here made on the very day he had a conversation with the defendant and on which he noted in lead pencil "Conversation had on November 3rd, 1906" he does not mention a word that she said to him that she was suffering from hernia or rupture.

MR. MOSKOWITZ: You don't offer that report in evidence.

MR. SEIGEL: I asked him whether this report contained any such statement and so far as ~~as~~ the record is concerned it is sufficient for the defense.

MR. MOSKOWITZ: It contains the statement as to the bursting of the lining of the intestines.

MR. SEIGEL: That is objected to.

THE COURT: Objection sustained. The question that counsel is addressing himself to is that the report

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made by the claim agent did not contain any statement alleged to have been made by this defendant that she not the physician, ---that she told him that as a result of the accident she sustained a hernia or rupture, using the term in the indictment that she sustained "an umbilical hernia".

MR. MOSKOWITZ: We will bring that out on the re-direct.

THE COURT: As I have said before the People will prove by many witnesses as to what was said. I think you can shorten the examination very much.

MR. SEISEL: I am almost through.

THE COURT: This witness could be kept on for two and a half hours more.

MR. SEISEL: I think it has been time well spent so far as the defense is concerned. That is all.

RE-DIRECT EXAMINATION BY MR. MCCORMICK:

Q Now, Mr. Dow, this report that has been offered in evidence and has been marked Defendant's exhibit A is a report prepared by you, is it not? A Yes sir.

Q Directed to W. H. Failing, Division Claim Agent? A Yes sir.

Q Did you submit this report to him? A Yes sir.

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Q Personally? A Yes sir.

Q At the time that you submitted this report to him did you submit other papers attached to this report, with the report? A Yes sir.

Q What were they? A Papers which are enumerated on the first page of that statement.

Q And among those papers was this document which I show you, is that right? A Yes sir.

Q In whose handwriting is that? A Mine.

Q State the circumstances under which you wrote that? A Sitting in the parlor of the Gilsey House with a pad of paper on my lap I asked Mr. Strula questions concerning the claim she made and when she gave me the answers I wrote them down on that sheet of paper in narrative form.

Q You wrote down, what things she said? A Yes sir.

Q Did you deliver this paper to W. H. Failing at the same time that you delivered that report, Defendant's Exhibit A? A Yes sir; it is part of the report.

MR. MCCORMICK: I offer this paper in evidence.

MR. SEIBEL: I object to it, if your Honor please.

MR. MCCORMICK: A part of the report.

MR. SEIBEL: I object to it as irrelevant and incompetent, and as absolutely not in any way pertaining to this issue.

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THE COURT: You have offered a part of this report. This report referred to other papers.

MR. MCCORMICK: Yes sir, enumerated in report and submitted at the same time.

MR. SEIGEL: The only thing I offered was the report made by this witness to his company for the purpose of contradicting his testimony given here and given before the Grand Jury.

THE COURT: Let me look at the additional paper that you offer.

MR. SEIGEL: For what purpose does the District Attorney want to offer this additional statement?

MR. MCCORMICK: To show her statement as to what the injury was.

MR. SEIGEL: The District Attorney has stated that it is to sustain the hernia contention that he offers this?

MR. MCCORMICK: Wait until the Court reads the document.

MR. SEIGEL: I thought we had an agreement that there is nothing in that statement as to the hernia or ruptures?

THE COURT: I will allow it in evidence.

MR. SEIGEL: I take an exception. The only

use they could make of that paper is to refresh this witness's recollection as to the conversation had with the defendant. He has refreshed his recollection, now what benefit is this?

THE COURT: You offered in evidence the report and it only contains part of the report.

MR. SLICK: I asked the witness whether that was the full report made by him to the company as far as his investigation was concerned. "This is only in substantiation---"

THE COURT: He said it contained other papers.

MR. McCONNICK: The report itself says "Referring to the personal injury to Mrs. Anna A. Strula."

Exception.

— MR. McCONNICK: A passenger on 19th Street on October 19th last "I attached the following papers" and this is one of them.

MR. SLICK: It is not any part of his report. It does not make very much difference what he attached.

(Received in evidence and marked People's Exhibit 2)

(Mr. McConnick reads People's Exhibit 2 to the jury)

Q I am going to ask you another question and ask you if you have ever seen that before? A Yes sir.

Q When was the first time you saw it? A When I first

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interviewed Mrs. Strulz.

Q Where did you get it? A From her.

Q She delivered it to you? A Yes sir.

Q Did she say anything at the time she delivered this document to you? A She said that was the statement of her own physician.

MR. MCCORMICK: I offer this document in evidence.

Q Do you remember the date upon which she offered this document to you? A I believe it was November 3rd. It was prior to the settlement.

Q Was it after the injury or alleged injury on the stairs at 125th Street? A Yes sir.

Q On the 19th? A Yes sir; I never saw her before that.

MR. MCCORMICK: I offer it in evidence.

(Received in evidence and marked People's Exhibit

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(Mr. McCormick reads People's Exhibit 3 to the jury)

Q Now, what did you say your title was in connection with the New York Central at that time? A At that time I was assistant claim agent.

Q How long did you hold that position? A About three years.

MR. SEIGEL: I object to that question.

MR. McCORMICK: It has been gone into by the other side.

MR. SEIGEL: I object to it as not proper.

MR. McCORMICK: I want to show that he now holds a position in Buffalo and has authority to settle claims.

Objection overruled; exception.

MR. SEIGEL: On the ground that it is absolutely immaterial what he can do now. The question is what he could do in 1906.

THE COURT: You asked him what his duties were.

MR. McCORMICK: At that time.

MR. SEIGEL: Now he is inquiring about to-day.

THE COURT: Not to-day.

MR. McCORMICK: Very well I do not care about going into it.

THE COURT: He might be President of the Road to-day.

Q What were the duties of your position on the 19th of October---from that time down to the time that this money was paid? A The duties were to investigate claims, submit them to my superior, and under his instructions settle them, if necessary.

Q Did you ever decide to settle a claim yourself?

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MR. SEIGEL: I object to that question.

THE COURT: He stated that he settled them under instructions from his superior.

Q Who were the men who instructed in regard to settlements? A Mr. W. H. Failing instructed me directly.

Q Who else passed upon any claims? A H. B. Dwyer, Chief Claim Agent passed upon them finally.

Q Did he instruct you to settle this claim.

Objected to. Objection overruled. Exception.

Q Who instructed you to settle this claim?

THE SEIGEL: The question of instructions received by this witness in the absence of the defendant cannot bind the defendant---any conversation between this man and his superior.

THE COURT: He may answer.

Q Who instructed you?

MR. SEIGEL: It is calling for a conclusion, if your Honor please.

Q Who instructed you? A I was instructed on November 17th 1906.

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Q Did Mrs. Strula give you this? A Yes, sir.

Q Is that her signature? A Yes, sir.

Q Was that delivered to you by her at the same time she was paid the \$500 by you? A Yes, sir.

Q Who else was present at the time? A A notary, his name is --- I have forgotten; he was up in Wanamaker's store.

Q Was he the one who took her acknowledgment? A Yes, sir, the top floor of Wanamaker's.

Q On the 17th of November, 1906? A Yes, sir.

MR. McCORMICK: I offer this in evidence.

(Received in evidence and marked People's Exhibit 4.)

(Mr. McCormick reads People's Exhibit 4 to the jury.)

Q I show you another document and ask you whether that formed a part of the report that you submitted to your superior? A Yes, sir.

(The Court then admonished the jury, calling their attention to Section 415 of the Code of Criminal Procedure, and took a recess until ten minutes after two o'clock.)

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AFTER RECESS.

M A R C U S A . D O W, a witness for the People, resumes
the stand.

BY MR. MCCORMICK:

Q Mr. Dow, you have in this report that you submitted to
Mr. Dwyer, your superior, - you refer to a certificate by
Dr. Morrissey? A Yes, sir.

Q Is that the certificate (showing witness a paper)?
A Yes, sir.

Q Was that document submitted with your report to Mr.
Dwyer? A Yes, sir.

MR. MCCORMICK: I offer it in evidence.

MR. SIEGEL: I object to it, if your Honor please,
first on the ground that it is immaterial.

MR. MCCORMICK: This is a paper which was sub-
mitted with the report by this witness to his superior
and was referred to in the report and made a part of
it, the same as the other papers which have been
offered.

MR. SIEGEL: Objected to on the ground that it
is immaterial, irrelevant and incompetent, and as
embodying a confidential communication between
physician and patient.

THE COURT: A paper delivered by whom?

MR. MCCORMICK: By the doctor, and submitted by

this witness to his superior, Mr. Dwyer, and made a part of the report. They cannot bring out a part of the report and object to it all being brought out. Your Honor has already ruled on that.

THE COURT: This report was made by what doctor?

MR. McCORMICK: Dr. Morrissey, the Railroad Company's doctor.

THE COURT: For the present I shall sustain the objection. When you show that the information obtained by the physician was under circumstances where the relationship of patient and physician did not exist, and that such information was not necessary for the purpose of the physician to treat the defendant, and was not within the provisions of Section 834, I will admit it.

MR. WOSCOWITZ: I believe it is up to the defense to show that the relationship did exist.

THE COURT: That is true, under the People against Korner, 154 New York. You must show that the relationship existed.

MR. SIEGEL: I cannot show it until they call the physician.

THE COURT: I think you might as well hold that back for awhile.

MR. McCORMICK: In the beginning we would not

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have been able to put in evidence the report rendered by this man to his superior in office, but when the defense insisted upon a part of that report going in your Honor ruled that we then had a right to put all of it in, and this is a part of that report, and it seems to me that it should be admitted in evidence.

THE COURT: Was this the physician who was referred to in his testimony by Mr. Dow -- the physician that the defendant called upon for the purpose of examination?

MR. SIEGEL: No, sir. This was the physician who was selected by the Railroad Company. The defendant never gave it to anybody.

THE COURT: I will sustain the objection at present.

MR. MOSCOWITZ: This report, your Honor, was marked in evidence.

THE COURT: I understand that, but if the paper now offered contains matters which indicate that the relationship of physician and patient existed I would not be justified in receiving it.

MR. MOSCOWITZ: The defense offered it in evidence. Why didn't they waive it?

THE COURT: The defense did not have before it

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all of the papers at the time.

MR. MOSCOWITZ: All of the papers were in their possession.

THE COURT: But I will not allow it.

BY MR. SIEGEL:

Q I just want to ask you one question: Where did you get the words "umbilical hernia"?

MR. McCORMICK: Objected to. It is not in evidence that he got these words any place.

THE COURT: Is it referred to any where that this witness used the term "umbilical hernia"?

MR. SIEGEL: Umbilical hernia, - that is the gravamen of the indictment.

Objection overruled.

A I cannot say.

Q You testified in answer to the District Attorney's question that this statement of Mrs. Strula's, - one of the District Attorney's exhibits, which you wrote out on your knee, right in the hotel, at the Gilsey House, when you met the defendant on November 3rd, - did you not? A That statement, yes, sir.

MR. McCORMICK: He did not put that statement in writing at that time.

Q You testified, did you not, Mr. Dow, that as you questioned Mrs. Strula, you wrote this on your knee in the

Gilsey House? A Yes, sir.

Q People's Exhibit 2? A Yes, sir, I did.

Q You did not put in that statement the words "umbilical hernia", or rupture, did you? A They are not there.

Q Well, tell me, how did you come to use that term when you testified before the Grand Jury on June 1st, 1910? A Well it is in the report; I can't say just where I got it; I am not a doctor.

Q People's Exhibit 2 embodies the conversation that you had with the defendant on November 3rd, does it not? A Yes, sir.

Q You testified before the Grand Jury that on that conversation she claimed to be suffering from umbilical hernia?

A As far as I am concerned, rupture and umbilical hernia are the same; I don't know the difference.

Q Do you know there are all kinds of ruptures, do you, Mr. Dow? A I am a layman on the subject; I know nothing about it.

Q What I want you to answer is, Mr. Dow, your report to the Company, defendant's Exhibit A, not containing the words umbilical hernia or rupture, and ⁱⁿ the statement which you wrote down at the time you had the conversation with the defendant at the Gilsey House, you did not incorporate therein "umbilical hernia" or rupture, -- when did you first hear that term used in relation to this case? A At the time I made the investigation.

Q The defendant did not tell you that, did she? A She used some such word as ---

Q Well, if she did, why didn't you ---

THE COURT: Some such word as what?

THE WITNESS: Umbilical hernia ---

BY MR. SIEGEL:

Q Why didn't you put that in your statement, People's Exhibit 2, made at the time? A I cannot say.

Q You cannot say? A No, sir.

MR. McCORMICK: Because he was ---

MR. SIEGEL: If you please, Mr. District Attorney, the witness has testified, and if Mr. McCormick wants to testify he can take the stand.

BY THE COURT:

Q What were the words which she used? A If I remember she used the word "rupture" several times during our conversations.

Q But she didn't use the word "hernia" did she? A I cannot recall that she did.

Q Or umbilical hernia? A I cannot recall that she did.

Q Are you sure that she told you that there was some laceration of the abdominal region? A Yes, sir.

Q And a bruise on the right side of the abdomen? A Well, I don't remember whether --- I think it was a little to the left of the centre.

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BY MR. SIEGEL:

Q Then she didn't use the term as you have stated to his Honor's interrogations the words "umbilical hernia"?

A Not those exact words that I can recall.

Q Why did you so testify before the Grand Jury on June 1st, and also before the Grand Jury on August 8th to that effect? A I told you that as far as I know rupture and umbilical hernia are the same. I don't know the distinction.

Q But didn't you testify, Mr. Dow, that that was the expression which she used when you had the conversation with her? A I don't think I intended it that way.

Q What did you say? A I did not intend it that way.

Q You did not intend it that way? A No, sir.

BY MR. McCORMICK:

Q Look at this document, People's Exhibit 3. Read that. Do you remember now what words she used in describing her injuries?

MR. SIEGEL: I object to the question, if your Honor please, as immaterial, irrelevant and incompetent, and absolutely improper on the District Attorney's part. He asked him if by refreshing his recollection by the statement of a physician he can now say what conversation he had with the defendant.

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MR. McCORMICK: I have shown him a document
which he received from the defendant.

BY THE COURT:

Q Is there any way by which you can refresh your recollection as to the nature of the statement made by this defendant, if she did make any statement, concerning the nature of the alleged injury which she sustained?

MR. SIEGEL: I object to that question on the ground that it has already been answered; that the witness said she did not say she was suffering from umbilical hernia.

THE COURT: What do you want to prove?

MR. McCORMICK: I want the witness to refresh his recollection by this document.

THE COURT: He claims he knows the nature of the injury from what this defendant said, not from what the doctors said.

MR. McCORMICK: This is what the defendant handed to him and talked to him about.

Q Was there anything said by you to the defendant at the time she gave you this document, People's Exhibit 3? A There was.

Q What was it?

Objected to as already answered.

Objection overruled. Exception.

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A She said that this was a statement of her doctor as to her injury.

THE COURT: That is People's Exhibit 3, isn't it?

MR. McCORMICK: Yes, sir.

THE COURT: And in that document the word hernia is mentioned, is that right?

MR. McCORMICK: Yes, sir.

BY MR. SIEGEL:

Q Did you hear his Honor ask you whether the defendant had used the words "umbilical hernia"? A Yes, sir.

Q You answered no? A Yes, sir.

Q You now want to change your testimony after looking at this statement and say she did so state? A She did not use the words "umbilical hernia" that I recall.

Q What do you say? A I say she did not use the words "umbilical hernia" that I recall.

MR. SIEGEL: I ask that the testimony in relation to this report of the physician be stricken out.

MR. MOSKOWITZ: This is November 8th, and the money is paid ---

MR. SIEGEL: I object to the District Attorney making a statement.

THE COURT: I will hear Mr. Moskowitz.

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MR. MOSKOWITZ: On November 8th this was presented, and on November 17th the money was paid.

THE COURT: It seems to me that it is very clear just what occurred, but you have not developed it. This document, given by this defendant, presumably came from a physician who attended her. She delivered it to this witness, and in that document, there is a statement that her injury was in the nature of hernia.

MR. MOSKOWITZ: All this appeared in the record, your honor.

Objection overruled. Exception.

THE COURT: You may ask this witness, Mr. District Attorney ---

BY THE COURT:

Q How did you happen to use the term hernia before the Grand Jury, do you remember the occasion of how you happened to use that term? A Because it appeared in the report including all of these papers which are attached together.

MR. MOSKOWITZ: And the certificate of Dr. Morrissey, which is attached to the report.

THE COURT: Yes.

A I did not.

BY MR. SIEGEL:

Then he testified before the Grand Jury that the

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defendant had so represented that fact to you, that was untrue, was it not?

THE COURT: That question is excluded on account of its form.

Q Was the testimony given before the Grand Jury by you on June 1st, 1910, to the effect that she claimed to be suffering from umbilical hernia true?

Objected to. Objection sustained. Exception.

Q You were a witness before the Grand Jury on June 1st, 1910, Mr. Dow? A I think that was the date, somewhere around there.

Q Was the following question put to you, and did you make the following answer: "Q What was she suffering from? A She claimed to be suffering from umbilical hernia". Did you so testify? A I did.

Q Was that testimony true? A To the best of my recollection.

Q What do you say? A To the best of my recollection.

Q To the best of your recollection what?

MR. McCORMICK: That it was true.

MR. SIEGEL: Mr. District Attorney, please.

THE WITNESS: The testimony I gave at that time was true to the best of my recollection.

Q How do you reconcile that statement with the fact that you answered the question of his Honor to the effect that

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she did not state that she was suffering from an umbilical hernia? A I have already stated --- I have refreshed my memory since I was before the Grand Jury.

Q And your memory is better now than it was three months ago in relation to something that happened in 1906? A Yes, sir.

HENRY B. DWYER, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. McCORMICK:

Q Where is your address? Croton Falls, New York.

Mr. Dwyer, on the 19th of October, 1906, and for several months subsequent to that time, what was your business? A I was the Chief Claim Agent of the New York Central & Hudson River Railroad Company.

What were the duties of the position held by you? A Well, I had charge of the investigation and settlement of claims arising out of personal injuries.

Have you any recollection of a claim filed by the defendant? A I have.

Do you remember seeing the papers in that case?

A Yes, sir.

I show you a document marked Defendant's Exhibit A?

MR. SIEGEL: I object to that, if your honor please, the District Attorney showing the witness

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these papers.

Objection overruled. Exception.

Q Just glance through it.

MR. SIEGEL: He does not say that he cannot recollect; he does not say that he cannot refresh his recollection.

THE COURT: He is simply showing him a paper.

MR. SIEGEL: For what purpose? He has not asked any question.

THE COURT: I do not know.

MR. McCORMICK: The next question will show what the purpose is.

THE WITNESS: I remember seeing that paper, yes, sir.

Q With that was any other paper submitted to you? A Yes.

Q Do you know about when that paper was submitted to you? About the time? A Well, about the date, or shortly after the date of the paper, November 15th.

MR. SIEGEL: That is just the objection I made. He must look at the paper in order to answer. I think that is incompetent.

THE COURT: It is incompetent. There is no objection to him looking at the paper.

BY THE COURT:

Q Have you any independent knowledge as to when this paper

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Defendant's Exhibit A was submitted to you? A Not specifically as to that.

Q Have you any means whereby you could have your recollection refreshed as to when you received the paper? A Except the recollection I have of getting it shortly after the report was made out; I have a recollection of that.

BY MR. MCCORMICK:

Q Did you examine it at the time? A Yes, sir.

Q Did you give any instructions as to the settlement of that claim about that time?

MR. SIEGEL: Objected to.

THE COURT: He may answer that yes or no.

Exception.

A Yes, sir.

That will do with that paper. Now I will show you another paper, People's Exhibit 2, and ask you whether that was submitted to you with the report? A It was.

I now ask you whether People's Exhibit 2, which you have just testified to, the statement written down by Mr. Dow at the dictation of the defendant --- did you rely upon that statement when you directed the payment of \$500?

MR. SIEGEL: I object to that, if your Honor please --- a statement written by the witness Dow?

THE COURT: In the presence of the defendant, and permitting to be a record of what the defendant

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said to Dow.

MR. SIEGEL: Yes, and whether true or false it is submitted to the claim agent that he is asked whether he relied on that statement?

THE COURT: The better plan would be for the witness to state what were the circumstances on which he relied in making the payment of the claim.

MR. SIEGEL: The record as it stands shows that the question is asked "Were all the papers submitted to you." I think that is objectionable.

THE COURT: I think you had better let him have all the reports. You can ask him whether he is able to recognize the fact of ever having seen the papers before, before all of these papers.

Q. Now, did you rely upon when you directed the payment of the claim? A. On the ---

MR. SIEGEL: I object to the question as immaterial, irrelevant and incompetent.

Objection overruled. Exception.

A. I relied upon the claimant's statement of the occurrence, and the report of the doctor and the report of Mr. Dow.

/ Q. And the report of Mr. Dow.

Q. When you refer to the defendant's statement do you refer to Exhibit 2? Look at the number marked on

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Objected to. Objection overruled. Exception.

MR. SIEGEL: I further object to the witness looking at the papers.

Objection overruled. Exception.

A Yes, sir, I relied upon that statement of the claimant (referring to People's Exhibit 2).

Q At that time was it your business to decide whether or not claims presented against the New York Central Railroad Company should be paid or should not be paid? A Yes; claims of that character.

Q Referring now to People's Exhibit 1, is that the claim upon which you directed --- did you direct the payment of that claim relying upon the statement that you have just referred to? A Yes, sir.

Q Made by the defendant?

Objected to. Objection overruled. Exception.

Yes, sir.

Q Was that your signature, on People's Exhibit 1?

A Yes, sir.

Q That you have in your hand, People's Exhibit 1?

A Yes, sir, that is my signature to that paper; the second signature on the paper.

CROSS EXAMINATION BY MR. SIEGEL:

Q Mr. Dwyer, Mr. Failing was the district claim agent, was he not? A The Division Claim Agent.

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Q The Division Claim Agent? A Yes, sir.

Q Wasn't it Mr. Failing's duty to determine whether a claim should or should not be paid? A No, sir; he has nothing to do with that; he had a recommendation to make.

Q A recommendation to make? A Yes, sir.

Q Did he recommend anything to you. Answer yes or no?

A I cannot recall now that he did.

Q You cannot recall whether Failing recommended anything to you or not? A I cannot recall now that he did.

Q Well, can you tell us the names of the physicians that made the examinations for the company? A Dr. William B. Coley.

Q Anybody else? A For the Company? I think that is all for the Company.

Q When did you look at these papers last, Mr. Dwyer?

A In 1906, I think it was.

Q Nobody has asked you a single, solitary question about this case until you took the witness stand just now? A Oh, yes.

Q You have been going over these last evening? A I never saw the papers since the settlement.

Q Who went over the case with you? A Nobody went over the case with me.

Q Who spoke to you about the case? A Why somebody connected with the District Attorney's office asked me about

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it and I had to come as a witness.

Q Was Dr. Coley's name mentioned? A In regard to Dr. Coley ---

Q Was Dr. Coley's name mentioned in that conversation?

A In that conversation? No, sir.

Q It was not? A No, sir, not in that conversation.

Q In which conversation was it mentioned? A No conversation; I met Dr. Coley in the Court here this morning.

Q That is the reason, Mr. Dwyer, why you now recollect it was Dr. Coley who made the examination for the company?

A That is not the reason.

Q That is not the reason? A No, sir.

Q You can remember from 1906? A My memory has been refreshed by the interviews in the interval; I remembered Dr. Coley was in the case.

Q I asked you whether you had any independent recollection of the facts of the case besides those papers, and you said yes. A Yes, sir.

Q That you remembered Dr. Coley was the physician? A Yes, sir, certainly.

Q And the reason why you say that is because your memory has been refreshed recently by newspaper articles? A Yes, sir, and the fact that Mr. Dow was requested to come on here from Corning, New York, or Buffalo, to testify as a witness several months ago.

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Q How many cases have you passed on as Claim Agent of the New York Central? A A good many thousand.

Q How many a year? A I couldn't say exactly; they vary.

Q Approximately? A I would say --- do you mean claims or investigations?

Q Either, and both? A I should say several thousand investigations, and maybe over a thousand claims, or two thousand perhaps.

Q You have a recollection of this case in 1906? A A very vivid recollection of it.

Q Due to what, Mr. Dwyer? A As I say, to the fact that it came out in the newspapers from time to time.

Q You have a very vivid recollection of this case since 1906 outside of reading the newspapers; what makes your recollection so vivid? A And the fact that Mr. Dow was requested several times to come on from distant parts of the state, and when he first was requested to come here and testify before the Grand Jury, the whole case came right back to me.

Q Outside of anything that has recently occurred in reference to Mr. Dow coming from Buffalo, and the Grand Jury investigation, and the newspaper articles, have you any other recollection of this case since 1906? A I have a distinct recollection of the details of the case brought back

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to me.

Q Of this particular case? A Yes, sir, of this particular case and many other cases.

Q Have you ever had any other case of hernia? A Yes, sir, lots of them.

Q Tell me the name of it? A I can't think of the name of it now.

Q Have you ever had a case where there was an injury to the spine? A What do you mean, from passing on it from a medical standpoint?

Q No, from a settlement standpoint? A Certainly.

Q Tell us the name of the case? A I can't recall any specific name now.

Q Is it a fact, Mr. Dwyer, that your memory is vivid for the purposes of this trial? A No, sir.

Q Has the District Attorney told you what testimony he wanted from you when you took the stand? A No, sir.

Q Did he tell you that he would expect you to testify that you relied on these papers for the payment to her?

A He asked me the question whether I did or not, and I said I did.

Q Well, let us see how far that is true, Mr. Dwyer. You had physicians make examinations, did you not? A No, sir; I had one physician.

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Q One physician? A Yes sir.

Q Dr. Coley? A Yes sir.

Q You had that examination made because you didn't want to rely on the claimant's representation as to injuries, did you? A Not because of that, that isn't so.

Q No. A I had it made for the purpose of corroborating her statement or the opposite---justifying the payment of the claim, of any money.

Q Of corroborating, as a way of record, and if possible disproving it? A Whatever the fact was.

Q Yes? As a matter of business.

Q It was the duty of Dow to make a thorough investigation was it not? A Oh yes.

Q You read over the statement of the witness Fisher and the other witnesses as to the accident at the time? A Yes sir, that is in 1906.

Q There was no question in your mind, was there, but that the accident had actually occurred after the reading of the witnesses testimony? A No sir.

Q And statements? A No sir; not at that time.

Q Did Dow report direct to you? A No sir.

Q He gave you the papers? A They came through Mr. Fallins office.

Q Through his office? A Yes sir; to me.

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Q From the Claim Department to your office? A Yes sir.

Q You don't know even who gave them to Failing if it wasn't for the fact that Dow signed ~~them~~ his name to the reports? A I know that it came from Dow because I recognized Dow's writing in the statement.

Q You recognized Dow's writing? A Yes sir.

Q On his typewritten statement? A I recognized the handwriting of Dow. I knew there was no question but that they came from him to Failing and then to me; that was the usual course of business.

Q There is a fact that what prompted you to recommend payment to the claimant was the statement of the witnesses and the statement of Dr. Coley? A No sir.

Q You always rely upon the statements of claimants? A Not always.

Q But you did in this particular case? A Yes sir; I did in this particular case.

Q Did you ever in any other case but this case? A Lots of other cases.

Q You rely on statements of claimants? A Yes sir.

Q After or before the investigation? A Why after.

Q Did you ever make a single solitary settlement where you relied upon the statement of the claimant without a

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further investigation? A Yes sir.

Q You have? A Yes sir; without any further investigation---yes sir, I have settled such cases.

Q By taking simply the statement of the complainant
Yes sir.

Q Now you tell me the name of such a case. A I can't tell you the name but I can tell you the kind of case.

Q Tell me the kind of case. A Why cases of passengers being in a wreck, no question about the wreck, no question about the passenger being on the train.

Q You would have an investigation as to the wreck, would you not? A Yes sir.

Q You would satisfy your own mind there was a wreck?
A That is a matter that would not require any investigation.

Q When you would require, would you not, Mr. Dwyer, that the complainant make an affidavit that he or she was on the train? A Not always.

Q Not always? A No sir.

Q You would make an unsworn statement to that effect?
A I would in lots of cases.

Q At the time that you made a recommendation for payment did you consider the claim doubtful? A No sir; I don't think I did.

Q Just look at the end of Mr. Dow's report, Mr. Dwyer please, the last page and read it? Do you see it there? A Yes sir.

Q Thereading of that, does that now refresh your recollection so that you can now say you thought the claim was a doubtful one? A I never thought the claim was a doubtful one.

Q What? Up to this time.

Q Doubtful? A Up to the time of settlement I never thought the claim was doubtful.

Q There was nothing unusual about this case, was there? A In that way unusual.

Q Anything unusual which would have impressed itself upon your memory? A Yes sir that banana skin feature being in it.

Q Did you ever have anybody else slip on any fruit skin or banana skin before or since? A I don't recall any fruit skins; I can't recall any fruit skins.

Q Is it unusual for anybody to slip on a banana skin. To consider that unusual to have anybody slip on a banana skin? A Yes sir; not the slipping itself.

Q What did you mean to say just now about its being an unusual thing slipping on a banana skin? A I meant from the circumstance, as stated in it.

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Q Since that time? A Yes sir.

Q I am talking about 1906? A Nothing unusual for a person to slip on a fruit skin.

Q Well isn't it a fact that you relied more upon the reports of your physician, Dr. Coley, and isn't it a fact that you relied more on the statement of Dr. Coley and the statement of the disinterested witnesses whom you have heard and the investigations of Mr. Dow, rather than the statement of this claimant? A No sir; I relied upon the statement of the claimant and of Dr. Coley only as far as the medical issue was concerned.

Q So when you relied upon Dr. Coley as to the medical nature, did you not? A To a certain extent.

Q You want to limit that answer, Mr. Dwyer? A Yes sir.

Q How, to what extent? A To the extent of how much of the injury was caused by this accident in conjunction with her statement of it, her version of it, and her claim.

Q Did you rely upon Dr. Coley's statement as to the physical injuries? A In conjunction with her and as part of the case.

Q In conjunction with hers, what did she say about it, as far as you know? A As I recall---not seeing the papers in such a long time---she claimed she sustained a rupture.

Q Now look at the statement that you claim you relied upon

on, People's Exhibit 2, You read that, and tell me whether the word "rupture" is used in that statement.

THE COURT: Now it is conceded that the word "rupture" is not used.

MR. SEIGEL: He says he relied upon that statement.

THE COURT: What statement?

MR. SEIGEL: He said he relied upon the claimant's statement, the report of the doctor and the report of Mr. DeW.

THE COURT: There is no use of occupying time.

MR. SEIGEL: Let me ask him this.

THE COURT: Suppose you wait until we get this out of the way.

MR. SEIGEL: I can't see the word "rupture" in this paper.

THE COURT: You don't think the doctor said that you answered the injured attorney who relied on when you recommended this doctor's statement embraced in the report.

MR. SEIGEL: The statement embraced in what reports? A In this report of DeW.

THE COURT: You read the statement of DeW and you told us the word "umbilical hernia" or "rupture" does not appear there-- read the statement of DeW and tell us whether "umbilical hernia" or "rupture" appears there.

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MR. MOSKOWITZ: We concede it does not, there is no use in taking time.

MR. SEIGEL: It is conceded it is not in there.

BY THE COURT:

Q Mr. Dwyer, do you remember whether you had before you all of the papers, including the one you now hold at the time you passed upon the claim?

Objected to; objection overruled; exception.

A Yes sir. I would like to add here that in Mr. Dow's report there was what I construed to be a rupture---though the word rupture does not appear.

MR. SEIGEL: I ask that the statement be stricken as not responsive.

THE COURT: Yes. Strike it out.

MR. MOSKOWITZ: It is conceded it is not in the paper.

THE WITNESS: The word rupture does not appear in this (Reading from Mr. Dow's statement) "To satisfy myself further as to the truthfulness of her statement and also to get an expert opinion of the nature of her injuries I had her examined by Dr. W. B. Coley---she had already been examined by Dr. J. J. Morrissey the community's surgeon of Harlem and he states that immediately after her fall he found a rupture."

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THE COURT: The witness said he relied upon the report made by one of the agents. The witness at no time stated that he relied upon the statement made that this defendant had a rupture, but what the witness testified to, was as follows: He relied upon the claimant's statement of the occurrence, and the report of the doctor, and the report of Mr. Dow. Then when you further questioned him he said he relied on the statements of the defendant, and on the doctor's report to a certain extent, in so far as it tended to corroborate this witness as to the nature of the extent of the injury, and whether she had received the injury before she complained, in conjunction with all the other matters in the case, which he relied upon. You are trying to have this witness testify concerning a statement alleged to have been made by this defendant and at no time during the examination did he testify that he relied upon the statement that this defendant said that she had a rupture.

MR. ATTORNEY: He said he made his recommendations on the statements contained in People's Exhibit 2 which is the written account of the conversation, and also the defendant's statements as contained in Dow's report.

THE COURT: Exactly.

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MR. SEIGEL: There is no statement contained in Dow's report---

THE COURT: People's Exhibit 3 was given by this defendant to Mr. Dow and in People's Exhibit 3 there is a statement by the physician to the effect that the defendant had a hernia.

BY MR. SEIGEL:

Q Do you remember if you had the statement of Dr. Payne before you when you recommended the settlement? A Yes sir

Q Was it upon the representation of the physician's statement contained in the paper that you made this recommendation for settlement?

MR. MCCORMICK: I object to that.

Objection overruled; exception.

A I wanted to correct something there. Counsel said I relied upon the statement of Dow's report, or Dow's report, and the statement of Dr. Coley's report and the statement of the claimant as embodied in Dow's report---in addition to that I said her own statement also.

Q How as to the injuries though? A As to the whole case.

Q You relied more upon the physicians report in reference to the injury? A Only in conjunction with her own statement as to her injury; I relied upon that.

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Q Which did you rely more upon upon her statement or your own physician's statement? A I relied upon them all, as a whole.

Q That is you gave as much weight to this woman whom you had never met or seen as your own physician's statement.

Objected to.

A Yes sir; I relied positively upon her statement as to how the accident occurred and the extent of her injuries.

THE COURT: The witness has stated that the physician's statement strengthened his judgment as to the nature of the injury which she had.

THE WITNESS: It corroborated her claim.

BY MR. CHIEFL:

Q Whom did you discuss this case, Mr. Dwyer, with anybody? When?

A At the time, in 1906 when you recommended the settlement? A I don't recall that I discussed it with anybody; I discussed it with Mr. Failing and Mr. Dow both.

Q Did Dr. Dow tell you at the time that it was a suspicious case? A He did not tell me.

Q What is that? A He did not tell me; it is in his report.

Q Did he tell you that the reason why you had best make a settlement was because she was threatening suit? A

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No sir.

Q He didn't tell you that. A No sir; not exactly that, no sir.

Q Did he or didn't he? A Not in those words.

Q Give us his words? A Why he said to me that he thought---something; to that effect.

Q Did you notice his report in writing where he reports that this is a doubtful claim? A Yes sir; I noticed that.

Q Which would you say is the correct statement made at the time, the report that you have before you in writing, or your own recollection of the occurrence. A Why I think it he might have stated to me; this report was made up--- it was dated a long time after the accident; I have a recollection that he expressed that opinion.

Q That is not a long time after the accident, it is November is that? A The accident then happened in October, and I have a recollection that he told me some time in some kind of an informal conversation, whether it was before the receipt of this report or not I can't say, that he thought that it would be a bad case to be sued or something to that effect.

Q Did he ever tell you she threatened suit, did he? A I can't recall that he did, no sir.

Q It is a fact that the settlement was made because she threatened suit? A No sir.

Q That is not the reason? A No sir.

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DR. WILLIAM B. COLEY, 5 Park Avenue, a witness
called on behalf of the People, being duly sworn,
testifies as follows:

DIRECT EXAMINATION BY MR. MCCORMICK:

Q What is your occupation? A Surgeon.

Q How many years have you been a surgeon? A Twenty-one.

Q About twenty-one? A Twenty-two, since 1888.

Q In the month of November, 1906, where was your office
then? A 5 Park Avenue.

Q No. 5? A No. 5 Park Avenue.

Q Were you then in the employ of the New York Central
Railroad? A I am chief surgeon.

Q Do you remember the defendant; meeting her in that
month? A I do.

Q Or in the preceding month, the month of October? A
November 9th.

Q November 9th? A November 9th, 1906.

Q Under what circumstances? A She was sent to my office
for examination on account of an alleged recent injury.

Q Where was your office then? A 5 Park Avenue.

Q Did you have a conversation with her when she reached
your office? A Yes, I went carefully into her history,
and also made a physical examination.

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Q Was she alone when she came there? A I think she was alone; I am not positive.

Q Well, speaking as nearly as you can? A Very nearly positive.

Q (Continuing) State what she said to you when she came there?

MR. SIEGEL: If your Honor please, I do not think the conversation competent. I think it would be no more than fair to let the doctor state the result of the examination.

THE COURT: Why wouldn't the conversation be competent?

MR. SIEGEL: Unless bearing on the question of her physical condition. It would not prove anything so far as the indictment is concerned. It is long after.

THE COURT: What the District Attorney is trying to do is trying to show the relationship of physician and patient does not exist.

MR. SIEGEL: I will withdraw that objection.

THE COURT: The District Attorney is evidently proceeding along the lines to bring this case out of the statute which prohibits a physician from giving testimony ---

MR. SIEGEL: I make no question, your Honor, as to

that, as far as Dr. Coley is concerned, absolutely none. She went to Dr. Coley's office for the purpose of being examined; for the purpose of having Dr. Coley report her examination to the Railroad Company.

THE COURT: At that time Dr. Coley did not act as her physician.

MR. SIEGEL: Absolutely not.

THE COURT: Let the defendant rise and state she confirms what counsel says.

(Defendant rises.)

THE COURT: Madam, you have heard what your lawyer has stated in the presence of this jury? Have you heard your lawyer's remarks?

THE DEFENDANT: Yes.

THE COURT: You state that this physician --- you consent that this physician should testify as to what occurred between the witness and yourself in a professional way, and that the relationship of physician and patient did not exist?

THE DEFENDANT: Yes.

THE COURT: And that you waive the seal of secrecy which usually exists between patient and physician; is that right?

THE DEFENDANT: Yes.

BY MR. McCORMICK:

Q Now, Doctor, what was said when she came to your office?

THE COURT: Just a second. And that there is no objection to this witness giving the occurrences which took place between them and testifying to the occurrences which took place between them.

MR. SIEGEL: As to the conversations necessary for her physical examination, and her physical examination.

THE COURT: She openly waives before the jury any claim that she may have under Section 834 of the Code of Civil Procedure.

MR. SIEGEL: Limited, as I say, Your Honor, I think that should be limited to the fact that conversations ---

THE COURT: Mr. Siegel, Section 834 covers it?

MR. SIEGEL: Yes.

THE COURT: Proceed, Doctor.

She stated that about three weeks before, at the 125th Street Station of the New York Central, she had slipped on a Banana peel and had fallen, injuring her left knee and abdomen. She had fallen against the stair on her abdomen and had produced a rupture. On examination I found her left knee somewhat swollen and measurements showed it to be one inch larger than her right knee, and a little fluid in the knee joint. There was no external evidence at that time of any external injury, although there was a little tender-

ness on the inner side of the knee. On examining her abdomen I found the scar apparently of an old operation, which she said was performed, - had been performed by Dr. Munday, thirteen years before, in 1893. This scar was six inches in length and extended from just above the pubic bone, the lower part of the abdomen, upwards, nearly to the navel, and in the widest part the scar was about three-quarters of an inch in width. At the upper part of the scar was an opening, admitting about two fingers, a transverse, horizontal opening or tear in the old scar, and through this, on her standing up and examining her, there was a hernia or rupture, about the size of a closed fist. This rupture was easily reducible on lying down, and could be pushed back with moderate pressure. There was no external evidence of bruising or injury, but she stated that it had --- that the scar was perfectly firm up to the time of this injury, two weeks before, and in questioning her about how she knew it was firm, or strong, she stated that one year before a Dr. Spicer of Cincinnati had examined her abdomen carefully and had remarked upon the fine condition of it. She also said that a year and a half before that she had been examined by a life insurance agent, but he did not examine the abdomen. That is the extent of my examination.

Q The pubic bone that you speak of, Doctor, is where?

A Why, it is where the two bones of the pelvis join together,

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the centre --- the central and lower part of the pelvis.

Q Would you mind standing up and indicating? A Right here (indicating).

THE COURT: Bring that figure in and show the jury on that.

Q Do you remember whether she said anything about any other injury except the one sustained in 1893, and the one sustained at 125th street on the 19th of October?

DR. SIEGEL: I object to that question.

Objection overruled. Exception.

A She said she had no injury previous to the one that I examined her for.

Q She had had no other injury? A No.

Q Have you made a specialty, Doctor, in the practice of medicine and surgery? A I have been connected with the Hospital for Ruptured and Crippled for the last twenty-one years, the largest rupture clinic in the world. I have operated on about twenty-five hundred cases of rupture.

Q Well, what is rupture? Will you kindly describe that to the jury? A Rupture is a protrusion of some of the abdominal contents, contents of the abdomen, through some opening. The usual sites are the groin and umbilicus or navel.

Q What is meant by an abdominal hernia? A Practically all ruptures are abdominal. They are distinguished by the

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locality of the ring through which they come. If they come through the inguinal ring they are called inguinal ruptures; a little lower down femoral, and in the navel, umbilical.

Q What is the meaning of umbilical rupture? A Umbilical is where it appears in the vicinity of the navel.

Q Now, will you indicate, Doctor, exactly where this rupture was? A (Indicating on the figure) That is the pubic bone there. There is no need of putting where the groin runs in, because it has nothing to do with the case. The scar runs from here nearly up to here (indicating). That corresponds very nearly to the umbilicus or navel, and all hernias in this position are called umbilical hernia. This is the pubic bone, where the two bones come together and where the abdomen, the lower part of the abdomen begins. The scar from about here, nearly up to the umbilicus, and the rupture is just below the umbilicus in a slit which had formed in this old scar.

Q From your examination are you able to form an opinion as to whether the rupture was of recent origin or not? A Not a positive opinion. There were certain --- practically all ruptures are of congenital origin. That is due to a pouch which is present at birth and they may not ever develop until later on, until some extra strain, or something, forces the contents into this pouch, but the cause of hernia is

really present at birth and particularly so of the umbilical hernia, but in this case there were certain features of it that made me think it might have been recent, and might have been due to the accident, although in my experience of twenty-one years I have not seen more than half a dozen which I thought were due, pure and simple, to an injury. In this case the fact that the rupture was not adherent, - that is, it could be all reduced, was a point in favor of the possibility that it might have been of recent origin, because ruptures in this vicinity are somewhat prone to become in-herent to the sac and not all reducible. It was quite reducible, so it was impossible to state whether it was old or recent, and I had to rely principally on her history that I have already given you.

Q How long does it take, Doctor, to cure hernia? A By operation?

Yes, in the manner, in the way they are usually treated?

Q You mean by the operation itself, the time consumed?

A And recovery after the operation? A The operation is comparatively short timed, anywhere from fifteen to thirty minutes. It takes about two or three weeks in the hospital.

Q After the operation is performed? A Two or three weeks in the hospital usually.

Q Assuming that the defendant had been ruptured twenty-four hours prior to the time she was -- she claims to have

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been ruptured at the 125th street station on the 19th of October, would it have been possible for that rupture to have healed? A Healed?

MR. SIEGEL: I object to the question, if your Honor please.

JUDGE: Sustained. No evidence.

EXAMINATION BY MR. SIEGEL:

Q Mr. Coley, the report made by you of this examination to the Railroad Company was made solely upon the condition found upon examination, rather than upon any statement of the patient, was it not? A It was made upon the combination, as it always is, of a combination of both the clinical history, I get from the patient, and the physical examination I make of the patient.

Q Just look at this report, Doctor, and tell me if this is the report that you furnished to the Railroad Company, at that time? Just answer the question yes or no? A That is my report, and I am quite willing to stand by every part of it.

Q Doctor, you cannot recollect since 1906? A No, but I have already read a copy of my report.

Q I will read this report to you: "My opinion is based solely upon the condition I found upon examination, rather than upon any statement of the patient." At that time you

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said it was based solely --- A Will you please read the whole report?

Q I will give it to you, Doctor, but in this part here you state --- A If you read what follows, please.

Q Yes, I will just read the paragraph: "Of course the main point at issue is whether the condition is of recent origin or whether it is one of long standing. While it is not possible to make an absolutely positive statement, I am strongly inclined to believe that the condition did not exist prior to the accident." A That is what I said a moment ago.

Q "My opinion is based solely upon the condition found upon examination rather than upon any statement of the patient?" A Yes, I said that.

Q "Well, then you would correct your testimony in that respect, would you, Doctor, and say that your report to the Company was based solely --- A I would like you to read what follows.

Q Yes. "In the first place an umbilical or ventral hernia, especially in a person who is at all stout, very thick, hard and adherent to the sac or wall of the hernia, cannot be easily put back. Such a condition does not exist in the present case, which is pretty strong evidence that the hernia is of very recent development. In addition there is no tenderness or pressure in the hernial

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ring than would be likely to be the case in a rupture of long standing. Rupture due to a direct injury is extremely rare, and in this case I attribute the hernia to the great strain upon the abdominal muscles, rather than to the direct blow from the fall. Of course there is no question that her abdomen was weaker and more predisposed to a rupture by reason of her previous operation, but the fact that the scar held firmly for thirteen years is pretty good evidence that she would not have been likely to develop a rupture without some extraordinary strain." A That showed I relied largely upon her thirteen years freedom from recurrence.

Q Is that a proper statement to have here, "The opinion is based solely upon the physical examination"?

A Yes, quite correct.

Q That is as to whether she had --- A That was my opinion, but I modified it by saying it is not possible to positively state it was of recent origin.

Q Now, so far as your professional opinion goes at that time, how did you feel? A I was inclined to regard it as of recent origin.

Q When the rupture was found, Doctor, he described it as a ventral hernia, is that, not technically correct; that is, it is not a ventral hernia. Umbilical is used in a broad and general way, as any hernia in the vicinity of the umbilicus, but this was really a ventral hernia, that is, though this

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scar. It is a technical expression.

Q Isn't it a fact, Doctor, in accordance with medical terms, this defendant, up to the time, or at the time you examined her, she was not suffering from an umbilical hernia?

A She was suffering from a hernia in the neighborhood of the umbilicus. It did not make any difference what you call it.

Q You would describe it as a ventral hernia? A I would, from a strictly technical point of view, as a hernia expert.

BY THE COURT:

Q What term did you use in your report?

MR. SIEGEL: None, if Your Honor please.

I described where it occurred, but I did not characterize it.

MR. MCCORMICK: He used the words "umbilical or ventral hernia."

MR. SIEGEL: He does not.

MR. WITNESS: There is a press copy of my report.

MR. MCCORMICK: Let the doctor say what he said.

THE COURT: You say in your statement, Doctor, in the first place, "umbilical or ventral hernia, especially in a person who has a large sac, which becomes adherent to the sac or wall of the hernia." It is a general statement, without

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Q Without regard to this case? A That is right, it is a generalization.

Q But the proper description of the injury in this case is ventral hernia? A Yes, a proper description, and in a general way umbilical is also proper.

BY THE COURT:

Q Ventral? A Yes, ventral.

BY MR. SIEGEL:

Q Your examination also showed, did it not, Doctor, that the rupture will be healed without much difficulty, and there will be more or less risk of the bowel coming down and becoming strangulated, a condition attended with much danger?

A That is the reason I advised an operation.

Q That was her condition at that time? A That was her condition at that time.

Q Would you describe her condition to this jury as a really dangerous condition? A There is a considerable risk of a hernia with that sort of opening getting strangulated. When it does get strangulated it is the most dangerous of all forms of rupture. About fifty per cent die of the operation.

Q And you strongly advised an operation? A I did.

Q And you advised also to get a belt? A I did.

RE-DIRECT EXAMINATION BY MR. McCORMICK:

MR. SIEGEL: If there is no objection, I will

offer the Doctor's statement in evidence as simply part of the res gestae, that is about all.

MR. MCCORMICK: I consent that go in. We have got his testimony.

THE COURT: There is really no necessity to offer it.

MR. SEITZ: I withdraw it.

Q Now, Doctor, just one question. Such a rupture as you describe is commonly known as an umbilical hernia or rupture?

A Umbilical or ventral. Umbilical usually applies to hernia that occurs spontaneously at the region of the umbilicus. This occurred in the case from an old abdominal operation, and those are characterized as ventral.

Q Well, was this in the vicinity of the umbilicus? A This was near the umbilicus, yes.

Q You have stated, as I understand awhile ago, it was commonly called, what kind of hernia, umbilical? A Umbilical or umbilical, either way.

BY MR. SEITZ:

Q What do you mean by commonly called? According to medical terms this is a ventral hernia? A Yes, strictly speaking. If you were sitting writing a book on hernia you would call it a ventral hernia. If you were talking to a body of laymen you would probably call it umbilical.

Q You would call it a rupture? A Probably call it

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umbilical or navel rupture.

H A R R Y C. M I L L E R, Huguenot Park, Staten Island,
a witness called on behalf of the People, being duly
sworn, testified as follows:

DIRECT EXAMINATION BY MR. McCORMICK:

Q What was your business in October, 1906? A Clerk,
in the Claim Department of the Interborough Rapid Transit
Company.

BY THE COURT:

Q October, 1906? A Yes, sir.

BY MR. McCORMICK:

Q In the month of October, or in the month of November,
1906, did you see this defendant? A Yes, sir.

Q Anna Sturla or Sturla; do you remember the date on
which you first saw her? A Not without referring to my
papers.

Q Are these the papers you refer to? (Showing) A Yes,
sir.

Q Refresh your recollection as to the date upon which
you first saw her?

Q. SIEGEL: Does the witness refresh his
recollection ---

Q. McCORMICK: You have the right to look at
it.

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MR. SIEGEL: Nothing but his own writing can refresh his recollection.

THE WITNESS: My own writing.

THE COURT: I disagree with you as to that rule.

MR. SIEGEL: Well, my associate disagrees with me, so I withdraw the objection.

A On November 16th, I saw Mrs. Strula.

BY MR. SIEGEL:

Q What was the date? A November 16th, 1906.

BY MR. MCCORMICK:

Q That was the first day that you ever saw her? A Yes, sir.

Q Where did you see her? A In the Claim Department of the Interborough at 13 Park Row.

Q Did you have any conversation with her there? A Yes, sir.

Q What was it?

MR. SIEGEL: I object to it, your Honor, as immaterial, incompetent and irrelevant.

THE COURT: Objection overruled.

MR. SIEGEL: I state it further, if your Honor please, the conversation is alleged to have taken place on the 16th day of November 1906. Now, what can this conversation prove? Absolutely nothing

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nothing in relation to the crime charged in this indictment. She went to this representative and openly said that she had a hernia; that was the absolute truth as testified to by the last witness, because the last witness, Dr. Coley, testified she did have a hernia. This witness's testimony can prove absolutely nothing.

THE COURT: I don't know. At present I cannot rule intelligently. It might be well for both sides to

Wait, this lady came and stated that she had met with an accident on the road.

MR. SIEGEL: I object to the question unless the witness can state he had the conversation with the defendant.

THE COURT: SIEGEL:

Did he recollect this defendant, Mr. Witness? A Yes, I do.

THE COURT: SIEGEL:

What name did he give at that time? A Anna Sturla.

Do you recognize her as the same woman? A I do,

in 1921. Was she in the office of the Company? A

In the Claim Department? A In the Claim Department,

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yes, sir.

Q And this conversation took place on what day? A On the 16th day of November, 1906.

MR. SIEGEL: Please note my exception to all this evidence.

Q Go right ahead. A Why, she stated she wished to make a claim against the Company.

Q Against what Company? A The Interborough Rapid Transit Company, and I told her that we entertained claims by her making an affidavit, and she then made an affidavit before me and signed it and swore to it.

Q Did she say first before she made that affidavit, something about the date on which she had been injured? A Not that I recall, before she made the affidavit.

Q Did she say that she swore to a statement of fact? A Yes, sir.

Q Have you that affidavit here? A Yes, sir.

Q Were you present when she signed it? A Yes, sir.

MR. McCORMICK: I offer it in evidence.

MR. SIEGEL: I object to it, if your Honor please.

THE COURT: Received.

MR. SIEGEL: Exception.

THE COURT: Affidavit marked People's Exhibit 5, three pages.

MR. McCORMICK: "State of New York, County of

New York, ss: Mrs. Anna Sturla being duly sworn, deposes and says: I reside at Wyckoff, New Jersey. Am forty-one years of age, widow. On the 18th day of October, 1906 ---"

THE COURT: On the 18th of October?

MR. McCORMICK: "On the 18th day of October, 1906, about 10 p. m., I was injured in the following manner: On October 17th last I came to New York and remained over night at Mrs. Tierney's, 24 West 126th street, and the next morning left there about 11 a. m., going around Harlem, looking at some houses, as I intended renting ^{one}. I also stopped in some stores and purchased dry goods, and then went to a restaurant on 84th avenue, near 116th street, and after having supper rode down on the surface car to 116th street, and then to Proctor's theatre, where I remained until about 9:30 p. m. I then got out and walked across 116th street to Sixth avenue, and then to 33rd street. I then went up the airway on the up-track station and when I reached the first step from the top of the first flight of stairs from the street I fell and was assisted up by a policeman whose name I think I have, and he afterwards showed me some banana peel."

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THE COURT: A little louder please.

MR. MCCORMICK: I will go back and read the last sentence over again. "I then started to ascend the stairway on the up-track station, and when, about the third step from the top of the first flight of stairs from the street I fell. I was assisted up by a gentleman whose name I think I have, and he afterwards showed me some banana peel and some grape skins. I saw the gentleman pick them up off the steps. I was alone at the time, but one man gave me his card and there were two others with him, and he said that if he could do anything for me let them know. I gave this card to my son but I don't know whether he has it yet. If I can find the card I will send the man's name and address. This man assisted me to the top of the stairs, and I then told the gateman I was hurt, but he paid no attention to me. I got in the waiting room, where I remained over an hour before any of the station men came to me, although I sent for them. An ambulance afterwards came and I was taken to the New York hospital, where I remained until the next day, and then went home." Since then I have been treated by Dr. Payne, Midland Park, New Jersey, and the doctor says I will have to go under an operation, as I have

an ruptured intestine. I cannot say whether any of the lights were out, but cannot say whether it was as light as usual or not. I make a claim for One thousand dollars and ask that the Company pay that amount. Sworn to before me this 16th day of November, 1906. Signed Anna Sturla. Harry C. Miller, witness -- no, Harry C. Miller. I hereby swear that before signing and swearing to the above affidavit I carefully read the same and understood the contents thereof. Anna Sturla. Witness, Harry C. Miller, Notary Public, Richmond County, Certificate filed in New York County."

MR. SIEGEL: If your Honor please, I ask that this witness's testimony be stricken out. There is no proof as yet that this representation made by her to the Railroad Company was true or false.

THE COURT: Subject to the District Attorney's making connection, the evidence will stand. I cannot direct the District Attorney at this time to negative the alleged false pretenses or representations.

CROSS EXAMINATION BY MR. SIEGEL:

Q Sir, Witness, what is your name? A Miller.

Q Did you make any investigation of this at all, personally? A No, sir.

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Q Do you know Mr. Bartro? A Yes, sir.

He was the Claim Agent at that time for the Interborough Rapid Transit Company? A Yes, sir.

He said nothing on this claim, did you? A No, sir.

Why? A Why, from the first of the claim, when it was presented, it looked suspicious, and upon advice of our legal department, we turned the claim down.

THE COURT: The People by this evidence

show that on November 16th, 1906, she made

an affidavit to the effect that on October 18th the day before the alleged injuries at 124th street station she got into an accident which resulted in her intestines being ruptured.

P. SIEGEL: We are perfectly satisfied to admit that that claim is false, as far as that is concerned.

THE COURT: You say what?

P. SIEGEL: That so far as this particular accident of the Interborough causing this injury, that that accident did not cause that injury, but the accident that was alleged in the indictment.

THE COURT: You make the concession? Did you say that you would ---

P. SIEGEL: I would not make that concession at this time. I want to see what testimony the

District Attorney is going to offer.

MR. MOSCOWITZ: Your Honor, we may assume that was the true state of affairs and present that as the true state of affairs to the jury.

THE COURT: This evidence is perfectly competent.

MR. SIEGEL: Unless the District Attorney goes further, so far as this particular case, this particular testimony is concerned, to show that it is a similar transaction ---

THE COURT: It shows that she claimed that she had never heretofore had a rupture. Now, the People are proving ---

MR. SIEGEL: No, if your Honor please, this testimony is offered to prove that an accident on October 18th caused a rupture.

THE COURT: Yes.

MR. SIEGEL: That is all.

THE COURT: She stated she received as the result of an accident --- she sustained a rupture on October 18th.

MR. MOSCOWITZ: She stated to our physicians ---

THE COURT: Don't interject anything into the case that is not in it.

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ERNEST BARTRO, 502 West 118th street, a witness
called for the People, being duly sworn, testified
as follows:

DIRECT EXAMINATION BY MR. MOSCOWITZ:

Q Mr. Barcro, do you know this defendant? A What is
that?

Q Do you know this defendant, Mrs. Strula? A I do, sir.

Q Do you remember about when you met her for the first
time? A November 20th, 1906.

Q Had you any conversation with her then? A Yes, sir.

Q Give those conversations to the Court. With respect
to what? A Relative to an accident she claimed she had on
our road.

Q Give that conversation to the Court. State that con-
versation? A You want it all?

Q The conversation when you met her? A I went out to
her home in Wyckoff, relative to this claim, to ascertain
what injuries were, and I informed her that I had in-
formation that she was injured before, and the injury which
she claimed was not caused, as she contends on the Elevated
Railroad. She finally confessed that she had a claim against
the Pennsylvania Railroad.

THE COURT: There is no objection to his
evidence, so I am allowing it, a conclusion of a
fact. He said she confessed. That is objectionable;

stating a conclusion of a fact.

MR. SIEGEL: Well, so far as the entire testimony is concerned I rest on my previous objection.

THE COURT: I overrule your objection on that ground, but as to the witness stating that she confessed,

MR. SIEGEL: I ask that it be stricken from the record.

THE COURT: Motion granted.

MR. SIEGEL: Just state what she said to you, and what you said to her.

THE COURT: Don't state a conclusion of fact.

BY MR. OSCOWITZ:

Q You appear for whom? A I am connected with the Interborough Rapid Transit Company as adjuster. After the defendant was at the Company's office, the case was turned over to me for investigation. It was on that investigation I went to her home. Before going to her home I went to see Dr. [redacted], who informed me ---

MR. SIEGEL: I object.

THE COURT: Never mind the physician.

Q All right, now, what you said to her and what she said to you? A I was at the physician's home I went to her home, and I informed her that I had information to show that she was not injured --- she did not receive

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this injury from our accident, and she then informed me that she had a claim, collected a claim from the Pennsylvania Railroad, for this injury, and although she had made an affidavit that the injury was caused on our Road. She then contended me it was only an aggravation, and was willing to withdraw the claim.

Q Did she describe to you where the injury was? A A hernia.

Q Did she use the word hernia? A My report will show that.

Q Did she point out to you in what part of the body this alleged injury took place? A Some place about the abdomen. I cannot exactly tell which side, at this time.

Q But she pointed it out then, is that right? A Yes, she asked me, if I wanted to see it. I told her I was not a physician.

Q Did you have any other conversation with her subsequent to that time? A Subsequent to that time she came to our office and I told her we declined to pay her anything.

Q Did she demand anything at that time? A She demanded a settlement.

Q What were her words?

THE COURT: I object.

THE COURT: Sustained. What did she say?

Q What were her words? A I cannot say the exact words.

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She came into the office and wanted to know whether the Company intended to pay her claim. I told her no, we declined.

Q Did you have any other conversation? A Only twice I saw her.

Q That was the last conversation? A That was the last conversation, yes.

BY THE COURT:

Q Did she send you to her physician? A I went to her physician first.

Q Now, don't --- A No, sir.

BY MR. MARCOWITZ:

Q Did she tell you who her physician was? A That was included in her affidavit. That is the reason I went to the physician, when she called at the Company's office and made an affidavit, in that affidavit, if I recall rightly, the name of the physician appeared. That is the reason I called.

Q Did you have the affidavit with you then when you saw her? A I did not have the affidavit, but I had the information.

Q Did you ever see the affidavit? A Oh, yes.

Q Is that the affidavit that you saw (indicating People's Exhibit)? A That is the affidavit, yes, sir.

Q Is Dr. Leonard the Doctor mentioned in the affidavit?

A Yes. Leonard is his name, some place this side of where the defendant lives. That will show if it is correct.

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Q What did she say? A She admitted.

THE COURT: Strike it out.

Q What did she say? A She said she had a claim with the Pennsylvania Railroad some time prior to that, for which she received a thousand dollars, by being thrown down on the ferry boat, crossing the ferry boat, and the ferry boat bumped into a slip.

Q That is what she said to you? A Yes, sir, in my report.

Q Anything else she said to you relative to the previous accident? A No, sir, that is the only time. I asked her how many accidents she had and she admitted that one.

THE COURT: Strike out "she admitted that one."

THE WITNESS: She told me that one.

Q Did she tell you the result of that accident? A She sustained a hernia or rupture.

Q She mentioned that? A Yes, sir.

MR. SIEGEL: The result of what accident?

MR. MOSCOWITZ: Accident on the Pennsylvania Railroad.

THE WITNESS: Pennsylvania Railroad. She was on a ferry boat, as the ferry boat was coming into a slip.

BY MR. SIEGEL:

Q She claimed that this accident against your company was simply an aggravation of hernia? A No, she made a claim

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for a hernia.

Q You testified before the Grand Jury, did you? A I can answer the gentleman, it is all right, I can qualify it.

BY MR. McCORMICK:

Q Have you finished that answer? A No, sir, I have not.

Q Were you interrupted? A I was.

Q Will you kindly finish your answer?

(Question and answer repeated by the stenographer.)

MR. SIEGEL: Now, that, I submit, your Honor, answers the question.

THE COURT: Please answer the question.

The claim to the company was for a hernia, but she told me after I asked her about the former accident, that it was only an aggravation. That is the reason I testified before the Grand Jury she told me it was only an aggravation.

Y. S. SIEGEL:

Q Now, I will ask you if these questions were put to you before the Grand Jury, at the time you were a witness there, and you made the following answers: "Q. Did you see Anna Strula at that time? A. Yes, sir. Q. Did she make any statement to you at that time? A. Yes, sir. Q. What did she say? A. She was injured on the elevated railroad.

Was she at that time on the elevated railroad? A. Yes,

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33rd street and Sixth avenue, fell on the stairway. Q Fell on the stairway? A Yes, sir. Q Did she state whether or not she suffered any injury? A Yes, sir. Q What injury did she say she suffered? A Aggravation of hernia".

A Yes, that is what she told me, yes, sir.

Q Did you know, Mr. Bartro, at the time you saw her she was actually suffering from hernia? A I am not a physician. I did not make an examination. I had no way of ascertaining. I simply took it up as a claim.

Q Why did you reject the claim, Mr. Bartro? A Well, the legal department are better qualified to answer that. I do not pass upon the claims. I simply make my report.

BY MR. MARKOWITZ:

Q Did you make any recommendation to the Legal department?

A Did I?

Q Yes. A No, sir, I have not authority to do that; the general claim agent does that.

Q Did you make any recommendation in this case at all?

A Verbally.

MR. SIEGEL: I object.

Q Did you look into the facts of this affidavit, Mr. Bartro? A Yes, sir.

Q Did you ask the defendant here any questions as to whether or not she was in the New York Hospital? A That is in the affidavit. I would not --- my investigations would

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carry me to the New York Hospital, but I would not ask the defendant that. I think permission had already been had by the office ---

Q Were you ever at the New York Hospital? A I was, yes, sir.

Q To follow up this statement? A Yes, sir.

Q What did you learn at the New York Hospital?

THE COURT: No, no.

MR. SIEGEL: I object.

THE COURT: Objection sustained.

MR. SIEGEL: I again renew my motion, if your Honor please, to strike out from the record the testimony of this witness and the last witness.

THE COURT: Motion denied.

MR. SIEGEL: On the ground it is incompetent, immaterial and irrelevant, and absolutely no evidence for the purpose of proving intent.

THE COURT: Subject to the promise of the District Attorney to connect it, I will allow it.

The Court thereupon admonished the jury, in accordance with Section 41b of the Code of Criminal Procedure, and adjourned further trial of the case until 10:30 a. m., Thursday morning, December 1st, 1910.

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New York December 1, 1910.

TRIAL RESUMED.

J O S H U A R O S E, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MCCORMICK:

Q Your address? A 1249 Clinton Place, Elizabeth, New Jersey.

Q Where do you reside? A 1249 Clinton Place, Elizabeth, New Jersey.

Q In the year 1906 what was your business? A Claim Agent for the Pennsylvania Railroad, although the title at that time was Special Agent.

Q How long have you been employed by the Pennsylvania Railroad? A At the present time in my 33rd year.

Q During the Summer of 1906 did you have a conversation with this defendant? A I did.

Q Did you have more than one conversation with her? A I had two.

Q Do you remember the date of the first conversation? A August 18, 1906.

Q Where did that take place? A At Wyckoff, at the house known as the "Harold", I believe it was spelled, Wyckoff, New Jersey.

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Q How did you happen to go there to talk with her? A To take up the negotiations for the settlement of a claim which she had against the Pennsylvania Railroad.

Q Now just state what conversation you had with her?

MR. SIESEL: I object to it, if your Honor please, as immaterial, irrelevant and incompetent at this time. The main crime has not as yet been proved and your Honor made a ruling last night that this all would be subject to the proof of the allegations in the indictment. That is as I understand it.

THE COURT: Among the allegations in the indictment is the following: "Whereas, in truth and in fact, the said Anna A. Trula, otherwise called Anna Sturla, had not ruptured herself at the time she so fell as aforesaid upon the said stairway upon the said 19th day of October 1906, and the said umbilical hernia which with which she, the said Anna A. Strula otherwise called Anna Sturla, was afflicted on said 17th day of November, 1906 was not caused by and was not the result of said fall; and the said Anna A. Strula otherwise called Anna Sturla was ruptured prior to said fall, and the said umbilical hernia had existed prior to said

fall." It is admissible on the question as to whether

the said Anna A. Strula had knowledge of the falsity of the pretenses

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made to the representatives of the New York Central that she sustained a rupture as the result of that particular accident. It is also competent on the question of the intent with which the statement was made that she sustained a hernia; and, later on, under proper instructions, if the case goes to the jury, I shall very carefully instruct the jury as to the reasons for the admission of such evidence and its applicability to the case under consideration. But you see it has a double bearing, one on the knowledge of the falsity of the pretenses made by her, and this evidence tends if believed by the jury, to negative the representations or pretenses made by the defendant.

MR. SIEGEL: I take an exception. The District Attorney for the purpose of laying the foundation for this evidence must first prove the falsity of the representations she made to the New York Central.

THE COURT: That will be connected.

MR. SIEGEL: I don't see why the District Attorney should take up the end of his case at the beginning. He has, not, as yet, proved the falsity of the representations and all this is going in subject to being connected.

THE COURT: I beg your pardon. We have had the

evidence of this young man Harry C. Miller who testified that---

MR. SIEGEL: She made a representation. There is no proof even that the statement was false, for that to be admissible in the trial here---

THE COURT: This accident occurred on the New York Central on October 19, and Miller testified that she stated that on October 18th she sustained a rupture or a hernia as the result of an accident. What would this evidence then tend to indicate? The evidence of Miller was that this defendant stated she had an accident and she sustained an injury on October 18th; that she sustained a hernia on October 18th. And to the representatives of the New York Central she said she sustained a hernia on October 19th.

MR. SIEGEL: But that would not be proof that the representation she made to the New York Central was false. That would not be proper proof of the falsity of the false representations alleged in the indictment.

THE COURT: I will consider that later. I overrule your objection.

THE WITNESS: It was in the general line of negotiating a settlement of the claim which---

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Q What date was that? A The date I interviewed her, August 15th, 1906; not the date of the accident, but the date I had a talk with her.

Q The day you had the talk with her? A Yes sir.

BY MR. MCCORMICK:

Q What was that conversation, what did she say to you and you to her? A I could not remember it verbatim.

Q As nearly as you can remember it, as well as you can remember. A Well, it was only in the general line of negotiating a settlement of a claim for injury she received on our road.

MR. CINGEL: I object to that and ask that it be stricken out, and further on the ground it is not responsive to the question.

THE COURT: Strike it out.

Q Now I asked you for the conversation as nearly as you could recollect it. A I would not undertake to repeat it any more than I can say that during that conversation this subject of her injuries was brought up and she---

Q Go ahead?

MR. CINGEL: Objected to. Objection overruled.

Exception.

THE WITNESS: (Continuing) And she stated that she---the former hernia had been cured by an operation

and that in our accident it had been reproduced.

Q Did she say upon what day she sustained this injury for which she claimed ~~that~~ damages from the Pennsylvania Railroad? A On June 16, 1906.

Q Did she say where? A On a ferry boat of the company at Jersey City.

Q Did she say how? A She knew how.

Q Did she say how? A Yes sir; the machinery broke down and they could reverse the engine and it hit the dock with unusual force.

Q What happened to her? A She claimed she was thrown down and injured her left side, and of course---

Q What did she say when she wanted that? A I said it positively would not be considered by our people; she afterwards reduced it to \$3000. and I told her I would submit a proposition of \$1000. to ---

Q Was anything said by you to her regarding an examination by a physician? A Our Dr. McGill did examine her twice.

Q Had he examined her prior to this time? A Twice.

Q The conversation which you have just related took place on the 15th of August? A Yes sir.

Q Was that the only conversation you had with her?

A No sir; I called there again on September 7th.

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Q September 7th? A Yes sir.

Q What happened when you called September 7th? A I handed her a voucher of the Pennsylvania Railroad for \$1000. May I interrupt just here---

Q I want you to tell what happened between you and her on the 7th of September? A I delivered to her the voucher and took her release for the same. I handed her---she agreed to accept the amount over the telephone. After the 15th and up to the time of the 7th our conversations were on the telephone entirely.

BY THE COURT:

Q Were you able to recognize her voice? A Yes sir.

Q You could identify the voice of the person with whom you spoke as the defendant, on the phone? A I could.

Q And prior to talking with her over the telephone how many times had you conversed with her? A I talked with her on the 15th for quite some time.

Q You are positive that the voice that you heard over the telephone was the defendant's? A I am.

THE COURT: I will allow it, under the People against McKane and People against Wood, where you can identify person's voice.

MR. SIBBEL: Don't you think, your Honor, under these decisions it is in the discretion of the court to

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say whether the witness could identify the voice.

THE COURT: It will be for the jury to say. The weight to be given to the testimony is for the jury. All these cases hold that.

MR. SINGER: I will take an exception.

Exception.

THE WITNESS: The authority for the payment, of necessity, must come from the head office in Philadelphia; I had received authority first before I could agree to make any payment.

Q What were these telephone conversation, do you remember now? A No.

Q How many telephone conversations did you have with her? A I could not recall the number; several.

Q Do you remember what they were about, what was said by her and by you? A Not verbatim, only in the line of what we were going to do.

Q As nearly as you can remember what was said? A In those conversations she reduced her demand all the way down from \$3000 when I left her on the 15th of August to \$1000, which she finally agreed to accept.

Q Who called the other up? A She called me up.

Q Each time? A Yes sir.

Q Now, coming down to the 7th of September. You did not

answer the question that I asked you. What happened on the 7th of September? A I called--

Q Where did you see her? A At her house at Wyckoff, and delivered to her the voucher for \$1000, and took her receipt, release for the payment.

Q Did you pay her \$1000. A By voucher.

Q By check? A We call it a voucher.

Q It is an order for money? A Yes sir.

Q Whose money was it? A The Pennsylvania Railroad's money.

Q Did you receive a document from her that she signed that day? A I did.

Q Was it signed in your presence? A Yes sir.

Q Have you that document with you? A I have.

Q A general release? A Yes sir, a general release.

MR. McCORMICK: I offer it in evidence.

MR. CIPRI: I object to it, if your Honor please, as immaterial, irrelevant and incompetent not pertinent to the issue and not part of any proof to show that there was a similar false representation.

Objection overruled; exception.

The paper referred to is marked People's Exhibit

6.

Mr. McCormick reads People's Exhibit 6 to the jury.

BY MR. McCORMICK:

Q Now during the conversations that you had with her did she say what was the nature of the injuries she had received? A Yes sir. hernia, of course, she had other injuries, that was the principal one.

CROSS EXAMINATION BY MR. SIEGEL:

Q Mr. Rose, for the Pennsylvania Railroad Company you made a thorough investigation, did you not, of this accident? A It was made before my time, an investigation was made, yes sir.

Q You were not the first representative of the Pennsylvania Railroad that saw Mrs. Strula in reference to this accident, were you? A No sir.

Q You were not the representative of the railroad Company to whom she made any claim, were you? A The first claim, no sir.

Q You simply went there to finally settle the matter, after an investigation was made by the railroad company? A Well, the investigation had all been made but I took up the investigation and also took up the settlement.

Q You took up the settlement? A Yes sir and the investigation also.

Q And from your investigation you ascertained that this

accident actually occurred, didn't you? A Yes sir; the accident had occurred.

Q A ferry boat ran into the slip? A Yes sir.

Q Ran into the dock? A Yes sir.

Q Mrs. Strula was examined by your physicians? A She was.

Q And relying on what your physicians reported you made a settlement of it? A We did.

Q You relied---you did not rely on what she said, did you? A On our doctor.

Q What is that? A On our doctor.

Q On your doctor? A Yes sir.

Q She also told you that she had had a previous injury? A She did.

Q And this was simply a reproduction of the old injury, the old operation she had? A Yes sir.

MR. SIEGEL: That is all.

BY MR. MCCORMICK:

Q When did she say she had sustained the rupture prior to that time? A She did not inform me.

Q Did she not give you the date? A No sir.

Q Was there anybody else hurt in that collision that you ever heard of? A No sir.

MR. SIEGEL: I object to that, if your Honor

pleases, and I ask that the answer be stricken out.

THE COURT: Strike it out.

BY MR. McCORMICK:

Q Did she file with your company her claim in writing

MR. SIEGEL: I object to that, if your Honor
pleases.

THE COURT: He may answer that, yes or no.

Q Do you know? A I don't know.

D R. J O H N D. M c G I L L, a witness called on behalf
of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. McCORMICK:

Q Your address? A 16 Gifford Avenue, Jersey City.

Q Dr. McGill, what is your business? Your profession?

A Physician and surgeon.

Q How many years have you been a physician and surgeon?

A Over forty years.

Q Where did you reside? A 16 Gifford Avenue, Jersey
City, is my residence. My office is at 292 Montgomery
Street, Jersey City.

Q During the year 1906, did you reside at the same
place? A Let me see, in 1906, I resided 124 Mercer Street,
Jersey City.

Q At that time were you connected with the Pennsylvania Railroad? A I was.

MR. SIEGEL: I object to that, if your Honor please.

Objection overruled; exception.

Q Will you proceed Doctor? A I was surgeon of the Pennsylvania Railroad; I have been for a good many years.

Q For how many years? A Well, I don't remember the exact date of my commission as surgeon; I must have been connected with the road at least twenty years or thereabouts to the best of my recollection, perhaps more.

Q Now you were Surgeon General of the State of New Jersey for some time, were you not? A I am now surgeon general of the State of New Jersey, since 1886.

Q Have you ever seen this defendant before? A Yes sir. I saw her in St Francis Hospital, Jersey City, on June 16th, 1906, and I afterwards saw her at Wyckoff New Jersey, on July 4th, 1906.

Q Will you kindly state to the jury the conversation that you had with her on June 16th, and the result of any examination you may have made on that date?

MR. SIEGEL: I object to it, if your Honor please, as immaterial irrelevant and incompetent, as it consisted of a confidential communication between

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patient and client.

THE COURT: Well you have got to prove that yourself, you may claim the witness.

MR. SIEGEL: I ask your Honor to permit me to examine the witness for the purpose of showing that--

THE COURT: Yes.

BY MR. SIEGEL:

Q Let me see if I can have you recall Doctor when you first saw Mrs. Strula. Isn't it a fact that you first saw her at the Ferry House of the Pennsylvania Railroad? A My recollection of seeing her was in St. Francis Hospital, Jersey City.

Q That is your recollection? A Yes sir.

Q But isn't it a fact, Doctor, ---now see if you cannot recall or remember that you were called to treat her when she was injured at the ferry house of the Pennsylvania Railroad in Jersey City,? A I don't recollect that; my recollection is St. Francis Hospital.

Q Don't you remember that you had her sent to St. Francis Hospital for treatment yourself? A I don't recollect that.

Q Would you say it wasn't so, doctor? A My recollection I don't pretend to say it wasn't so, but I have no recollection of it. Very frequently when people are hurt at the ferry or at the depot, or around there, I send them to the

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hospital in an ambulance where I can give them better attention and examine the patient.

Q Give them better attention? A Yes sir; but in this case I remember of seeing her on the 6th floor of St. Francis Hospital, the southerly room, the southeasterly room, that is my best recollection of her.

Q Did you make any report of this case to anybody at the time? A I made a report to the Pennsylvania Railroad, yes sir.

Q Have you got that report ere? A I haven't got it about me now.

Q Where is it? A I have---it was a report that--- well, is it necessary to produce that report.

THE COURT: I can see no objection to your production of it.

THE WITNESS: I don't care to produce the report; it was a report to the railroad and I don't care particularly to---it is not a report---it is not a report taken at the time, but written afterwards, but, of course, from notes taken and congested into a report.

BY MR. SIEGEL:

Q Well, Doctor, when did you first make known to Mrs. Strula that you were a surgeon for the Pennsylvania Railroad Company? A I don't recollect that I made known that fact at all.

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Q You never told her that at all? A I don't recollect that I did; I don't think that I did.

Q What was your purpose of going to St. Francis Hospital, to see Mrs. Strula? A Simply because I am medical director, I am chief surgeon of that hospital.

Q You were at that time chief surgeon at St. Francis Hospital? A I was; I am now.

Q What is that? A I say I am now.

Q Where you then? A I was then, and since 1887 I have been medical director and chief surgeon.

Q You saw her the same as other patients in that hospital? A I saw her, yes sir, the same as I looked at other patients, looked at all patients.

Q You saw her as you were going through the hospital seeing other patients that day? A Yes sir; my recollection is that I did, I saw her.

Q Can you recollect having this question---just answer this question, yes or no, whether you prescribed any treatment for her at the time? A I think that I did, yes sir, my recollection is that I advised the sister about her.

Q You advised? A She was in charge of the sisters of the Poor of St. Francis and I gave orders to the ward sister.

Q Did you give instructions to the sisters in relation to the treatment to be given to Mrs. Strula? A I did give

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instructions.

Q Just answer this question, doctor, yes or no? Did you have a conversation with Mrs. Strula. Did you interrogate her so that you could prescribe for her? A I certainly interrogated her, yes sir.

Q So that you could prescribe for her? A Undoubtedly, yes sir.

Q Sir? A Yes sir.

Q And the conversations you had with her were necessary in order for you to treat her? A To find out in regard to her.

Q Just answer yes or no? A I did what was necessary to make a---

Q To give her proper treatment? A To make a diagnosis of her case.

Q Was it necessary to give her proper treatment? A To give her--why, of course, it was necessary to give her such treatment as the case warranted.

Q But I ask you this question and I ask you to answer it categorically---were the conversations you had with Mrs. Strula at St. Francis Hospital that day, when you saw her the same as you did the other patients in the hospital, by reason of the fact that you are visiting surgeon, necessary in order to treat her? A Yes sir.

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MR. SIEGEL: Now, I think, the witness has come directly within the rule and absolutely under the Code, his lips are sealed.

THE COURT: What does the District Attorney say?

MR. MCCORMICK: I am inclined to agree with counsel for the defendant.

BY THE COURT:

Q You did not make known to her at the time that you treated the defendant in the hospital, that you acted as a physician representing the hospital and not the railroad company? A I did.

THE COURT: I sustain the objection.

MR. MOSKOWITZ: We concede that.

THE COURT: Our courts have held in the case of Gray against the City of New York that a physician from a Hospital who attended an injured person, in response to a call for an ambulance, should be permitted to testify as to admissions made to him by the injured person, showing how the accident occurred, and it cannot be a privileged communication under section 834 of the Code.

MR. SIEGEL: He is a surgeon and has testified that the conversation that he had with her was necessary for treatment.

THE COURT: This conversation you asked him

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about you put in the nature of a conclusion.

MR. SIEGEL: In the case of the People against Murphy, in 131 New York, a physician was sent by the public prosecutor and the court went so far as to say that, although he was selected by the public prosecutor and sent by him, he considered his services of a professional character and he rendered them in that way.

THE COURT: Have you any case later than the Murphy case?

MR. SIEGEL: Eddington against the Insurance Company, and People against Kperner 154 New York.

THE COURT: In the Kperner case Dr. Ward went there and told him that he was not representing the defendant; but in the case of the People against Hood, and in the case of the People against Scuyler, and in the case of the People against Silverman, and in the case of the People against Furlong---

MR. MOSKOWITZ: Griffiths against the Metropolitan and Greene against the Metropolitan, 171 New York, decided this year.

THE COURT: The case of Griffiths against Metropolitan is a very interesting case. In Griffiths against the Metropolitan Judge Werner wrote that opinion, and in Greene against the Metropolitan Judge

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Werner wrote the dissenting opinion. The Court was unanimous in the Griffiths case and they were divided in the case of Greene against the Metropolitan, for this reason, they held that ~~where~~ Dr. Moorhead a representative of the J. Hood Wright Hospital was on the scene of the accident. It did not appear whether or not there was any relationship there existing and Dr. Moorhead was permitted to testify. In the case of Greene against the Metropolitan, the Court of Appeals said in that case, Judge Gray, writing the opinion ----

I am inclined to follow the case of Greene against the Metropolitan where the Court of Appeals said "I think this judgment should be reversed and a new trial should be had for the error in accepting the testimony of the witness Moorhead when asked by Defendant's Counsel to state what he said, if anything, as to how the accident happened. The circumstances under which an accident happened does not aid or help a physician in making a diagnosis of the case with a view to treating the patient. It is information that it acquired concerning the injury and as to how the accident happened." The Courts have always held that testimony is admissible. Moorhead was a surgeon attached to the J. Hood Wright Hospital; he was a doctor on the ambu-

lance which was summoned to convey the plaintiff after meeting with this accident. " It will be observed that the question called for no information which was required by the surgeon to enable him to act as such. It called for evidence merely of what had preceded and what had caused the accident according to the plaintiff's knowledge." Section 834 of the Code of Civil Procedure covers this question and applies, by its language, to cases where information has been acquired by a physician or a surgeon while acting in a professional capacity and which information was necessary to enable him to act in that capacity. You have been very careful to ask this Doctor, without objection on the part of the District Attorney, a conclusion of a fact, "was it necessary to enable you to act in that capacity "We would readily admit that Dr. Moorhead acquired the information which the question called for while attending the plaintiff in a professional capacity and still we would be far from the point of the legislative purpose in enacting the section of the Code that says that the information should be of a character necessary to enable Dr. Moorhead of the Hospital Staff to act professionally upon the case. It is not sufficient to authorize the exclusions that the physician

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acquired the information while attending a patient, because necessarily he acquired it in that capacity but it must be the necessary information mentioned. The object of the statute, as we are bound to presume, was the accomplishment of a just and salutary purpose, which was that the relations between physician and patient should be protected against public disclosure, so that the patient might unbosom himself freely to his medical adviser and thus receive the full benefit of his professional skill. Surely it could not have been intended that any truthful version of the narrative of the event leading to an accidental injury should be excluded and that was all this question called for, as it had come from the sufferer's lips and when fresh in his recollection. It is rather more consonant with the requirements of justice that no witness should be prevented from giving such evidence. The burden was upon the plaintiff in seeking to exclude the evidence from Dr. Moorhead so bring the case within the provisions of the statute and he did not do so. It was proper to exclude testimony as to any information acquired which was of a nature to enable the surgeon to treat the plaintiff. Such information is confidential. As to such information the lips of the physician are

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sealed and the seal of secrecy cannot be broken unless the defendant does so in open court."

Now I do not know what questions the District Attorney intends to put to this witness, but so far as the present examination indicates on your part, any information which he obtained from the defendant, while he acted as her physician, which information was necessary for the physician to treat her, is confidential and the lips of the witness cannot be moved to disclose it.

MR. STEPHENSON: Is that the dissenting opinion?

THE COURT: No, I am not reading a dissenting opinion for an authority. I am reading the prevailing opinion. I cannot find any distinction between Judge Werner's reasoning where he dissents and where he writes the prevailing opinion.

MR. STEPHENSON: I would suggest that your Honor ought to follow this case.

THE COURT: But the decisions have been reversed in one of my own cases. It is merely my own decision. I had occasion to pass upon it in the case of Cravath for contempt of Court. There the lawyer said "I cannot talk unless my client permits me" and when Ryan was called before the Grand Jury he said "Well, I won't allow my lawyer to talk." It was tweedledum and tweedle

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dee. I could not compel the lawyer to talk because you cannot put a witness on the stand and compel him to talk. As a matter of fact the history of the law on the subject as to whether a priest can disclose what a penitant says to him, or a lawyer what a client says to him, or a physician what a patient says to him is most interesting, and you will find that little by little they are breaking down the rule of secrecy except in so far as the information is peculiarly of a confidential character. Why they went so far in the case of Silverman that they sent a physician over from the District Attorney's office to examine Silverman while he was in prison and the evidence was allowed. Suppose they sent a physician surreptitiously into the Tombs to talk with the defendant. They have done it and the Courts have approved it.

MR. SIEGEL: That is as to information acquired which was not necessary to the treatment of the patient.

THE COURT: The question of how an accident happened is not necessary to the treatment of a patient.

BY THE COURT:

Q Doctor, is it necessary for you in treating a patient to take into consideration what the patient says to you at the time of the happening of the accident? A Not if the signs or symptoms of the accident are objective; then they

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speak for themselves.

Q In this case did you have any talk with her before treating her as to how the accident occurred? A No sir; it was not necessary for her treatment in the case.

Q Don't give any conclusion but just answer the question. I suppose you know the law of confidential communications? A It was not necessary.

MR. SIEGEL: That is what I was going to call your Honor's attention to. Here is a physician who takes the stand and says he saw this defendant in the hospital and what occurred between him and this defendant is sacred and he wants to come on the stand and repeat it.

THE COURT: No, I won't tolerate that.

MR. SIEGEL: He has done so.

THE COURT: I beg pardon. He has done nothing.

MR. SIEGEL: I asked him if he made a report to the Railroad Company and he said he did.

THE COURT: I am afraid if you keep on you will make that communication public and not confidential.

MR. SIEGEL: I don't care if the doctor tells how the accident occurred.

THE COURT: I see what you mean.

BY THE COURT:

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Q At the time that you made the report to the company were you acting as ---this is in justice to yourself--- at the time you made the report to the company concerning these injuries which this defendant sustained--- A I was acting for the company.

Q You were acting for the company? A Yes sir; I was surgeon of the company, and we send all cases---

MR. SIEGEL: How can the witness himself designate his own relationship?

THE COURT: We will see about that. You see you have opened the door, you have really opened the door. You asked him did he make a report to the company.

MR. SIEGEL: Yes sir.

THE COURT: You have asked him that. In other words you have brought that out.

MR. SIEGEL: That report would not be competent under any circumstance. I wanted it if he had it.

THE COURT: In the case of Marks against the Second Avenue Railroad Company, or Morris against Marks I think it is it was held ---

MR. SIEGEL: But if your Honor please.

THE COURT: Where you bring out a fact, you are bound by it.

MR. SIEGEL: I have not brought out anything. I asked him--

THE COURT: You asked him whether he prepared any report.

MR. SIEGEL: Yes sir, and he said yes. But the fact that at that time he made his report he was acting for the Railroad Company---

THE COURT: It makes no difference. Let me show you how far the courts have gone. You cannot use a communication as a sword to destroy, and they use it as a shield to protect you. You cannot blow hot and cold. In the case of McKinney against the Metropolitan Street Railroad Company the Court of Appeals held that where a physician, who, as such, attended the plaintiff for her injury was called as a witness by the plaintiff and testified to facts bearing upon her physical condition, and upon a subsequent trial the defendant was permitted to call and examine such witness since there was a waiver. That is the first case. In Marks against the Manhattan Railroad Company, where the plaintiff pretended to give what was said they there held that the entire conversation could be given. In the case of Morris against the New York Ontario and Western where there were two physicians, one was called, and in the case of Kaufman against Rosenshhein, and in Butler against the Manhattan Railroad Company---in all

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these cases where you bring out a fact on examination you open the door to it all. There is no doubt of that.

MR. SIEGEL: There is no open door.

THE COURT: You asked him about the report.

MR. SIEGEL: Yes sir. I asked him if he made a report to the Railroad Company and he said he did. That is not going to prove or tend to prove his relationship as to when he gained the information or how he gained it.

THE COURT: I don't know that the District Attorney wants to press the question. I don't know the importance of it for I cannot see any necessity for it. You have the circumstance that the accident occurred and while spend any more energy on it.

MR. McGOVERN: I don't want to question this witness further.

MR. MOSKOWITZ: The other side have called for the Doctor's report.

MR. SIEGEL: The situation of the record is this. The District Attorney has conceded that this man acted as physician of the defendant and that his lips are sealed. That is the concession.

THE COURT: Suppose the District Attorney does

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concede that? I really do not see the necessity of the testimony of this witness.

MR. MCCORMICK: Counsel for the defendant says that he wants that report. I want it too. Now produce it. Do you want it?

MR. SIEGEL: I certainly do not.

MR. MCCORMICK: You asked for it, didn't you?

I want that report in evidence.

BY MR. MCCORMICK:

Q Have you got it here? A I have it in my coat, yes sir.

Q Will you kindly produce it? A I have got two reports, the first report was the 16th and the other was the 4th of July.

Q Both of them? A Yes sir.

Q Which is the report that you spoke of Doctor? A This one that you have in your hand on the blank of the company.

Q That is dated June 16? A Yes sir.

MR. MCCORMICK: I ask to have this marked for identification.

(Marked for identification People's Exhibit #7)

THE COURT: You better first question the physician as to whether there was any such relationship as

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physician and patient.
BY MR. McCORMICK:

Q The first time you saw this woman did you have any conversation with her? A Yes sir, I did.

Q Don't say what it was? A I did.

Q In that conversation did you state that you were connected with the Railroad Company?

MR. SIEGEL: I object to that and ask that it be stricken out. I object to the question as being

Objection overruled. Exception.

A I don't remember that I did; I don't think I did.

Q Where was that conversation? A St. Francis Hospital, Jersey City.

Q Have you any recollection what the first thing said by you and by her was, answer yes or no? A Some recollection, yes sir.

Q Now you need not answer this question until the court rules upon it. What was that conversation?

MR. SIEGEL: I object to that.

THE WITNESS: As to how she was hurt.

Q You need not answer---as to the manner in which she was hurt? A Yes sir.

THE COURT: He may say that. I will allow that.

Q What did she say about how she was hurt?

THE COURT: That conversation is admissible but

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how does that help you. You have in the record an account of the accident.

MR. MCCORMICK: We might as well have it in. It will only take a second.

THE COURT: I know, but how does it help you?

MR. MOSKOWITZ: You ~~re~~ Honor will recollect that the last witness said he was not the first man who seen this defendant; that there were others and he came in later on and that Dr. McGill was one of those who saw her first.

THE COURT: There is a way of ascertaining whether the relationship existed.

BY MR. MCCORMICK:

Q What were the circumstances under which you saw her the first time? A Well, I was in the hospital, as I go in frequently, my duties call me there frequently and it is my recollection that I was told that there was----

Q Not what you were told? A Well, in going through the wards I found this person who had been injured on the Pennsylvania Railroad Ferry boat, as I recollect.

Q What date was that? A That was June 16th, the day of the accident.

Q Do you know how long she remained as a patient in

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that hospital? A I could not state exactly about two or three days, somewhere about that, I saw her afterwards too.

Q Did you make a report to the Pennsylvania Railroad company after that? A I did. When they sent me out to see her at Wyckoff, New Jersey, my recollection is July 4th and that is the report you have in your hand.

Q This report was written the same day that you saw her in Wyckoff ~~Sixth~~. A I don't know about that, probably the next day, but I took notes, and that was written from my notes.

Q Did she know at the time that you saw her in Wyckoff that you represented the Railroad Company?

MR. SIEGEL: I object to the form of that question.

Objection overruled; exception.

A I think she did.

THE COURT: Strike out the answer.

Q Did you have any conversation with her about your representing or being the surgeon of the Railroad Company

MR. SIEGEL: I object to that question, if your Honor please.

THE COURT: Strike out the last question and answer:

MR. SIEGEL: I don't think that is a fair

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interrogation.

Objection overruled; exception.

THE WITNESS: My recollection is not absolutely clear on that matter.

MR. SIEGEL: Then I object to the witness stating it.

THE COURT: He has not said anything yet, Mr. Siegel, you need not be at all alarmed. I am watching the evidence very closely.

Q Did she send for you to come to Wyckoff? A I don't recollect that she did.

Q Do you remember how you happened to go to Wyckoff?
there

A I was sent for by the Pennsylvania Railroad.

Q Did you inform her of that fact when you went there.

MR. SIEGEL: I object to the question.

THE COURT: He said he did not have any recollection.

THE WITNESS: I am not clear.

BY MR. MCCORMICK:

Q This report of July 4th ~~that~~ you submitted that to the Railroad Company, did you? A Yes sir, I did.

Q And that is a report as to her condition? A Yes sir.

BY THE COURT:

Q Did you tell this defendant that you were going to file a report of what she said to you with the company? A I did not.

THE COURT: Now you have that door pretty well closed, Mr. District Attorney.

BY MR. McCORMICK:

Q Now, was there anything said about the making of a report to the company? A Very possibly something was said about my making or saying something to the company, I think it is very probable, I haven't any specific recollection along that subject; this was over four years ago and I have seen thousands of cases, and I can't remember the specific particulars of every case, but usually I tell them that I will report to the company; that is my usual procedure, I probably may have done it in this case.

Q You tell them that in the beginning of the conversation generally? A What is that?

Q At the beginning of the conversation before you examine them? A Yes sir, I tell them I come from---

THE COURT: I would not allow this evidence to go in upon any such statement.

MR. McCORMICK: I ask to have this report of July 4th marked for identification.

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(The report referred to is marked for identification
People's Exhibit 8)

MR. McCORMICK: I offer in evidence the two
reports made by the witness to the Pennsylvania Railroad
Company dated June 16th and July 4th?

THE COURT: I exclude them.

DR. GEORGE W. TERRIBERY, a witness called
on behalf of the People, being duly sworn, testified
as follows:

DIRECT EXAMINATION BY MR. McCORMICK:

Q Your address? A 146 Broadway, Patterson, New
Jersey.

Q What is your Profession, Doctor? A Surgeon and
physician, or physician and surgeon.

Q How long have you been a physician and surgeon?

A Well I was in the Civil War as a surgeon and I have been
practicing 45 years next June, private practice.

Q Well, where is your office? A 146 Broadway, Patterson
New Jersey.

Q Where was it in 1906? A The same place.

Q Where did you have your office on August 25th, 1906.

A 146 Broadway, Patterson, New Jersey.

Q Were you in the employ of the Erie Railroad at that
time? A Yes sir; more especially in the New York,

Susquehanna and Western; that is a part of the Erie system.

Q Doctor, do you ever remember meeting this defendant?

A Yes sir.

Q What is the answer? A Yes sir.

Q When did you meet her? A I met her on August 25th 1906.

Q Will you state the circumstances under which you met her there? A I received a ~~from~~ phone message.

MR. STEPHEN: I object to that, and ask that it be stricken out, in your Honor please.

THE COURT: Strike it out.

Q Subsequent to the phone message--- A I didn't meet her before that.

Q Well-subsequent to that, after? A Well subsequent, well, I saw her in the station known as the station of the Paterson City, in Paterson.

Q What is enough. What did you tell her then when you met her? A I found, I was told that she was in the anti room, really the ladies' room, off of the main ladies' room, that she was in a chair.

Q THE COURT: Not what you were told, did you see her there.

THE WITNESS: Yes sir, I was told and I went in

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there.

BY MR. MOSKOWITZ:

Q What were your words to her, when you met her? A I asked her if she was hurt, and she said "Yes". I said "Where".

MR. SIEGEL: I object to that, if your Honor please.

THE COURT: You may claim the witness.

MR. SIEGEL: I do, if your Honor please.

MR. MOSKOWITZ: We are not through with him yet. For a moment I will leave that question and go on.

THE COURT: You withdraw the question.

MR. MOSKOWITZ: For the moment, yes sir.

Q Doctor, did you tell her who you were? A I said I was the company's surgeon.

Q What company's surgeon? A New York Susquehanna and Western Railroad.

Q Did you tell her the purpose you were there for? A I did.

Q What did you tell her was your purpose? A I asked her questions and took her statement on a blank furnished by the Railroad Company.

Q Did you tell her what the purpose was of the questions

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you asked?

MR. SIDEL: I object to the question if your Honor please, on the ground that the confidential relationship has already been shown. The fact that the doctor said he went there and found her propped up in the position and asked her whether she had been in jail---

THE COURT: That was stricken out.

MR. SIDEL: That of itself established the relationship.

THE COURT: I do not know whether this doctor acted as an investigator for the company or for the hospital treating her.

MR. SIDEL: I am going to ask the witness, if your Honor please.

MR. MOKHOVITZ: We are not attempting, as yet, your Honor, to ask anything of the kind.

THE COURT: Proceed.

MR. SIDEL: I want to examine him.

MR. MOKHOVITZ: For the present we are not attempting to introduce into evidence anything arising from the medical examination and therefore I do not see that the confidential relationship has been brought forth.

Q Did you tell her what your purpose was in com-

ing?

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

A I did.

MR. SIEGEL: What difference does it make, what purpose he went for it when he got there he acted as her physician.

MR. MOSKOWITZ: That has not as yet been brought forward.

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

Objection overruled. Exception.

Q State it?

MR. SIEGEL: I object to that, if your Honor please.

Objection overruled; exception.

A I told her I wanted to examine her and I found her in a position that I could not---

Q Who did you tell her you were going to examine her for? A For the company.

Q Did you tell who you were? A Yes sir.

Q Who did you tell her you were? A I told her I was the surgeon of the company.

Q What did she say then? A She said all right.

BY THE COURT:

Q Did you tell her you were going to treat her as a

physician or that you were acting---that you wanted to get information concerning the accident? A I wanted to get information concerning the accident.

MR. SIEGEL: I want to say this, your Honor, that so far as the defense is concerned, if he asks for the conversation when he first got there I will ask your Honor to strike that out under the rule---

THE COURT: The trouble is you object too soon.

MR. SIEGEL: The District Attorney is leading this witness.

Objection overruled; Exception.

BY THE COURT:

Q I do not want you to state that you made any physical examination of this defendant for the purpose of treating her, if you did make any such examination, I want you to testify if you can, as to what talk you had with the defendant prior to examining her for the purpose of ascertaining whether she had any injury, if you did examine her for the purpose of ascertaining that fact. A I did not examine her for the purpose of treating her; I simply examined her for the company.

Q Did you tell her---

MR. SIEGEL: I object to that answer and ask that it be stricken out.

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THE COURT: No.

BY THE COURT:

Q Did you tell that to her? A I did.

Q What did you say to her? A I said I wished---
I would like to examine her.

Q What did she say? A She said all right.

THE COURT: Now, you will have to bring yourself
within the rule. The mere fact that he said he is
the company's representative is one thing. The defendant
must be in a position to know that the person to
whom she spoke is not her physician.

MR. MOSKOWITZ: The witness said he came there
for the company. He told her he was the company's
physician and wanted to examine the nature of the acci-
dent for the company.

THE COURT: Ask those questions.

MR. MOSKOWITZ: Those questions are on the record.

THE COURT: No. They are not on the record

at all.

BY MR. MOSKOWITZ:

Q Now ask me about any conversation that you had
with this witness with regard to any purpose for which you
came and how you represented---state those conversations.

A I will state them as near as I can.

Q Well state them as near as you can? A I simply said I came there to see what her trouble was, not as her physician, but for the company.

BY THE COURT:

Q Did you use that term "Not as her physician"? A Yes ~~is~~ sir; but for the company. I was the company's surgeon and it was understood---

THE COURT: Strike out "It was understood".

BY THE COURT:

Q What did she say to you? A Then I said it was a bad place to make an examination, and I asked her if she would go to my office in my automobile and she said she would, and I took her to the office and laid her on a couch and she claimed to have been ruptured.

MR. SIEGEL: I object to that if your Honor please.

THE WITNESS: I laid her on a couch.

THE COURT: I will allow that.

MR. CHIEF: I ask your Honor's permission to examine this witness.

THE COURT: You may examine him now.

BY MR. SIEGEL:

Q Do you want this court and jury to understand, Doctor, that you told her when you were called to the station and

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she was---

MR. MCCORMICK: I object to the form of that question.

THE COURT: He is not through.

Q (Continuing) when you found her in the little room, propped her up, and she was groaning---at that time you told her "I am not going to act as your physician"?

MR. MCCORMICK: I object to that.

MR. SIEGEL: I think that is a proper question.

I will withdraw that question at present.

BY MR. SIEGEL:

Q You were a witness, Dr. Terriberry, weren't you, before the grand jury on June 1st 1910? A Yes sir.

Q Was the following question put to you and did you make the following answer: "Q You are telling us, of course, the conversation which you had with her? A Then she was, there was a report, a telephone message came to me, to my office to go to the ~~station~~ station and see a woman that was injured. I went there and found her in the little room, propped her up and she was groaning, groaning a good deal and she said she was in great pain." Is that right? A I did not prop her up.

Q Did you testify before the grand jury? A I don't-- I think I am except that.

Q Now, do you want this court and jury to understand that when you went to the station and found the defendant in such a position that you told her you were not going to act as her physician?

MR. MCCORMICK: I object to that question.

THE COURT: I will allow it.

Exception.

A I did not tell her that I was going to act as her physician

Q Did you tell her that you were not going to act as her physician? A I did not say anything about it.

BY THE COURT:

Q Didn't you a moment ago state that you told her you were the company's surgeon and you were not going to act as her physician? A Yes sir.

Q What did you tell her? A I told her simply I was the company's surgeon.

Q Anything else? A No sir, nothing else.

BY MR. SIEGEL:

Q Did you testify as follows before the Grand Jury:

"I said you better get in the machine and I will take you to my office and let you lie on the couch"? A For examination, yes sir.

MR. SIEGEL: I ask that the answer be stricken out, if your Honor please.

MR. McCORMICK: I object to its being stricken out.

MR. SIEGEL: I move that it be stricken out as not responsive.

THE COURT: You move to strike it out.

MR. SIEGEL: Yes sir. I move to strike out the answer.

THE COURT: Motion granted.

Q Answer the question, Doctor, did you so testify before the Grand Jury on the first day of June 1910? A That I took her to the office.

Q That you said to her "You better get in the machine and I will take you to my office and let you lie on the couch." A I did not testify---in part I did.

Q You did so testify before the Grand Jury, didn't you, doctor? A It was for a purpose, that is all.

MR. SIEGEL: I ask that the answer be stricken out as not responsive.

THE COURT: Strike it out. Answer the question, as propounded to you, Doctor.

A That I took her to go to the office? I did.

BY MR. SIEGEL:

Q The next question follows before the Grand Jury on August 2nd, 1910? A I put a little compress on it and put some strips on it and I sent for her son with a carriage and

drove home eight miles"? A I will say yes but I am not responsible for whether she was---I can't tell you that.

Q That is not the question. The question is whether you treated her. Did you treat her that day? A I put a compress on and strapped it.

Q How long did she lie on the couch in your office.

A Until her son came which was probably---

Q How long did she lie on the couch? A Possibly half an hour; I did not look at the clock.

Q Was it four hours? A No sir; it was not an hour, not an hour.

Q Was it half an hour, or was it an hour? A Well, I will say half an hour.

Q You wouldn't say it was an hour? A No sir, I would not.

Q Would you say it was not an hour? A Well I would not because it wasn't more than an hour; I don't think it was an hour.

Q Who called you to attend this woman in the railroad
station? A Well, I got it over the phone; it was the
station agent.

Q What did he say to you? A Well, I don't remember now, he said there is a woman hurt and wanted me to come over.

Q He said to you "There is a woman in jured at the

station and I want you to come over and treat her". A
He didn't say anything about treatment.

Q What did you think he wanted you to come for, Doctor?

A He wanted me to come over and make an examination, I suppose
and fill out a blank; I didn't treat her except what I treated
in the office, I never saw her afterwards for a month.

Q You did see her after that? A Yes sir; I said for a
month, or more than a month I did not see her after that
for more than a month.

Q Since you testified before the Grand Jury on the 1st
day of June, 1910, and your testimony before the Grand Jury
on August 8th, 1910 you had a talk with the District Attorney
upstairs, had you not? A Well I have talked a good many
times.

Q What District Attorney did you talk to?

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MR. MOSKOWITZ: I object to that. This examination, as I understand it, is for the purpose of proving that a confidential relationship existed.

THE COURT: I will sustain the objection.

Exception.

THE COURT: It does seem to me, Mr. Moskowitz that the relationship of patient and physician existed in the doctor's office and what he gathered there is not admissible.

MR. SIEGEL: I will ask one more question.

THE COURT: He said he was the Company's physician. She may have availed herself of his services. You see you must draw a distinction between the line of cases which permits evidence as to the occurrence of an accident, and evidence that was gathered concerning an injury for the purpose of treating the patient. But declarations the defendant made as to the nature of the injury which she sustained, and the information which she gave to the physician then and there that would enable him to treat her is confidential.

MR. MOSKOWITZ: Yes, sir, but the witness says that at the station he told her that he came to examine her for the Railroad Company.

THE COURT: He did not say that. He said I

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2h represent the Railroad Company, and in the last analysis his testimony is "I am the Company's surgeon." That is all he said to her.

MR. MOSKOWITZ: He also said "I want to make an examination for the company", in the very early part of his testimony.

THE COURT: He subsequently withdrew that statement. Is that right, Doctor?

THE WITNESS: I don't think so.

THE COURT: Read the entire examination.

(The stenographer reads part of the examination of the witness.)

BY THE COURT:

Q You did not tell her you wanted to examine her for the purpose of making a report to the Company? A I told her I wanted her to go to my office where I could examine her.

Q That is where you could physically examine her? A Yes, sir.

Q Did you tell her that you were the Company's surgeon, that your purpose in examining her was simply that you wanted to examine her for the purpose of making a report to the company that you represented? A I did.

Q Did you testify a moment ago that you said you were the Company's surgeon, and nothing else was said by you? A That was in the station there.

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Q Tell us all that you said to this defendant before you proceeded to make any physical examination of her? A I ---

Q Everything that you said to her? A As far as I can remember, - it is a good while ago now.

Q This woman's liberty depends upon the accuracy of testimony of witnesses. A If you don't object I will give you the facts as I know them.

MR. SIEGEL: I want to make this statement to your Honor. He testified that he treated her for twenty minutes after the accident occurred on a railroad train. He testified to that fact before a grand jury. Twenty minutes at the station. He goes to the station and found her propped up, in pain, tells her "I am the Company's physician, the Company's surgeon, I can't treat you here very well." He asked her to go to that office. Was that anything else but the relationship of physician and patient? He said he put a little compress on and put straps on, and she laid on his couch. I don't want to go any further if your Honor rules with me. He says he is the company's physician, but I take issue with the doctor on that point.

THE WITNESS: If the court allows me the liberty I will say that when I got her to the office I examined her. In putting this compress and straps on

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it took fifteen or ten minutes. She asked me then to call up some store where her son was supposed to be, to come there and take her home. I told her I would return with her to the station, and she could go back on the train. She didn't want to do that, but wanted to go back in a carriage. She simply remained there; she could have gone in fifteen minutes. She remained there until he came, and she went with him. I think she walked with him; I didn't see any carriage.

BY THE COURT:

Q What did you say to her? We have got to determine where whether you treated this defendant under circumstances where the relationship of physician and patient existed?

A Not at all. I treated her, what I did was for the Company, to make her safe to go home, if there was anything that was unsafe, and that is the reason the compress was put on.

Q You treated her? A Yes, sir, but not for any pay from her; it was from the Railroad Company, what we were ordered to do.

Q Did you prescribe for her? A No, sir, I didn't prescribe any medicine at all; that is all I did; I did not give her anything.

Q What did you say to her? I don't care what she said

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to you; what did you say to her? A Why I said --- do you mean the time at the station?

Q At the station. A I saw the woman there; I found her groaning, and she said she was in ---

That is something she did. In giving your answer do not state any conversation on the part of the defendant, simply what you said to her. A I saw her in the station. I asked her if she would go up to the office in my automobile for an examination, and she complied.

Again you are stating what she said. A Well, I see that.

Now, be very careful. A Well, then, at the station -- now she was in my office. I placed her on a couch, and I made a physical examination of her abdomen. Do you want me to tell what I found?

Q No. Do you want me to say I put a compress on?

Q State the conversation. A That is all the conversation there was.

BY MR. MOSKOWITZ:

Q In the conversation did you state whom you represented?

A Why ---

MR. SIEGEL: We have gone over it three times.

THE COURT: We will have it a fourth time to be sure.

MR. SIEGEL: I think we are sure about it now.

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THE WITNESS: I placed her on the couch and put on the compress.

MR. SIEGEL: I object to that.

THE COURT: Strike it out.

Previous to that, before she came with you in this automobile to your office, did you have any conversation with her as to the understanding, who you represented, and what purpose you came for?

MR. SIEGEL: I object to that as immaterial, irrelevant and incompetent, and calling for a conclusion.

THE COURT: The District Attorney is trying to bring himself within the Koerner case.

MR. SIEGEL: The conversation which is objected to is all on the record.

THE COURT: The witness insists he made the statement, and I want to see whether he does it again.

A Yes, sir.

Q State that conversation in detail and don't drop any part of it. State it in detail. A I said I was the Company's surgeon; I came there for the Company. Do you want me to say what she said.

Q You told her you were the Company's surgeon, you came there for the Company? A Yes, sir.

BY THE COURT: Q Was there any conversation with you

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concerning her injury, concerning the accident, and that you would make a report of the same, a report to the Company?

A There was a report made. A conversation from her asking me these questions?

Q Did you tell her that? A I told her this, that I ---

Q Tell all you told her? A As near as I can remember I went there and I told her I was the Company's surgeon, and I was to make a report to the company.

Q To the company? A Yes, sir, which I did.

Q Did you tell her that all the questions you asked her were for that purpose?

Objected to. Objection overruled. Exception.

A Well, I think so, as far as I remember.

Q This conversation, as I understand it, was at the station? A Yes, sir, at the station.

Q Then you told her, as you testified awhile ago, that the station was not the proper place for an examination, for this purpose and to come to your office? A There were no conveniences there.

Q And she came to the office? A Yes, sir; that is it.

BY MR. SIEGEL:

Q She came to your office by your taking her in your automobile? A I did, because I had my automobile there.

Q Did you visit her at her hotel afterwards? A Well, yes.

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Q Did you or didn't you? A I did a month after that, maybe two months.

Q Did you treat her at that time? A No, sir; I never treated her.

Q You never treated her? A No, sir, I never treated her.

Q Didn't you answer his Honor's question that in your office you did treat her? A I treated her there.

Q Then you did treat her? A I am now referring to the hotel.

Q You said you never treated her. A I said I put the compress on to make it safe for her to go; if there was anything necessary. ---

Q Did you suggest her taking a carriage? A I suggested her going back on the train.

Q When you say you represented the Company, you went there to treat her so that if there was any claim thereafter the claim would be small, you wanted to reduce the amount of the claim, didn't you? A For the Company I went. You mean to the station? I had nothing to do with the Claim Department at all.

Q You had nothing to do with the Company either? A Yes, sir.

Q Have you ever been paid by the Company money? A No, sir, not a cent.

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Q You are paid by getting a pass from the Railroad Company? A That is all I get, is the pass.

Q Do you, as a matter of fact, represent the Railroad Company? A I do.

Q You have not received a single, solitary penny from the Railroad Company for services? A No, sir; except court fees.

Q Did you ask Mrs. Strula, the defendant, to pay you for your services? A Yes, sir; shall I tell you the conversation?

Q Did you ask her to pay you for the services you rendered? A Not there, no, sir.

Q Where? A When she asked me to go to the hotel.

Q Then you asked her? A Then she wanted me. I said I couldn't go for nothing.

Q Didn't you ask for twenty-five dollars? A I don't remember what I asked her now.

Q Will you swear you didn't ask her for twenty-five dollars to cover everything? A I think it was ten.

Q To cover everything? A For going there.

Q What is the usual charge for a visit? A Anywhere from a dollar up to a hundred.

Q Tell me a case where you got a hundred? A Yes, sir, I got more than a hundred.

Q Tell me one case? A Well, I can ---

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Q For one visit a hundred dollars? A Well, I don't know as I can recall the case now.

Q You cannot recall it? A No, sir.

BY THE COURT:

Q Did you obtain any money from this defendant for services which you rendered? A No, sir, I did not.

Q When you met her at this hotel did you ask her for any money? A No, sir, I did not.

What did you say about twenty-five dollars? A Well, she called me on the 'phone; it was six weeks, maybe, or two months, I don't know how long, in October, it was cold, and I said that if she wanted to see me --- she wanted to see me in regard to her case, and I said "I can't take an eight mile trip for nothing." Well, she said, "It was all right, she would pay it", and I went there and I made an examination to see whether there was any change. I found there was no change, but I found ---

BY MR. SIEGEL:

Q Did you make that examination for the Company, or were you looking after Mrs. Strula's interests? A I made it for my own interest.

Q For your own interest? A Yes, sir.

BY THE COURT:

Q Did she ask you to examine her? A Yes, sir, she wanted me to work the company; that was the idea.

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MR. SIEGEL: I object to that.

MR. MOSKOWITZ: That was elicited by the defense. It is very important for this witness to get that statement in. It was elicited by the defense, that second visit.

THE COURT: Strike out "work the Company".

You may ask him for the conversation.

BY MR. MOSKOWITZ:

Q State the conversation you had at that time? A She asked me to make a report to the Company in her favor.

BY MR. SIEGEL:

Q You were willing to do it, if she supplied the where-withal? A No, Sir, I never did.

BY MR. MOSKOWITZ:

Q What did you tell her? A I told her that I was not the Claim Department. I asked her what she thought she ought to have, and she said she thought a thousand dollars was little enough, that she had been up to a Doctor in Paterson, and he said she would have to go to a hospital and be operated on, and he would charge her five hundred dollars; she had lost her boarders because she couldn't attend to them, and she thought she wouldn't come out even then on a thousand dollars. That is all the conversation there was.

BY MR. SIEGEL:

Q Didn't you tell her, Doctor, at that conversation that

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you would try to get your bill paid by the company? A I never did.

Q Where did you expect to get paid? A They don't pay bills.

Q Where did you expect to get the money from for the treatment? A I found what the object was for her getting me there, and I made no claim on anybody.

MR. SIEGEL: I ask that that be stricken out.

THE COURT: Yes.

BY THE COURT:

At the time that you saw this defendant in the station were you employed by the Company? A Have been for a number of years and was then.

Q Under what circumstances are you employed by the Company? A I am appointed as a surgeon for the Company for a district.

Q Without pay? A Yes, sir, without pay, except a pass.

Q Without pay except a pass? A Yes, sir; all applicants for physicians on the road have to be examined, and they are sent to me, because I get something out of it, but the Company don't pay it, the applicants pay. That is all I get from the Company, except Court fees.

Q When you go to Court to testify as a witness you receive a fee? A Yes, sir.

BY MR. SIEGEL:

Q That is, you call yourself the Company's surgeon,

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you go to Court? A What would you call it? We have a society of Company's surgeons, and we have met lately in Chicago.

Q You call yourself a Company's surgeon, because they give you a pass every year? A Well, that is remuneration, isn't it.

Q Do you actually get the pass? A Yes, sir, I have got the pass in my pocket now, - two of them.

Q That is the reason why you call yourself the Company's surgeon? A What would you call it?

THE COURT: He says that is the remuneration which he receives.

THE WITNESS: Can I tell you what the duties are? The duties are very little. We don't treat cases. The cases where people are badly injured are always removed to the hospital, and the hospital people treat them. So we simply take a statement, find out how they got injured, and what their injury consists of, and then how they were injured, just that statement, how did you receive the injury, what the age is, and so forth. I had a blank here that I gave the District Attorney, the other man.

THE COURT: The weight of this gentleman's testimony would be for the jury but so far as the question is concerned, it is for the Court to deter-

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mine whether the relationship of physician and patient existed. He says that he told this witness he was the Company's surgeon; that he was to make a report to the Company; that he came there for the Company, and that he would take what she said and make a report to the Company as to the accident. That is his statement. The weight of it is for the jury.

MR. SIEGEL: Our law is as to that matter that even if it permits a guilty person to escape the sanctity of the relationship of physician and patient must be sustained by the Court. I do not see how your Honor can doubt for a moment, that this Doctor acted as the physician of the defendant at the time. On cross examination, in answer to my questions, he said "I went to my station --- my testimony before the Grand Jury is true; I received a telephone message to go see a woman that was injured." He said, "I don't suppose it was more than twenty minutes after she was injured that I saw her. I found her in a little room, propped her up, she was groaning a good deal and said she was in great pain." That he took her in an automobile to his office; that he treated her there. Now, if your Honor please, if that can be anything else but the relationship of physician and patient, I fail to see it. This

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physician cannot limit his own relationship. What he says cannot change the relationship. If I say to this Doctor, "My brother cannot afford to pay you, but you can treat him", that does not make any difference if he goes to my brother and says, "Your brother sent me."

MR. MOSKOWITZ: I would like the full testimony of the Grand Jury minutes introduced. Not simply parts of it here and there.

MR. SIEGEL: The District Attorney knows his rights. If he wants the full minutes of the Grand Jury he can easily get them. The defense is not supplying anything to the District Attorney.

MR. MOSKOWITZ: We will have the minutes as soon as we can get them.

MR. SIEGEL: Are the exigencies of this case such that the District Attorney needs this testimony?

MR. MOSKOWITZ: It does not appear here that this defendant summoned this physician, absolutely not. This physician comes by reason of the fact that the station agent telephoned for him. He has a blank, and he fills out the blank in conformity with the rules of the company. He tells this woman he wants to know the facts. He is not called there by this defendant. He tells her what he is there for,

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that he is there to conduct an examination and "for this purpose you had better come to my office." And she goes there and then goes away. He never saw her after that, and he never treated her.

THE COURT: You may question this witness further concerning what occurred in the home of the defendant.

BY MR. MOSKOWITZ:

Q Now, Doctor, tell us what you saw of the condition of this woman at that time?

THE COURT: No. What occurred at the home.

Q Doctor, what conversation did you have with this defendant when you reached your office? A I reached her home by automobile, and I asked some man around the place ---

THE COURT: Strike that out.

Q Did you see the defendant? A (Continuing) Where the defendant was, and he said she was in a certain room. I went in there and found her in bed. I said, "I think I had better examine this rupture you got again now."

THE COURT: Strike that out.

Q Did she send for you? A She did.

This is at the home, at her house? A Yes, sir; she sent for me; she 'phoned for me; she never did before.

Now, Doctor, what did she say to you? A She said she thought I had some influence with the railroad company,

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and that she hoped I would send in a report favorable to her, as far as I remember.

Q Did you prescribe for her, Doctor? A I did not.

Q You did not? A No, sir, I did not give her anything at all.

Q Did you render any medical aid at all? A I did not.

Q You did not? A No, sir.

Q Did you ever receive any money for that? A No, sir; I have nothing on the books.

Q Did she have any talk with you, any further conversation? A After that?

Q Yes. A Well, she got up out of bed then, and I said-- I went out to start home; I could not make my machine go, the gasoline got cold, a cold night or afternoon, and I asked her if I could use the telephone to have a man come up to start my machine from town, and she said I could. Well, after I telephoned to this man, I primed my machine and it started, so I telephoned for him not to come; that is all I remember that occurred.

Q There was no further conversation with respect to medical treatment? A Not at all.

Q And none was rendered? A No, sir, nothing rendered at all.

Q No pay was received for that call? A No, sir, not a bit.

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BY MR. SIEGEL:

Q Didn't you answer a moment ago that you would not go to her house unless she arranged to pay you? A Yes, sir, I told her.

Q When did you tell her that? A When she called me up on the 'phone.

Q What did she say? A She wanted to see me.

Q What was the conversation you had over the 'phone. Relate that again. A Well, she wanted, - she didn't say she wanted to see me on account of her injury or anything of that kind, but to have a talk with me.

Q Did you know who was speaking when she telephoned?

A I knew it was her; I knew, she told me it was her; I said, "I can't spend my time going up there without compensation," and she said all right, that would be all right. I don't remember what it was, but I think it was ten dollars I would charge her to go. When I got there and found what she wanted I didn't make any claim for anything.

Q Did you use the following language to her, "Dr. Terriberry said to me that the work he had done for me was worth at least the sum of twenty-five dollars; - he stated he had done some work for the Railroad Companies, and he said he would see if he could not get the Railroad Company to pay his bill for professional services he rendered to me, as I have above stated"? A No, sir.

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Q Did you make that statement? A No, sir, I never did.

BY MR. MOSKOWITZ:

Q Were you ever paid by the Railroad Company for that service? A No, sir, never was paid.

BY MR. SIEGEL:

Q Why when she telephoned for you to come up to her house, why did you tell her you would not go up unless you received pay? A Isn't my time worth something?

Q Was it because you didn't receive anything for the first performance at the railroad station? A I never take anything from any patient, never have, never a penny in fifteen years.

Q You don't take anything from patients, and you don't get anything from the Railroad Company? A No, sir, I get nothing from patients, and get nothing from the Railroad Company.

Q You run a charitable organization? A All doctors do that. We are not like lawyers.

BY MR. MOSKOWITZ:

Q Now, Doctor, you say you were not in the habit of asking such railroad patients for money? A No, sir.

Q Is that right? A Never did as far as I remember.

Q Why did you, in this instance, ask her for money?

A Because it was her own voluntary act to send for me. It was not the Company. I was not working for the Company then.

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Q You wanted to be paid for the services you were going to render? A If I went there I wanted to be paid for it.
BY MR. SIEGEL:

Q When you made the statement before you never charged these kind of patients that was not a proper statement?

A Yes, sir.

Q You said you don't do it? A That was an outside affair. It had nothing to do with the Company at all.

Q You started out and went to her house that afternoon with the expectation of payment, and for the purpose of treating her? A No, sir, I did not; I did not think she would ever pay me anything.

BY MR. MOSKOWITZ:

Q The attorney just asked you whether when you went to the house you went for the purpose of treating her? A No, sir.

Q You went in response to a 'phone message from her? A Yes, sir.

Q At that time you had a certain conversation with her? A Yes, sir.

MR. SIEGEL: I object to the District Attorney's question on the ground that the witness has answered as I have indicated, and I think it is not proper for the District Attorney to so construct his questions as to have the Doctor take exactly the opposite position in his testimony. He says he never

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asks the railroad patients for money. He says she called him up on the 'phone, and he did ask her for money. I asked him why and he said because he expected to be paid if he was going to her house. Now I asked him if he was going there for the purpose of treating her and in the expectation of money, and he says yes, -- for the purpose of treating her and I think he said yes.

BY MR. MOSKOWITZ:

Q What was the purpose of your going to her house? A She said she wanted to see me on certain business.

Q Then you said you wanted to be paid? A Yes; I would not go there for nothing.

BY THE COURT:

Q Did she explain the nature of the business? A She did not until I got there.

Q Before you got there you expected you were going to act in professional employment? A I did not.

Q What did you ask her for money for? A For the trip, for the time.

Q How much did you ask her for the trip? A I don't remember. I think it was ten dollars. I would not swear positively about that; it ought to have been twenty-five.

Q Tell us what she said over the telephone to you? A She said she wanted me to come and see her. She wanted to see

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me.

Q What did you say to her? A I said to her it was too much of a trip, too much time. I would not come for nothing, if she wanted to seem she would have to pay for it, but nothing mentioned about treatment.

Q What did she say about paying you? A She said she would pay me.

Q You expected she would? A No, sir, I did not.

Q And without expecting that she would pay you, you still went to see her? A We do that every day among patients.

Q Doctor, a moment ago you said you don't do that? A I didn't say so; I said we are a charitable organization. We do it.

Q Didn't you just tell me a moment ago you would not go there unless you would be paid? A Yes, sir; she said she would pay me when I got there.

Q When you went there you expected to be paid? A She said nothing about it when I got there, and I said nothing about it.

Q On your way there you expected to be paid? A Yes, sir, I expected to be paid.

BY MR. MOSKOWITZ:

Q Did you demand any money for your services when you went there? A No, sir.

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BY MR. SIEGEL:

Q Isn't it a fact that the reason you did not demand payment was because you suggested to Mrs. Strula that perhaps you could get the Railroad Company to pay you? A No, sir, I did not any such thing.

BY MR. MOSKOWITZ:

Q What is the fact? What is the reason why you did not demand payment?

MR. SIEGEL: I object to that.

Objection overruled. Exception.

A The reason why I found she did not want me --- when I got there she didn't want me professionally at all; she wanted me to ---

Q State what she said? A She wanted me to send in another report.

Q What did she say? What sort of a report? A She wanted a favorable report in her case.

Q What did she say, Doctor? A She told me to send in a report to the Company, make a report to the Company in her favor, recommending them to pay her the stipend, whatever they agreed upon, she wanted a thousand dollars.

Q Do you remember what it was? A A thousand dollars she said she thought she ought to have.

MR. SIEGEL: I object to this as immaterial, if your Honor please.

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Objection overruled. Exception.

MR. SIEGEL: That does not create a waiver
under any circumstances.

BY THE COURT:

Q Did she say to you anything concerning in what way the
report was to be presented as to be in her favor? A She
wanted it in her favor, of course.

Q Did she specify in what respect? A She thought that
I would have more influence with the company by sending in
a favorable report in her interest.

Q Did she say in what respect the report should be made
favorable? A In the amount of money she wanted; they had
not settled with her then.

BY MR. MOSKOWITZ:

Q Was that report a false report or a true report?

Objected to. Objection sustained.

THE COURT: He may state the details but he
cannot characterize it.

THE WITNESS: What report is that?

Q The report she requested you to make? A I did not send
any report in.

Q What is that statement? A I didn't send in any report.

THE COURT: Can you show whether any claim was
made by the defendant here?

(Mr. Moskowitz confers with the Court.)

(The Court then admonished the jury, calling
their attention to Section 415 of the Code of Criminal
Procedure and took a recess until 2:30 o'clock.)

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AFTERNOON SESSION.

December 1st, 1910.

D R. G. W. T E R R I B E R R Y resumes the stand.

DIRECT EXAMINATION BY MR. MOSKOWITZ: (continued)

Q Doctor, how long were you a physician and surgeon?

A How long?

Q Yes. A Well, I have been in private practice forty-five years next June.

Q And during all that time had you any experience ~~in~~ with hernias or ruptures? A I have seen a great many.

Q Doctor, at the time you saw this woman, Mrs. Strula, what was her condition?

MR. SIEGEL: Objected to, if your Honor please.

THE COURT: Your question is what?

MR. MOSKOWITZ: At the time you saw this woman, what was her condition?

THE COURT: I sustain the objection to the form of the question.

BY THE COURT:

Q Doctor, let me ask this question: Did you have any talk with this defendant as to how the accident happened?

A Yes, sir.

Q State what, if anything, she said to you. A In this report that I made out, there is a question of that kind. She said that she was thrown by the lurch of the car on the

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arm of the seat. I asked her if she got up before the train stopped and she said no. I asked her where she sat in the train. She said about midway. I asked her where she was when she fell and she said near the door. This train backs into Paterson and stops and goes out again, and this train backs in.

Q What else did she say? A Well, that is all I remember about that. She said she struck on her stomach on the arm of one of the seats and that --

MR. SIEGEL: I object to that, if your Honor please, and ask that it be stricken out as to what occurred, at least to what injuries she sustained. The question is simply directed to ^{what} did she say as to how the accident occurred; that is, the cause of the injury.

THE COURT: Yes, strike out the last question.

BY THE COURT:

Q Now, doctor, when you questioned this defendant, whatever you said to her and what she said to you, was her information necessary for you to know in order to treat the defendant for the injury which she then claimed to have sustained?

MR. SIEGEL: I object to the question propounded by the Court upon the ground it tends to call for a conclusion of the witness.

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THE COURT: Objection overruled.

A I don't think so.

Q You don't think so? A No.

Q Did you have any talk with her about the report at that time? A Well, I either did at the station or at the house.

Q Do you remember what you said to her? A I said I would have to take her history.

Q Did you tell her what you were going to do with the report? A Yes, she understood that.

Q What did you tell her? A When did I say it to her?

Q What did you say to her? A I simply asked her questions as to her age --

Q No, what did you tell her you were going to do with the report? A I told her it went to the company.

MR. SIEGEL: I object to the answer and ask that it be stricken out in that it tends to answer a question already answered, and in fact contradicts the witness' own testimony, because he said when he went to the house and learned what she wanted him for she refused to let him have anything to do with --

THE COURT: That is not the house. This is the doctor's place.

MR. SIEGEL: I object to it. It has been gone over this morning and answered.

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THE COURT: I beg your pardon. These questions were not asked. I overrule your objection.

MR. SIEGEL: I take an exception.

Q You say that you told her that this report would go to the company? A I did.

Q What did she say as to that? A Nothing, as far as I know.

Q She said nothing? A No.

MR. SIEGEL: I ask the first portion of the conversation be stricken out, because the doctor cannot give the full conversation. He has to be able to give the entire conversation or none at all.

THE COURT: Motion denied.

A (continuing) I asked her if she was willing to sign. She said she was.

Q Did she sign it? A Yes, she signed it.

THE COURT: Have you got that report here?

MR. MOSKOWITZ: Your Honor, the Erie records have all been destroyed and we cannot locate it.

THE COURT: If the defendant signed that report and that report was to go to the company, then this defendant made a publication which unseals the lips of this physician.

MR. SIEGEL: I respectfully disagree with your Honor.

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THE COURT: Well, you may take your exception.

MR. SIEGEL: I take an exception that it does not constitute a waiver of the Statute.

BY MR. SIEGEL:

Q Do you want the Court and jury to understand that you had the defendant sign your report? A Yes, I did, her own statement; her own statement, when I wrote it out.

Q In your report? A It was part of the report. It was the report how she was injured and whether she had ever been injured before.

MR. SIEGEL: I ask that be stricken out; no proper foundation been laid for it.

THE COURT: Strike out, "it was the report how she was injured and whether she had ever been injured before." I will allow the District Attorney to make proof as to his inability to procure that report. Make no statement.

MR. MOSKOWITZ: Your Honor, we were very anxious to get the records of the Erie railroad --

THE COURT: Make no statement.

MR. MOSKOWITZ: The statement which we have --

THE COURT: Do not make any statement.

MR. MOSKOWITZ: The people who can prove that are not here and will not be here until morning.

THE COURT: I will give you ample opportunity

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t o prove it. You may question the doctor and ask him what he said at the time; what he said to her and what she said to him.

BY MR. MOSKOWITZ:

Q Doctor, what did you ask this witness in regard to her medical history; anything? A I think not.

Q To any previous injury? A What is that?

Q As to any previous injury?

MR. SIEGEL: I object to the question.

A I do not think I ever asked her anything about it.

MR. SIEGEL: I object to the question.

THE COURT: You may ask what if anything was said.

THE WITNESS: I don't think there was any conversation; strictly a business --

BY MR. MOSKOWITZ:

Q Well, with respect to the business of which you speak, what was the conversation that you had with her then?

A Well, I asked her these questions and wrote them down on this report.

Q Now, what were the questions? A Well, first her age and whether she had children.

Q Yes. A And whether she was a native and a certain line of questions.

MR. SIEGEL: I ask it be stricken out as not

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the best proof, if your Honor please.

THE COURT: Just a minute. Strike that out. You may offer proof of the destruction of the documents under People against Dolan, 186 New York.

BY THE COURT:

Q Do you remember what conversation, if any, you had with this defendant, either at the railroad station or at your house? A Nothing especially, except what I have stated. I wrote this report and described the injury; that is all; and described it on the book.

Q Do you remember what if anything the defendant said about the nature of the injury? A Well, she said first that this was a new thing; a new rupture.

MR. SIEGEL: I object to the answer and ask it be stricken out.

THE COURT: Objection overruled. I will give you the benefit of an exception.

MR. SIEGEL: You are going right into the proposition as to --

THE COURT: Yes. I overrule your objection.

MR. SIEGEL: I will ask your Honor this: Is your Honor going to rule this is not a confidential communication?

THE COURT: Yes. Give you the benefit of an exception.

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A (continuing) This rupture that she had was about as big as her head; that is before I examined her. When I examined the rupture I said, "It is an old affair." Then she acknowledged it was.

Q Do not state she acknowledged. State what she said.

A Well, she said it was; that it occurred either at the birth of a child or after an operation.

BY MR. MOSKOWITZ:

Q How long ago did she tell you? A Well, if it was the birth of a child, a young man, it would be twenty or twenty-five years, and it might be thirty. I don't know.

THE COURT: Strike that out. I don't ~~want~~ want you to indulge in guess work, doctor. Did she tell when the child was born?

THE WITNESS: She did not tell me when it was born. It was a young man. He came there.

Q Did she refer to her son? A She did not refer to only her child.

THE COURT: Strike it out.

You can examine the case of People against Hirsch, 77 New York (?) and People against Carlisle Harris.

MR. S. SALT: I am familiar with both cases.

THE COURT: I have given this question very careful consideration, and I have come to ^{the} conclusion that this evidence is competent and the weight of

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the evidence is a matter for the jury.

MR. SIEGEL: The question first to be determined is did the doctor act as her physician, and I say to your Honor again --

THE COURT: And I have decided that as a matter of law, within the authorities, that the relationship did not exist, and give you the benefit of an exception.

BY MR. MOSCOWITZ:

Q What ability did you have to see her condition?

MR. SIEGEL: I object to the form of the question, if your Honor please.

THE COURT: Sustained.

Q Well, describe her condition as you saw it? A I looked at her abdomen and I saw a little protrusion there, which to my mind, contained no gut. It was fat and omentum, and for fear that there might be some accident I put on a pad, strapped it on and she went home; very little conversation about it.

BY THE COURT:

Q When you told her that it appeared to you that the hernia was of what kind of origin, did you say? A An old hernia.

Q An old hernia? A An old hernia.

Q She then said to you what? A She said that it was.

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She had a hernia there and it occurred either after an operation or at the birth of a child.

Q In your professional experience how many cases have you examined of hernia; how many cases where a patient has suffered from hernia have you examined? A Well, this kind of a hernia?

Q Yes. A All kinds?

Q All kinds? A Oh, probably five hundred or a thousand.

Q What kind of hernia is that? A Well, this would be called a ventral hernia; it is so near the umbilicus that it might be termed an umbilical hernia; it is just on one edge of the umbilicus.

Q You say that you found no evidence of a recent hernia; of a recent hernia? A Gut? No, I did not.

BY MR. MOSCOWITZ:

Q Doctor, will you point out the hernia? A (Indicating on figure) That is the umbilicus, where that pin is on; the hernia occurred right around like this (indicating) the edge was at the umbilicus; that is the depression there, but it did not go through that depression; it came through on the side and it was probably as big as an egg; maybe as big as a large egg or a small orange.

BY MR. SIEGEL:

Q Will you point out where the gut came through?

A It came through here adjacent to the umbilicus on

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her left, as far as I remember.

Q On the left? A On the left and below -- below and on the left; that is my impression now.

MR. SIEGEL: Well, I object to it and ask it be stricken out; the doctor says it is his impression.

A (Cont'd) Well, I will state it for a fact.

BY MR. MOSCOWITZ:

Q Doctor, other than the hernia that she mentioned she sustained some years before at child birth, did she ever tell you she had ever had any other hernia since? A She never told me of any other hernia or any other trouble.

Q That was the only one she spoke of? A That was the only one referred to there.

Q Did you ask her whether she had sustained any?

A Why, I asked her where she was injured and she only referred to this injury; that is all.

Q Did you ask her whether she had ever sustained any other. Did she volunteer the fact she sustained this old one? A Yes, and it came out as big as her head.

Q And she spoke of no other? A No other.

BY MR. SIEGEL:

Q Did you examine her? A Did I?

BY MR. MOSCOWITZ:

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Q Doctor, what did you do with the report that you made mention of a while ago, which she had signed? A I mailed it to the Claim Department of the Erie Railway at Jersey City.

BY THE COURT:

Q At the time that you questioned her was anybody present? A I don't think so.

BY MR. SIEGEL:

Q You personally mailed the report, Doctor? A What is that?

Q Did you personally mail the report? A I did.

Q You say you would describe this injury that you saw properly as a ventral hernia? A Well, it could be called ventral, or an umbilical, but is is more ventral.

Q Well, which is absolutely correct? A Well, possibly you might call it a ventral hernia.

Q Possibly you might call it a ventral hernia? A Yes.

Q Will you please point out exactly on the figure where this hernia was? A Well, that is the umbilicus there (indicating); there is the depression; this hernia occurred on the left side and below.

Q Well, will you point to it, please? A Well here; I am pointing to it.

Q That is where it was? A It was right here (indicating) if it had been proper umbilical it would come right out

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through the navel, but it come out just at the edge.

Q You are now familiar with the condition of Mrs. Strula at that time? A What is that?

Q You now are familiar with the physical condition of Mrs. Strula at that time? A At that time I never saw the woman before.

Q Are you now familiar with what her physical condition was at the time you examined her? A I did not see any reason to think that she was anything but a good --

Q Please answer the question? A What do you want me to answer?

Q Are you familiar with Mrs. Strula's condition at the time you examined her? A Why, there was only this little protrusion there; that is all.

Q Just loan me the pencil; this little protrusion that you describe right here (indicating) A No, not as far over.

Q Right there (indicating) A Right along here; here is the navel and it occurred right around here (indicating)

Q It was not down here (indicating) was it, doctor?
A No.

Q It did not come down here at all, did it? A No.

Q Are you familiar with Dr. Coley's diagnosis of the condition of Mrs. Strula in November, 19 10? A No sir.

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Q November, 1910? A No, sir.

Q You are not? A Know nothing about it.

Q 1906, I mean? A I know nothing about it. I never met Dr. Coley or any of his writings until ---

Q Would you say her condition was such that if she had come down a flight of steps and slipped on something and fallen about four steps, doubling up and falling to the foot of the steps, that her condition was such that a rupture could also have occurred where I indicated below the umbilical space there? A Oh, there is a possibility.

Q There is? A If she was not protected. You may get a hernia anywhere from a fall.

Q Her condition was such that she may have gotten a hernia anywhere in the location of the abdomen? A Might have got a femoral hernia, or anything else from the fall.

Q You say she told you she did not have an injury before?

A I don't remember any.

Q Do you remember her having a long scar extending from the top paper to the bottom paper? A There was a scar, 2 or 3 inches long.

Q 2 or 3 inches long? A Of course I have nothing to go by definitely, but I know there was a scar there, but it did not seem to me very long; I would not say 3 inches or 4 inches.

Q Did you question her about the scar? A She said she

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had been operated on, laparotomy, for some trouble.

Q Still you want us to believe she said she never had any trouble before? A Never had any injuries.

Q Did the scar, or what you call a cicatrix-- A I will tell you about the injury.

Q I don't want you to tell about the injury. A The question is --

Q Did not the scar indicate -- A It only relates to this railroad; that is all. "Have you ever been injured on this road before?" And she said "No". I did not ask her anything more.

Q Have you finished now, Doctor? A Yes, sir.

Q Didn't this scar, when you saw it, indicate to you that she had been operated on? A I supposed she had, yes.

Q You supposed she had, or you could tell absolutely that she had? A I think she had, yes.

Q Did you question her about the scar? A Not at all.

Q You did not say a word to her about it? A No; did not ask her except what she volunteered to tell me.

Q When you saw her in the railroad station did the intestines protrude? A No; I made a very --

Q Well, what do you mean? A I made a very slight examination, because I did not have the opportunity --

Q When you got her to your office from the railroad station, did her intestines protrude? A Not a bit.

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Q Well, why did you testify and tell the Grand Jury you put a little compress on it and put some strips over it?

A As a protection; as a protection to her; that is all.

Q As a protection to her? A As a protection; if there was any gut there; there was no gut there.

Q Was it a protection for the Erie Railroad Company?

A No, not at all. The Erie Railroad had got nothing to do with it.

Q The Erie Railroad Company had nothing to do with it?

A Not so far as I am concerned. I am independent of the Erie Railroad Company, as far as that goes.

Q Didn't you answer the District Attorney's question,

"Q You are surgeon for a branch of the Erie Railroad Company?" A I am.

Q Then don't fence with me, Doctor, answer questions fairly at least. What was the name of the railroad you say you were connected with? A New York, Susquehanna & Western Railroad.

Q New York, Susquehanna & Western Railroad. All right. Now, when you put the strips and the compress over, did you do it for her own protection or for the protection of the New York, Susquehanna & Western Railroad? A I did it because in my own judgment it might be best; I did not take into consideration the New York, Susquehanna & Western, or her.

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Q Were you considering the fact that you were treating her then as a physician? A Not at all; not on her account.

Q Well, what would you call that? A Why, we are always obliged to fix a patient up when we get one, by the railroad company.

Q That is, the railroad company instructs you when you answer a call, to fix the patient up? A Yes, or to fix up a trespasser, or a passenger, or anybody.

Q Did you say that you did it to protect your own judgment? A Well, I did it to protect — yes, my own judgment.

Q What do you mean by that? A Well, because in the first place I did not think there was any need of it, but I did something that would give her relief and I might have put a bandage on her, but I did not.

Q Assume, Doctor, that in November, 1906, her condition was such that if she had not been operated on immediately she may have died of strangulation of the intestines, would you say that if that condition existed in November, that it could have been the same injury? A That condition did not exist.

Q Did not exist when you saw her? A No.

Q And before such a condition could exist she had to meet with some violence, didn't she? A Well, not neces-

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sarily, if that gut came out.

Q Can you get a hernia of that condition by —

MR. MCCORMICK: I object. Let him answer the other question.

A (Continued) If you take a ventral hernia you do not often have strangulation, because the opening is so big it goes in and out of its own accord. Now, with inguinal hernia it is different.

Q But in order to have a condition which was necessary to be operated on, otherwise she would have died of strangulation of the intestines, wasn't it necessary she should have met with some violence after the time of your examination?

MR. MOSKOWITZ: I object to the question as not intelligible.

THE COURT: Overruled.

MR. SIEGEL: Did you understand the question?

A I understand you to say if she had strangulated hernia is it necessary for her to be operated on.

Q No. A Would it be necessary to operate on her if she had strangulated hernia.

Q You describe her condition as not even needing a compress, or a strip of plaster at the time you examined her at your office. Now, I ask you if in November, 1906, her condition was such that she was liable to die of strangu-

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tion of the intestines unless she was operated on immediately, that she must have met with some violence between your examination and that condition in November? A But there was no such condition.

MR. McCORMICK: I object to the question.

A (Continued) There was no such condition.

MR. McCORMICK: It assumes facts not in evidence.

THE COURT: I will allow it.

A (Continued) Well, there was no such condition, so I cannot give an answer to the question.

Q Assume there was such a condition in November, would violence be necessary to cause that condition? A I do not just understand.

Q Such as would be induced by falling down four steps of a stairway? A Would it be necessary to operate, do you say?

Q (Question repeated by Stenographer as follows): Assume there was such a condition in November, would violence be necessary to cause that condition, such as would be induced by falling down four steps of a stairway? A I do not think any violence would produce strangulated hernia.

Q What is the answer? A I do not think falling down four steps would produce such a hernia that it would be

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necessary to operate on her.

Q You do not? A No.

Q If she did fall down ten steps would it be liable to produce hernia?

MR. McCORMICK: I object to that question because it assumes facts not in evidence.

THE COURT: Is there any evidence she fell ten steps?

MR. SIEGEL: My question was induced by the doctor's answer. He said if she fell down ten steps he did not think it would produce hernia.

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Q Did you ever hear of Dr. Coley, 5 Park avenue?

MR. McCORMICK: I object to that. He said he never did.

A I never saw him. I never knew there was such a man until my son, who is a doctor here in New York, pointed him out the other day.

Q Do you know his reputation in the profession? A I asked him what he was known for and he said for injecting serum in cancer. He did not say anything about hernia at that time.

MR. McCORMICK: I move to strike that out, because the question was whether he knew his reputation.

A (Continued) I did not know his reputation. I never knew there was such a man living.

MR. McCORMICK: I move to strike the answer out, what his son told him.

THE COURT: Strike it out.

BY MR. SIEGEL:

Q You say she had a slight cut on the side of the umbilical space? A I don't remember any such thing as that.

What do you describe was there? Describe it again.

MR. McCORMICK: I object. It has already been described by this witness several times. This cross examination is repetition.

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THE COURT: Why do you have him repeat this?

MR. SIGEL: For a purpose; I want him to describe it.

Q Please describe it again, Doctor? A It was simply a protrusion there.

Q What do you mean by a protrusion? A Well a tumor. A tumor is a protrusion.

BY THE COURT:

Q An extension? A It is something abnormal.

Q It extended out? A It pouted out.

BY MR. SIEGEL:

Q It was not a hernia? A It was fat and omentum.

Q Now, answer the question, Doctor: It was not a hernia, was it? A Not of the gut.

MR. McCORMICK: I object. That has been covered. He has already testified.

THE COURT: No, I will allow it.

Q Would you describe it as a hernia? A I would describe it as a certain kind of hernia, but not a hernia of the intestines.

Q What kind of a hernia? A Well, simply a protrusion of some fatty matter and omentum.

Q Is that a hernia? A That is a hernia in one sense, not of the gut, though.

Q In what sense is that a hernia? We are talking about

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medical terms, medical sense. A I understand. Well, you can call it a protrusion, if you like.

BY THE COURT:

Q Well, is a protrusion a hernia? A Not always, no.

Q Now, Doctor, it is of the greatest importance for this jury to know whether what you saw on this woman consisted in the medical term of hernia; whether you can say that in the medical profession you would regard the matter which you observed as a hernia? A Well, hernia is a general term.

Q I understand; was it a hernia or not, whether it was a ventral hernia? A It was a ventral hernia, and contained, as I say, fat and omentum.

Q Was it a ventral hernia? A Ventral hernia without intestines.

Q Without intestines? A Yes.

Q But it was a hernia? A It was a hernia without intestines. You can have a hernia of the brain.

BY MR. SIEGEL:

Q What is a hernia? Tell us what is a hernia?

MR. MCCORMICK: I object as having been answered already.

THE COURT: Overruled. He may answer it.

Hernia is an abnormal protrusion through an opening.

Q That is a hernia? A That is a hernia.

Q What is an umbilical hernia? A An umbilical hernia

would be a protrusion through the umbilicus.

Q Of what? A Well, whatever contents the abdominal cavity might contain. It might be a gut with fecal matter in it.

Q What is a ventral hernia? A A ventral hernia is a direct hernia through the abdominal walls, often occurring after operations, and after the stretching of the muscles in pregnancy.

Q Wouldn't you describe this then as a ventral hernia, in view of the fact you learned she had been operated on before? A I would consider it a ventral hernia, just what I say, the contents of which I have just told you.

Q The ventral hernia --- A. You might go with a ventral hernia, with fat and omentum and live for years and years and years without any trouble.

Q Well, now, let me --- A The danger of hernia is strangulation that occurs.

Q You were a witness before the Grand Jury on June 1st, 1910? A I think so. I was down there. I do not know what date was.

Q You remember being a witness before the Grand Jury? A Once.

Q Well, that is on the first occasion, Doctor? A All right.

Q Now give the following testimony: "There was a

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5hh

little tumor there. There is no cut, to my idea. There is simply a fissure from the interior. She was a very flabby, fat woman. She had a large stomach, probably three or four inches of adipose tissue over it ---" A I guess that is right.

Q Is that true, "There is no cut to my idea"? A No cut at all, no abrasion.

Q And still you would describe it as a ventral hernia?

A Yes.

Q Well, tell us again what does a ventral hernia consist of?

MR. McCORMICK: I object to that.

Q Well, what is a ventral hernia? A A ventral hernia, I will tell it, is a direct hernia from the abdominal cavity. An inguinal hernia is one that goes down the inguinal canal.

Q In the ventral hernia must there not be a cut? A No, no cut.

Q A break? A No, there may be a separation of the muscles, but no cut.

BY THE COURT:

Q Would you consider separation of the muscles a break?

A No, I would not.

BY MR. SIEGEL:

Q What would you consider it as simply a separation of the muscles? A Simply a separation.

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Q Do they separate themselves, or is it caused by a break of the muscular tissue? A It may occur from pressure inside.

Q From pressure inside, it breaks, does it not? A No, not necessarily. The muscles run up and down and they separate and there must be some pressure inside to do it. In a weak, flat abdomen, it is very apt to be so.

Q You said it was no cut to my idea? A I understand by that there was some abrasion outside, so you could see a cut. There was nothing of that kind.

Q Couldn't you see she had been operated on? A I saw an old cicatrix, an old scar.

Q Extending --- Well, extending from the umbilical space down to the end of the abdominal cavity? A I don't think so. My recollection is it was three or four inches, three inches.

That would be sufficient to indicate to you there had been an operation? A Yes, I think there was an operation all right.

Now, did you make a careful investigation of her at that time? At which time?

Q The time that you saw her at your office? A I simply examined this protrusion, or rupture, you can call it.

Q I do not call it a rupture, Doctor, you described it
as a rupture. A Well, a hernia. I only examined that,

because she did not refer to any other injury. I only had her --- I think I was all fixed up in fifteen minutes, but she stayed there on account of her son coming.

Q In a true medical sense would you describe her condition now as what you term a hernia? A Now, at the present time?

Q At the present time? No, at the time you examined her?

A An old protrusion, or hernia. You can call it an old hernia.

Q Not what I would call it. Would you describe it medically as a hernia? A I would, yes, sir.

Q You would? A Yes.

Q That is the only thing you examined? A That is the only thing I examined.

Q Did she tell you that she had previously suffered from umbilical hernia? A No, she said she had not at first.

Q She said she had not? A She said she had not at first, but she retracted that ---

Q Let me ask you ---

MR. MCCORMICK: Let him finish the answer.

THE COURT: Yes, finish the answer.

A (Continuing) She said that when I first questioned her about it ---

MR. SIEGEL: Just a moment. I ask the question and answer be read, and then if your Honor thinks there is anything ---

Q (Question and answer repeated by the stenographer as

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follows:) She said she had not? A She had not at first but she retracted that ---

THE COURT: You may answer the question.

MR. McCORMICK: Finish the answer.

Q She said first that she had no rupture, but afterwards she said ---

BY MR. McCORMICK:

Q After what? A After I had examined her at the office I said, "It is an old rupture", and she said "Yes, it is, but it had been aggravated by this injury."

Q But it was not? From your examination you could say that it had not been aggravated very much, couldn't you?

A Had not been aggravated, no.

Q Had not been aggravated at all? / No.

MR. McCORMICK: That is all.

MR. SIEGEL: If your Honor please, for the purpose of the record, I want to make a formal motion to strike from the record all the testimony of Dr. Terriberry, on the ground that it is a confidential communication between this physician and the defendant, establishing the relation of physician and patient.

THE COURT: Why, it appears from the testimony given by this physician that he told her that he was the Company's physician, and that he came for

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the company to ascertain the nature and extent of the injury; to make a report to the company, and that he told her he wanted her to answer questions for the purpose of furnishing a report to the Company; and that she signed a report. I think that under the circumstances the relationship did not exist, and furthermore that when this defendant signed a report and authorized him to send it to the company she made a publication to the world.

BY MR. SIEGEL:

Q When was this report signed by her, Doctor? A The same afternoon that she was there.

Q Where? A In my office.

Q After taking her in your automobile from the Railroad Station? A Yes, after I had examined her and fixed her up, and she went home.

Q Yes. A While she was in the office I made the report out and sent it right away, the same day, and probably within two hours after.

THE COURT: He told her this report would go to the Company. Even if the relationship was confidential, by signing that report to the Company she made a publication to the world, and the Code provision in relation to a waiver signed by a patient, you will recall in People against Blum, they refer to

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the case of Clifford against the Denver & R. G.
R. R. Company, 188 New York, and in the cases cited
therein, wherein the Court stated that the waiver,
the written waiver related to cases where insurance
companies would exact a waiver for the purpose of
future use, but it has always been held in the
Blum case once there is a publication it is a
publication to the world and in this case she signed
a report which this physician, representing the
company forwarded to the company. Of course the
People will have to present proof as to what became
of the report. It was a publication. And then
again, the fact ---

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MR. SIEGEL: There is no proof as yet, if your Honor please, that she signed the report.

THE COURT: The doctor said she signed it.

MR. SIEGEL: But the report is the best evidence as to whether she signed a report, and if the People cannot prove the report has been lost or destroyed, necessarily the doctor's testimony must be stricken out, and according to your Honor's ruling, the testimony must fall.

THE COURT: Not necessarily, because the doctor said, "I came there not as her physician. I came there representing the company." While in the Koerner case Dr. Ward, who treated Koerner in the Tombs, afterwards told him he was not his physician, and the Court allowed that evidence and sustained it, and I believe the evidence is competent on another ground, which I do not deem necessary to explain to the jury.

BY MR. SIEGEL:

Q Let me ask you this, doctor: When you wrote out your report you had finished your examination of her, your physical examination? A I had.

Q I mean your objective examination? A Yes, my subjective.

Q Your subjective and objective? A My subjective and

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objective both.

Q Now, did you say anything to her before you had her sign the report? A Well, I said, I read it over to her, and I said, "I want you to sign it."

Q Yes. A And she said, "All right." I said, "It is your statement, just what you told me."

Q Yes. And then she signed it? A And then she signed it.

Q And that is all that you said to her about the signing of the statement? A That is all.

MR. SIEGEL: Now, if your Honor please, clearly it is incompetent, because he does not say here he is going to forward it to the railroad company.

MR. MCCORMICK: He has already testified he told her it was for the company.

THE COURT: You simply questioned him concerning that branch of inquiry, but you have got to take into consideration the entire conversation.

MR. SIEGEL: He said he finished his subjective and objective examination. He then read the report over and said, "This is your correct statement." And she said, "Yes." He said, "Will you sign it?" And she signed it, and he said that is all he said to her.

MR. MCCORMICK: No, he also said he told her

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he was going to send the report to the company.

THE WITNESS: She signed the report and I witnessed it.

BY MR. SIEGEL:

Q You read it to her? A I read it and witnessed her signature.

Q You read the report to her, did you not, doctor? A Her statement.

Q Her statement? A Her statement I read.

MR. SIEGEL: If your Honor can imply from that an authorization to publish the report to the world, I don't think your Honor --

THE COURT: I have. You can take the benefit of an exception.

BY MR. MOSKOWITZ:

Q When you examined her and found this condition, I believe you testified a little earlier in the day that you saw her six weeks later and her condition was unchanged?

A Yes, I would not be positive what time, but it was pretty cold weather.

Q Some weeks later, about four or five or six weeks?

A Yes, it was the last of August, in September -- it must have been in October when I saw her and her boarders had practically all gone, gone to their homes, her summer boarders.

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Q This was October, you think? A I haven't any record, but I think it was October.

Q Was it the middle of October? A I suppose it was the 10th or 12th.

Q And this was October, 1906? A October, 1906.

BY MR. SIEGEL:

Q You examined her when you went to her home? A When I went to her home I looked at this hernia.

Q Did you examine her? A I only looked at that hernia. I examined that.

Q I thought you told us this morning when you found out what she wanted you would not have anything to do with her. A As far as making out a report, I did not make a report out; she wanted me to make out a report in her favor to the company, thinking she would get more by it and told her that was up to the Claim Department.

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Q Isn't that a fact that was the first time there was ^{she knew} any talk about any report to the company? A No, a report went in. She wanted another report.

Q Without looking at the report can you tell us the date of the report? A No, sir, I did not keep any copy of it.

Q Without seeing the report now can you tell us from memory what was on that report? A Yes, sir.

Q How many reports have you made out like that?

A Oh, I make out on an average two a month; maybe three; maybe sometimes three or four months I would not make any out.

BY THE COURT:

Q You say you could without the report? A I can give the general facts. It is a very brief thing.

BY MR. MCCORMICK:

Q Well, give it. A Well, in the first place, they ask age of the person, the name and the age and whether they are foreigners, how many children they have and whether trespassers or passengers or employees, then I describe --

MR. SIEGEL: I object to that.

A (continuing) And I describe that on the report --

THE COURT: Objection overruled.

A (continuing) I left the report here.

MR. SIEGEL: I object to the contents of the report, if your Honor please.

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THE COURT: You asked him.

MR. SIEGEL: I am entitled to a yes or no answer.

THE COURT: He is not giving the contents. He is not attempting to give any description of the injury. He is simply stating what the report contained. You asked him if he can remember the questions incorporated in the report, and he said yes. However, if this evidence really is not material. Proceed.

H A R V E Y A. L A K E, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. McCORMICK:

405 East 8th street, Flatbush.

Q What was your business in the month of December, 1906? A Investigator and adjuster for the Brooklyn Rapid Transit Company.

BY THE COURT:

Q What month? A In December, 1906.

BY MR. McCORMICK:

Q Did you see this defendant during the month? A I did.

Q Where? A At 215 West 120th street.

Q In this Borough? A New York.

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Q Do you know what day that was? A On the 25th of December, I first saw her.

Q Where was this place where you saw her? A 215 West 120th street, when I first saw her.

Q Did she live there at that time? A She said she was stopping there with, I understood, some friends.

Q Now, what conversation did you have with her there?

MR. SIEGEL: Objected to, if your Honor please.

The conversation took place on December 25th, 1906, and can in no way tend to prove the falsity of the representation made.

THE COURT: On the authority of People against Mayer, 80 New York, and People against Weisenberger, 73 Appellate Division, I will allow it. Objection overruled.

Q Go ahead.

THE COURT: Prior and subsequent acts admissible.

A (Continuing) I introduced myself from the Brooklyn Rapid Transit Company.

Q What did you say to her? A I told her that my name was Lake, from the Brooklyn Rapid Transit Company, and I had a report --

Q You will have to talk louder than that. A Of her meeting with an accident in Brooklyn.

Q On what day? A On the 22nd of December, 1906.

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Q Go right on and give the whole of the conversation.

A I asked her how the accident happened and she told me that she had went over to a firm or store owned by Moe Levy to buy a fur coat, she come out and was waiting on the corner to get a car going to New York. The car come to a stop and she was in the act of getting on. She had one foot on the lower step. The other foot she was placing, or about to place, on the platform, when the car started ~~not~~ suddenly or quickly, I believe was the word she used, and threw her so that her stomach fell on the doorsill. She said she remained on the car until it reached Brooklyn Bridge, then she felt terrible pain in the lower part of the abdomen. She had to get off the car, and she requested an officer to call an ambulance, which was done. She was taken to the Brooklyn Hospital, remained there, I believe, for three days, went home to this address at 215 West 120th street, and she had not had any doctor then. I went there in the afternoon of December 25th, but she said that she felt there was a swelling on the lower part of her abdomen and it was very sore. She did not know what it was; that she had been unable to eat anything and retain anything on her stomach. She had also claimed vomiting spells and that she was suffering a great deal of pain and that thirteen or fourteen years ago, at that time she said she had some ovarian trouble and one ovary was removed, and she thought possibly that there might

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be some weakness there, and that maybe part of the cause of her suffering such pain. I asked her if she had any other accident previous to this, and she said no, not any, and I said, "Have you any idea what this swelling is; how large it is?" She said, "Well, it is quite a large swelling. I do not know anything further as to what it is or how big it is any more than there is some swelling down there." Then I suggested sending over a physician who represented the railroad company and make an examination in New York for us, or investigation. She said she was perfectly satisfied to permit an examination, and then I told her -- I left my care and told her I would come back again and see her after I had an examination from the doctor. On the 29th I called again.

Q On the 29th of December? A On the 29th of December, the same year, and I made a settlement with her and paid her \$50. That was the end of the business that I had had.

Q What name did she use during the transaction? A She gave the name as Anna Sturla; Mrs. Anna Sturla. In the report I had first, turned in by the conductor, it was Mary Fuller, or Miss Fuller.

Q Same address? A 215 East 120th street.

Q Did you go there? A I went there and went all through the house, on the 23rd of December, the day following the accident.

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Q How did you locate her at the place you found her?

A On the 24th, I believe it was, there was a telephone message come in our office by somebody reporting himself as a friend --

THE COURT: No, no, that is objected to.

MR. SIEGEL: I ask that the witness' testimony in relation to the Fuller episode be stricken out.

THE COURT: Yes, strike it out.

BY MR. McCOLEMAN:

Q Did you have any conversation with her as to why she had used an assumed name? A No, I did not.

Q Did you get a general release from her? A I did.

Q Have you got it? A Yes, sir.

Q Did she say anything else to you in regard to the injury she had sustained; what it was?

MR. SIEGEL: I object to it, if your Honor please, as absolutely leading.

(Objection overruled; exception).

MR. SIEGEL: He can tell the conversation, and that is what the witness has done. I do not think the District Attorney ought to direct the witness' attention.

(Objection overruled; exception);

A (continuing) I asked her what the injury was, or the extent of the injury. She said she did not know, excepting

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a swelling there.

Q Where? A In the lower abdomen, she expressed it.

Q What term did she use in describing it? A Only as a swelling; just a swelling there. I asked if it was something like a hernia, and she said she did not know. It was a swelling. I took it for granted it might be a bruised condition of the abdomen.

MR. SIEGEL: I ask that the witness' testimony be stricken out.

THE COURT: Motion granted, and I direct the jury to disregard the evidence. Gentlemen of the jury, the testimony given by this witness must be absolutely disregarded by you. Hereafter, Mr. District Attorney, I should be extremely careful to see that you bring yourself within the rule. I do not want witnesses to give testimony and then be obliged to strike it out. The jury will disregard it as though the testimony was not given, and his testimony must not in the slightest degree prejudice you against the defendant.

WALTER B. DIVISON, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MCCORMICK:

120 Avenue A, Bayonne, New Jersey.

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Q Where do you live? A 120 Avenue A, Bayonne, New Jersey.

Q In the month of January, 1907, what business were you engaged in? A I was special agent for the Central Railroad of New Jersey.

BY THE COURT:

Q What railroad? A Central Railroad of New Jersey.

BY MR. MCCORMICK:

Q Did you see the defendant in the month of January, 1907?

A I saw a lady by the name of Mrs. Anna Strula, or Sturla.

Q Is she in this room now? A I think so. I would not be positive of it.

Q Well, is this the lady (indicating defendant)?

MR. SIEGEL: I object to it, if your Honor please.

THE COURT: No, I do not think you should point to her.

Q What conversation did you have with her?

MR. SIEGEL: I object to it, if your Honor please.

THE COURT: Sustained. You must identify the prisoner.

Q Are you able to identify her? A I would hesitate to swear that was Mrs. Strula I saw at the time.

Q You would or you would not? A I would not want to

swear it. There are reasons why I could not.

Q What are the reasons?

(Objected to; objection sustained.)

Q Well, did a woman giving the name of Strula have a conversation with you? A Yes, sir.

Q And did that woman look like anyone who is here now?

MR. SIEGEL: Now, if your Honor please, --

THE COURT: No, no. This is a criminal case.

We want evidence.

Q You are not able to identify her, is that right?

A Well, I would not want to go on oath as saying I am sure it is the same person, no, sir.

Q Well, did you have a conversation with a woman named Strula, or a woman who gave that name? A Yes, sir.

Q What kind of looking woman was she?

MR. SIEGEL: I object to it, if your Honor please.

THE COURT: Objection sustained.

Q What was the conversation?

(Objected to; objection sustained.)

MR. SIEGEL: I think it is proper now to say to your Honor that I do not think the District Attorney ought to be permitted to be calling these witnesses, knowing himself, or ought to know himself, they are not competent. Now it certainly is preju-

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dicial to the defendant, beyond the question of a doubt, even though your Honor instructs the jury to disregard it.

THE COURT: No, I cannot. I do not know the nature of the case the District Attorney has against the defendant, and it is difficult for me to admonish him unless I am satisfied that his conduct is of a wilfull character, that is in calling witnesses who he knows to be unable to identify the defendant.

MR. McCORMICK: I will ask this witness no more questions.

THOMAS W. FISTER, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. McCORMICK:

Q Where do you reside? A Philadelphia.

Q In the month of March, 1907, in what business were you engaged? A Assistant to claim agent, Philadelphia & Reading Railroad Company.

BY MR. SIEGEL:

Q Reading? A Philadelphia & Reading Railroad Company.

BY MR. McCORMICK:

Q Do you know the defendant, Anna Strula? A Yes, sir.

Q Did you see her in the month of March, 1907? A I did.

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Q Do you remember what day? A The 19th of March.

Q Whereabouts? A In our office in the Reading Terminal, Philadelphia.

Q Did you have a conversation with her? A Yes, sir.

Q Will you kindly state what was said in that conversation? A At that time?

MR. SIEGEL: Same objection, if your Honor please.

(Objection overruled).

A Mrs. Strula came to our office and said that she had met with an accident on one of our trains running between New York and Baltimore on the 14th day of March, 1907; that she was passing from the dining car to the next coach and while going through the passageway she trod on something that she did not know what it was, but supposed it was food that had been dropped from the tray by one of the waiters; that she fell and struck with her abdomen on a brass rail or a bucket that was allowed to stand in the passageway; that on account of this she had a rupture --

Q What name did she give? A In the name of Mary Hall at first, then she said that Hall was her maiden name; that she had been married to a Strula; that the reason she had given the name Hall was that she did not want her people to become alarmed on account of the accident.

Q Did you pay her any money? A Not at that time.

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Q Later? A Later on, about two weeks later, she again called at the office and said she would like to have the case adjusted and made a demand of \$750. We told her that would not be paid. Several weeks after that she called again at the office and said she would accept \$500 for an immediate settlement. Then the 13th of May, 1907, I called on her at Wyckoff, New Jersey, and made her a proposition of \$250. At the time she said she would not accept it. On the 16th of May, 1907, she called at the office and said she would accept the proposition of \$250, and it was then paid her.

Q Did you obtain a release? A Yes, sir.

Q Have you got it with you? A (Showing).

Q Was that signed in your presence? A Yes, sir.

Q By her? A By her.

MR. MCCORMICK: I offer the release in evidence.

MR. SIEBEL: I object to it as incompetent, irrelevant and immaterial and in no way tending to prove the issues of fact raised by the indictment.

(Objection overruled. Exception).

(Received and marked People's Exhibit 7 in evidence).

Q Attached to People's Exhibit 7 is a check. A A draft for the amount.

Q A draft. Did you deliver that draft to her at the time she signed? A She signed the draft in the office and the

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money was brought from the treasurer's office to her by our chief clerk and handed over to her.

Q At the same time? A At the same time.

MR. McCORMICK: I offer the draft in evidence.

MR. SIEGEL: Same objection.

(Objection overruled. Exception).

(Draft marked People's Exhibit 8 in evidence).

HERBERT A. ROWE, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. McCORMICK:

Q What is your name? A Herbert A. Rowe.

Q Your name is H. A. Rose? A Rowe.

Q Where do you reside? A Hoboken, New Jersey.

Q In the month of September, 1907, what was your business? A Claim agent for the Lackawanna Railroad.

Q In that month or about that time, did you have a conversation with this defendant? A Not in September.

Q Well, about that time? A In November I had a conversation with Mrs. Anna Strula in reference to an accident which she alleged took place in September.

MR. SIEGEL: I object, if your Honor please.

(Objection overruled. Exception).

MR. SIEGEL: There is no proof yet that this witness has identified the defendant.

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MR. McCORMICK: I asked him if he had seen the
defendant.

BY THE COURT:

Q Did you see the defendant in court? A Yes.

Q That is the woman that you know, ^{as} Anna Strula?

A Yes, sir.

Q Where is she? A Sitting right here at the table,
(Indicating defendant).

BY MR. McCORMICK:

Q Where was this conversation, Mr. Row? A In an apart-
ment house. I believe the number is 52 West 105th street,
New York City.

Q 52 West 105th? A I believe that is the correct
number.

Q And do you remember the day? A November 11th.

Q 1907? A 1907.

Q Was that the first time you ever saw her? A Yes.

Q What conversation did you have with her? A My con-
versation is substantially upon the line of the statement
which I took from ^{her} and she signed, and I believe you have
it among the files.

Q Just give me the substance of what was said by you two
people before the statement was signed by her?

MR. SIEGEL: I object to the question, as to
form. Let the witness give the conversation as well

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as he can remember it.

THE COURT: Yes, I think that is better.

MR. SIEGEL: I make the usual objection to the witness' testimony.

THE COURT: Objection overruled.

MR. SIEGEL: Exception.

BY MR. McCORMICK:

Q How many times did you talk with her? A Twice.

Q And the first time was the 11th of November? A Yes.

Q What was said on that occasion? A On the 11th of November she told me that she had been a passenger upon one of our ferryboats, the Bergen, at about 4:30 or 4:40 in the afternoon; that she --

BY THE COURT:

Q On what date? A On September 19th, 1907; that she boarded the boat on the lower deck; ours are double deck boats; that she attempted to pass up the stairway to the upper cabin. When she came to next to the last step of either the first or the second landing, I am not sure which, she slipped and fell and remained in the position where she fell until she attracted the attention of one of our employees. He came to her assistance and she then called his attention to a bag of paper, a bag which was in the corner of the step, and said that she had fallen upon something, and upon a further examination she saw that there was a banana skin upon

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the step, and on the steps there was a slippery mark, showing that the skin had slipped, and she said that it caused her to fall and strike her abdomen against the edge of ~~xx~~ one of the other steps. She further said that as a result of that fall she had sustained a hernia. She told me that she had a hernia in 1893, but that it had been operated on successfully and that she had not been troubled with it since. On the strength of her statement that she fell under the circumstances as she described, I made out the statement in full and reported to my company, and that in substance was our conversation at my first visit.

Q Was that statement signed by her? A It was.

Q Is this the statement (Showing to witness)? A That is the statement.

MR. MCCORMICK: I offer this statement in evidence.

A (continuing) May I add something in reference to our first conversation?

BY MR. SIEGEL:

Q When did you make that out? A What?

Q When did you write it out? A When I was at her house on the date mentioned there, November 11th, 1907.

BY MR. MCCORMICK:

Q In her presence? A In her presence.

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Q And at her dictation? A I would not say at her dictation. I used substantially her own words.

Q Before she signed it did she read it? A She did.

MR. McCORMICK: I offer it in evidence.

MR. SIEGEL: Same objection.

THE COURT: As bearing on the question of knowledge of the fact as to whether the representation made by her that she sustained a hernia on October 19th, 1906, it seems to me that this statement becomes admissible as bearing upon that knowledge. She states here ---

MR. SIEGEL: I saw that, but it contradicts the testimony of their own physician, Dr. Coley, who says she did have a hernia at that time. She testified that she had such a hernia that she might have died if it was not operated on.

THE COURT: No, you misunderstand. As I understand the District Attorney does not dispute that the defendant had a hernia, but the District Attorney disputes, and which is the basis of the contention that we are trying here, that she did not sustain a hernia from the accident which occurred on October 19th, 1906.

MR. SIEGEL: This testimony is the accident she claims to have sustained by this Railroad Company

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was long after the date she had the hernia, according to the testimony of the People's witness.

THE COURT: But she said in this paper --- I will allow the paper in evidence.

BY THE COURT:

Q You say she signed this? A Yes, sir.

Q And it was read by you? A She read it herself.

MR. SIEGEL: I will say, your Honor, following this argument, what does this paper tend to prove?

THE COURT: Do you wish me to enlighten you?

MR. SIEGEL: So far as the People's case is concerned, what does this paper tend to prove?

THE COURT: Well, I shall answer you, Gentlemen, but my statement does not affect you in any way. You are to try the facts. The People offer this evidence bearing on the guilty knowledge of the defendant, that at the time she made the statement to the Company, the New York Central Company, that she sustained a hernia as the result of the accident at 125th street and Park avenue, because of the negligence of the Company, that that statement which she then made was false, and as bearing on the guilty knowledge and intent with which the false statement was made, the District Attorney offers in evidence this statement, which in effect purports to

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be a statement made by this defendant that she had a hernia for which she was operated on in 1893, but it had been perfectly cured, and that she was accepted as a good risk by an insurance company during this year.

MR. SIEGEL: Yes, but that representation, according to their own testimony, was false, and simply goes to prove ---

THE COURT: They claim she never sustained this hernia. It will be for the jury to determine whether she had the hernia.

MR. SIEGEL: But they proved it was false by the testimony of Dr. Coley.

THE COURT: Dr. Coley states that the hernia which he examined showed it to be of a recent character. As bearing on the guilty knowledge and intent with which the statement was made, I have allowed a statement of the occurrence of October 18th, the night before, when she claimed to sustain a hernia; I have allowed the evidence as to what occurred June 16th, where she claimed to have sustained a hernia; I have allowed evidence as to what occurred in September, 1907.

THE COURT:

What was the name of this Railroad Company? A Lackawanna.

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THE COURT: As to what occurred with the Lackawanna, and in the complaint as to having sustained a hernia as the result of the injury which she sustained on the ferryboat operated by the Lackawanna Company, and the indictment charges that this defendant --- it is claimed that prior to said fall she never was ruptured, and that prior to this fall no such hernia did exist. Now, as bearing on the falsity of that statement, the People have offered in evidence this declaration wherein she said she sustained a hernia some time ago. Now, the People claim that she did not sustain a hernia as a result of the accident at 125th street.

MR. SIEGEL: Yes, but they have disproved themselves by the testimony of Dr. Coley, because he admitted she disclosed to him there was a previous operation.

THE COURT: Not for a hernia, it was some other trouble. Is there any evidence it was ---

MR. McCORMICK: An ovarian operation.

THE COURT: An ovarian operation, that is not an operation for hernia. I will allow the evidence.

(The statement marked People's Exhibit 9 in evidence.)

(Mr. McCormick reads People's Exhibit 9 to the jury.)

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BY MR. McCORMICK:

Q Did you pay her any money? A Yes, sir.

Q What conversation did you have with her about money?

A That took place about five days, if I remember right, following the taking of her statement. I made an adjustment with her of the claim for \$150, taking her general release therefor.

Q Have you got the release? A I have.

Q How did you pay her the money? A By draft.

Q To whom did that money belong before you paid it to her? A Delaware, Lackawanna & Western Railroad Company.

Q Was this release signed by her in your presence? A It was.

MR. McCORMICK: I offer it in evidence.

Objected to. Objection overruled.

(General release marked People's Exhibit 10, in evidence.)

(Mr. McCormick reads Exhibit 10 to the jury.)

Q I show you a draft and ask you whether that was delivered by you to her at the same time? A Drawn by me and delivered to her by me at that time, November 16th.

MR. McCORMICK: I offer it in evidence.

Objected to. Objection overruled. Exception.

(The draft marked People's Exhibit 11 in evidence.)

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DR. H A R R Y M. K E A T O R, 107 East 70th street, called
as a witness for the People, being duly sworn,
testified as follows:

DIRECT EXAMINATION BY MR. MCCORMICK:

Q What is your business? A Physician.

Q And how long have you been practicing medicine? A Since
1890 -- since 1902.

Q In January, 1907, did you see this defendant? A I
did, sir.

Q Where? A At 215 West 120th street.

Q Did you have a conversation with her? A Yes, sir.

And what was that conversation, Doctor? A She related
to me her history in connection with ---

Had you ever met her before that day? A No, sir.

Q What was the first thing you said to her? Did you go
to see her? You went to see her? A I was asked to go to
see her, yes, sir.

Q Did you introduce yourself to her? A Yes, sir, I did.

Q Give us that statement, what you said? A I said,
"How-do-you-do?", and she said, "How-do-you-do?" to me.

I know, but did you tell her who you were? A I did,
yes, sir.

Q What did you say? A I said, "I am Dr. Keator, come
from Mr. DeForest, of the New Jersey Central Railway, to make
an investigation.

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Q Well, now, will you kindly give us all the conversation you had with her? A I asked her what the trouble was and she said that she had had a fall on the ferryboat of the New Jersey Central Railway eight days previously, and that she had been ---

Q That would be what date? A That would be the 4th of January; I saw her on the 13th of January.

BY MR. SIEGEL:

Q What year? A 1907. She said that ---

BY THE COURT:

Q This was on the New York Central? A No, sir, New Jersey Central.

BY MR. McCORMICK:

Q Central Railroad of New Jersey? A She said that eight days previously she had slipped and fallen on the stairway of the Central Railroad of New Jersey ferryboat, striking on her abdomen and wrenching her knee. She said she had a sudden, sharp pain, was immediately nauseated and vomited. She was seen by a doctor and taken to a hospital in New Jersey. That she remained there three or four days. After the accident that she had a large swelling of the abdomen, and that it was blue; that she had been constipated for three or four days, that she was nauseated, and complained of a cramp-like, shooting pain in the region of the womb. She said that fourteen years before that time she had had an

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operation for some abdominal condition, she did not say just what, and that operation was followed by an abscess in the scar, which necessitated a second small operation; that since that time she had had a small rupture at the site of the old scar which had given her no trouble until the time of this accident.

BY THE COURT:

Q Did she say when the second operation was performed?

A No, sir; that it was followed by a second operation.

Q Since the second operation she sustained a small rupture? A No, sir, at the time of the original operation, since the second operation, she had a small rupture.

Q That is what I said. A Then she said that after this accident the rupture was enlarged and that they had a very hard time getting back the rupture, and since that time there had been some soreness at the region of the old scar, and also of her knee.

BY MR. McCORMICK:

Q What was the location of the rupture? A Well, after I had talked with her then I asked if I might examine her, and she said I could, and I made a physical examination and found that there was a scar about four inches long, an old scar about four inches long in the mid line, rather low down in the abdomen. That at the upper part of this scar there was an opening in the deeper tissue; the skin was

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closed; there was an opening in the deeper tissue about three inches one way by two the other, admitting about three fingers. I saw no blueness or any evidence at that time of any local bruise, nor did I find any evidence of any local condition on her knee, which she complained of --- when I felt of it --- complained of soreness in the region of the opening where the rupture came out, and also of her knee.

Those were the symptoms which she complained of; not the symptoms that I found.

Q Will you point out where this rupture was, Doctor? A The rupture was about that location; the scar was about four inches long.

BY THE COURT:

Q Where was the rupture? A Right about there (indicating) As I say, it admitted three fingers, about three inches one way, and about two the other, around the upper end of the four inch scar, which extended upward from the bone, upward about four inches. Then the rupture was in the upper end of the scar.

MR. SIEGEL: May we have that location marked, if your Honor please.

THE COURT: Mark it with a piece of chalk.

A (Continued) I might say that this model does not give the location of the bone. Of course, here is the symphysis bone, and the scar went from the symphysis bone up about

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four inches, and the rupture was in the upper ---

BY MR. SIEGEL:

Q Mark the rupture? A It would go down to about the middle of that paper.

BY THE COURT:

Q Mark it on the cloth, Doctor? A (Marking) That is as nearly as I can remember it.

BY MR. McCORMICK:

Q And how far from the navel, approximately, if you remember? A I should say the upper end of it was about three inches, as I remember it.

Q But you are not certain about the exact distance?

A No, sir; I am not certain. The rupture was in the old scar and it was in that region.

Q Did she say anything about her condition, physical condition a few years preceding the time of this accident?

A Not that I remember. Her physical condition?

Q Yes, as to rupture? A She had had this rupture, she said, for fourteen years, since the time of her old operation, is what she told me.

Q I mean in connection with this rupture, did she say anything else?

THE COURT: For fifteen years?

A Fourteen years was the history I got, sir.

Q I mean what was her claim as to this rupture? A She said the rupture had given her no trouble until this accident,

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and at the time of the accident the opening had enlarged.

Q Now you mean had given her no trouble for fourteen years before that down until this month we are speaking of? A Yes, sir, until the time of this accident.

Q Never had any trouble? A That is what she told me.

Q Did she tell you she had any previous injury? A I beg your pardon?

Q Did she say anything about any previous injury to this injury you have testified to? A No, sir.

Q Did she say whether or not she had had any previous injuries? A No, sir.

Q Did you ask her? A I did.

Q What did she say? A She said, "I have had no other accidents."

CROSS EXAMINATION BY MR. SIEGEL:

Q Is that on the card? A It is not on this card. That is my record.

Q That is the only record you have of the conversation and the examination? A This is not the only record.

Q Where is the rest of the record? A The record is in my pocket.

Q Does it say on the record that is what she said? Does it show on your record there that was the only injury she claimed she ever had? A I have no record of it here, but I

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asked her the question if she had any accident, and she said ---

Q Go ahead? A And she said she had no other accident.

Q You remember that? A I always ask that question.

Q You remember that? A Yes, I remember that.

Q Is it because you always ask that question, or have you a distinct recollection of asking that? A I have a distinct recollection of asking her, and I always ask it.

Q Is it a fact the only recollection you have is what is contained on that card? A Oh, no; oh, no.

Q Why did you have to refer to the card in order to answer some of the questions, or almost all of the questions?

A Well, this is a little over three years ago.

Q Yes, you had to refer to the card in order to answer the District Attorney's questions, didn't you? A Yes, sir.

Q Did you make an examination of the entire abdominal region of Mrs. Sturla at the time you examined her? A Of the entire abdominal region? Yes, sir.

Q That is, from where the top paper is on the figure down to the lower paper? A I cannot say that I made an examination from away up there. I made an examination of the region she complained of.

Q Yes, between the papers, I would say. A Yes, below that paper. That is pretty nearly up on the chest.

Q Now, just below the paper. From your examination,

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could you tell whether she had had an injury or a rupture here (indicating about two inches below the top paper). Right in that region there? A I did not pay any particular attention to that region.

BY MR. MARKOWITZ:

Q Doctor, what part of the body do you understand that to be? I would like to know what part of the body the Doctor thinks that is. I want to get an understanding there. What part of the body would you take that upper part to be, where that white paper is? A I would call that the lower part of the chest.

BY MR. SIEGEL:

Q Would you call that the umbilicus? A No.

BY MR. MOSKOWITZ:

Q What is your idea of the umbilicus? Where do you think the umbilicus would be located on that figure? A On that figure?

Q Yes. A Well, that would be about the lower border of the chest, about there (indicating).

BY THE COURT:

Q What do you call the diaphragm, Doctor? A The diaphragm is the muscle that is attached to the edge of the ribs.

Q And both sides? A All around, and to the spine behind, and is convex -- concave, downwards, extends up about

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that region in the middle and very far down behind, and about here in front (indicating).

Q And the umbilicus is below that? A Yes, the umbilicus is approximately half way from the end of the sternum to the symphysis, and if that were called the end of the sternum (indicating) at that point, or possibly there (indicating) and this were the symphysis, I should say it would come approximately about there.

Q Mark it, Doctor? A (Witness marks)

BY MR. SIEGEL:

Q Now, Doctor, what have you marked? A I am speaking of this model now, not of the patient.

Q Well, how much of a space was there between the umbilicus of the patient and the beginning of this injury that you found? A Well, I do not remember exactly. I was not paying any particular attention to the umbilicus at the time. I was interested in the scar and in the ---

Q Was it a larger space than indicated in the figure here? A It may have been. I do not think it was. Well, I cannot state, because as I say I was not paying any particular attention to the umbilicus in this patient, and in her particular case her abdomen was rather pendulous, and the distance from the umbilicus to the symphysis might vary anywhere from four to five inches in different patients, different sizes.

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Q Did you examine Mrs. Strula immediately below the umbilicus? A Yes, sir.

Q This region here? A Yes, sir.

Q At that time did you find any trace of her having at sometime sustained a hernia in that region? A I found a hernia, as I said, at the upper edge of the scar. I paid no attention to the particular location of this umbilicus.

Q Can you give us any idea of the distance between a region immediately below the umbilicus and the beginning of this injury that you found? A No.

Q Not even approximately? A No.

Q Would you say it was two inches? A Well, I should say it was possibly two inches.

Q Three inches? A Possibly three.

BY MR. ROSKOWITZ:

Q Doctor, I understand you to say that you found the rupture at the upper end of the scar that appeared on the body at that time? A As I remember it, yes.

Q At the very topmost part of the scar? A I won't say topmost part of the scar, because the scar is in the skin, and the skin can be moved from the deeper parts anywhere from two to three inches. The upper end of the scar on the skin can be moved with reference to the deeper part of it, the important parts, the muscles and abdominal wall, can be moved up or down two or three inches, so the reference on the

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skin made very little difference. I could put my finger perhaps above the scar and still put it on the rupture.

Q That was the only part that was exposed? A The only part I particularly examined was the one she complained of; that and her knee.

Q That was the only part that looked as if a rupture had occurred? A That was the only part I saw, yes, sir.

Q And that was the upper part of the scar, the visible part of the scar? A As I remember it, it was the upper part of the visible scar.

BY THE COURT:

Q Doctor, in your experience how many cases have you had where patients have sustained rupture? A How many?

Q Yes, approximately? A Why, I should say about five hundred, approximately.

Q And are you able to express any professional opinion as to whether a rupture is of recent origin or not? A By recent, you mean within a few days?

Q Yes, sir. A Yes.

Q Did the rupture which you examined indicate anything of its being recent or not? A Not in my examination, no, sir.

Q It showed no evidence of being a recent rupture?

A No, sir, not from my examination.

Q This defendant at that time did not tell you that she sustained a rupture as a result of that accident? A She

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said that the rupture had been small before that accident, and at that accident it had been enlarged.

Q But that some fourteen years ago she had a rupture for which she was operated? A No, that she had an operation, and after the operation an abscess, and after the abscess a rupture.

BY MR. SIEGEL:

Q Doctor, can you tell us how old, or how recent the rupture was that you examined? A No, sir.

Q You could not say? A Could I tell what?

Q Could you tell --- our answer is only that the injury you examined was not recent. Could you tell us how old it was? A Oh, no.

Q Haven't any idea? A No, sir.

Q Would you say it was more than six months? A Yes, I should.

Q Would you say it was more than a year? A I could say that --- well, there was a scar there at which an old operation had been performed.

Q Could you tell us approximately how old this rupture was? A No, I cannot.

BY THE COURT:

Q In your opinion it was more than one year's standing, did you say? A I should think so, yes, sir.

Q And your examination was made in January? A January, 1907.

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Q Would you say how it was more than a year, or you can't say at all how old it was? A I should say it was an old rupture, but the length of time I could not say, whether it was a year or ten years.

Q By saying an old rupture you refer to this scar, you say? A No, I do not refer to the scar. The scar is not a rupture. The rupture is an opening in the abdominal wall.

(The court thereupon admonished the jury in accordance with Section 41 of the Code of Criminal Procedure, and adjourned the further trial of the case until 10:30 a. m., Friday morning, December 2nd, 1910.)

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New York December 2, 1910.

TRIAL RESUMED.

HARRY E. CAIN, a witness called on behalf of the People, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. McCORMICK:

Q Your address? A Broad Street Station Philadelphia, Pennsylvania.

Q Mr. Cain, where do you live? A Philadelphia, Pennsylvania.

Q In the year 1908 were you in the employ of the Pennsylvania Railroad Company? A I was, yes sir.

Q Where? A At the Broad Street Station, Philadelphia.

THE COURT: What year.

THE WITNESS: 1908.

BY MR. McCORMICK:

Q What was your position? A Claim agent.

Q What were your duties? A Having claims investigated and settling for claims.

Q Do you remember having a conversation with the defendant in the month of June 1908? A I did, yes sir.

Q Where was it? A On the morning of June 10th 1908, about eleven o'clock, I received a phone message from the

Defendant in which she stated she was a Mrs. Stewart.

MR. SEIGEL: I ask that that be stricken out.

THE COURT: You will have to identify the person with whom you conversed first.

THE WITNESS: You mean you want me to identify the defendant.

BY MR. McCORMICK:

Q Do you know this defendant? A She is the party that I went to see, yes sir.

Q Where did you see her? A At the Collonade Hotel.

Q Prior to that time did some one telephone and ask you to go there? A Some one called me on the telephone and asked me to call.

Q When you went there you found this woman? A Yes sir.

Q What did she say to you? A She told me that she had given the Railroad Company the name of Stewart, for the reason that she did not want any newspaper notoriety; that she was a demonstrator; I asked her what ~~of~~, and she refused to tell me; but she told me that her name was Strula; that she resided in Atlantic Highlands, New Jersey; I asked her what was the matter with her and she said---

Q Go right on? A I asked her what she wanted to see me for and she said she was the party that had fallen on the steps in the Broad Street Station the previous day, and

wanted to know what the company intended to do for her.

Q Did she say how she had fallen? A She said she slipped on a banana peel.

Q Go right ahead now and tell all of the conversation as nearly as you can recollect it. A I asked her what was the matter with her---

Q Will you please speak up? A I have a little cold. Excuse me. I asked her how she was injured, what her injuries were, and she said that she was injured in the stomach; I asked her if she would come over and allow our doctor to examine her. At first she declined, but later she said she would. She agreed to come to my office at 1:30; she was there at the appointed hour and I had the company's physician there present and he took her to his office and examined her.

BY THE COURT:

Q What was said by you to the defendant, if anything, in the presence of the Doctor? A I asked the doctor, when he brought her back, what was the trouble and he said she had a ventral hernia.

Q Who said that? A The doctor said that.

Q In her presence? A Yes sir.

Q Were you present? A Yes sir.

Q The doctor said that she had a ventral hernia? A

Yes sir.

Q What I want to get at is this; before the doctor examined her what, if anything, did the defendant say to you, or to the doctor in your presence? A Well we had no discussion, your Honor, except that I asked the doctor to take her to his office and examine her, that she was the party that fell on the steps the previous day and claimed to be injured.

Q Did you have this talk with the doctor in the presence of the defendant afterwards about the hernia? A Yes sir; that was after she was examined.

Q In the presence of this defendant? A Yes sir; in the presence of the defendant; when she came back I asked the doctor.

Q You may state that. You asked what? A I asked the doctor the extent of her injuries and he said she had what he termed a ventral hernia; that was all that was said to the doctor and he left.

BY MR. MCCORMICK:

Q Did you have any further conversation at any time with her. A I told her at that time it would take me several days to have the matter investigated and in the meantime she had spoken about losing a grip, and I said to her "I will see if I can have the grip found, see if we can find

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the grip for you, if I find the grip I will send it to Mr. Rose at Jersey City. " She asked me not to send it to Jersey City and keep it, as she expected to be in the City the following week. On June 19th I received another phone call, and the party who called me said she was Mrs. Strula and that she was in the waiting room of the station. I told her that if she wanted to see me she would have to come up to my office. She came up and on her arrival I told her I had her case investigated and I found that one company had paid her \$1000. under the name of Mrs. Sturla, and that she also presented a claim to the Interborough Rapid Transit I think, here in New York City; that we did not consider ourselves liable for any injuries and we refused to do anything for her. She left my office and I have never seen her since until last Tuesday in court.

CROSS EXAMINATION BY MR. SIGHE:

Q What did the defendant say to you in reference to what injuries she sustained? A She said that she had been injured in the stomach.

Q Anything else? A That is all she told me at that time.

Q Are you sure she could hear what the physician said when he said she had ventral hernia? A I think so; we were all three standing there together; there is no

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reason why she could not hear it.

Q She made no claim by reason of having sustained a ventral hernia? A Not to me at that time.

MR. SIEGEL: I ask that the witness's testimony be stricken out.

BY THE COURT: What did she say after she was examined?

A May it please your Honor she said to me, when I first saw her, that she wanted to know what the company was going to do. Then I had the doctor examine her and when she came back, she left shortly after that conversation and I had no more conversation with her that day. Then when she came back I had very little conversation with her because I had this data and I did not entertain her claim and dismissed her.

BY MR. SIEGEL:

Q She did not state to you, Mr. Cain, did she, that this injury which she claimed to have sustained on the steps of the Railroad Company caused this ventral hernia?

A No sir, she never said anything to me about that.

MR. SIEGEL: I ask that the witness's testimony be stricken out.

MR. MOSKOWITZ: The testimony will be connected.

THE COURT: On that promise I will allow it to remain. If it is not connected then I will strike it

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from the record.

MR. SIEGEL: This conversation was in 1908. Now the testimony at hand is that in 1906 she had a ventral hernia. Proving by a physician that that ventral hernia still existed in 1908, is not going to benefit the People's case any.

THE COURT: I agree with you as to that proposition. The District Attorney will have to show that the ventral hernia of which this defendant complained she suffered from existed prior to 1906. Can you show that.

MR. MOSKOWITZ: I believe we have shown that, Your Honor.

THE COURT: But in the other cases you must show the same thing.

MR. MOSKOWITZ: All the other accidents along the line point to the identical hernia.

THE COURT: No argument is necessary. I shall for the present strike this witness's evidence from the record and instruct the jury to disregard the same. Put the right witness on the stand then there will be no occasion to strike out the testimony. The Jury will disregard this evidence as though it was not given. Now, you gentlemen know what the witnesses will testify to, I don't. If this witness in

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1908 said she received a hernia as the result of that accident that testimony cannot be disproved because there is testimony in the case that she did have a hernia. The question we are called upon to examine into is whether or not she had a hernia as the result of this accident with the New York Central. There is testimony to the effect that prior to that time she had hernia. The claim of the People is that when she stated she received the hernia as the result of the accident caused by the condition of the stairs of the New York Central, that that was false. That has a bearing upon her guilty knowledge of the fact that it was false and the intent with which she made the claim--evidence of prior and subsequent acts are admissible for the purpose of showing that prior to that time she had a hernia.

MR. McCORMICK: Upon another theory this testimony is admissible. Similar transactions bearing upon the question of intent.

THE COURT: But the intent, of course, the intent with which the other act was committed.

MR. SIGGEL: This is not a similar false representation.

THE COURT: It must be similar. I will strike this

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testimony out.

MR. McCORMICK: I will state what I expect to prove by the doctor.

THE COURT: You call the doctor first. Then this evidence might be admissible, I don't know. It will be for the jury to determine. I am not stating it as a fact. Witnesses have testified that this defendant told them that prior, --- that she had ~~in~~ a hernia in ~~in~~ 1893 or some time thereafter.

MR. SIGGEL: That she had an operation. Your Honor will recollect that some witnesses said it was for ovarian trouble.

THE COURT: Some witnesses testified that she stated that she had a hernia or rupture and that was prior to 1906.

MR. MOSKOWITZ: This witness testified that he would send a doctor and upon the doctor's report and other data he dismissed her claim.

THE COURT: The jury will disregard the evidence of this witness.

D R. E D W I N C. T O W N, a witness for the people.

DIRECT EXAMINATION BY MR. McCORMICK:

Q Your address? A Broad Street Station, Philadelphia,

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Pennsylvania Railroad.

Q Where do you live doctor? A I live in Harberth, Pennsylvania.

Q In the month of June 1908 were you connected with the Pennsylvania Railroad Company in any way? A I was.

Q In what capacity? A Well, medical examiner, company's surgeon.

Q In that month did you have an interview of the defendant? A I did.

Q Where? A In my office in the Broad Street Station.

Q Philadelphia? A Yes sir.

Q Will you state what took place upon that occasion?

A Can I read what I have here in my hand---taken at that time.

Q Is that a memorandum in your own handwriting? A Yes sir.

Q Made at the time? A Yes sir.

Q Will you refresh your recollection from it? A

June 10, 1908---

MR. SIEGEL: I object to this testimony as absolutely immaterial.

BY THE COURT:

Q Can you, doctor, without the use of the memorandum that you made at the time, testify from recollection? A

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I can.

MR. SIEGEL: I make no objection to the Doctor's testimony on that ground, except the fact that his testimony is wholly immaterial as bearing upon the issues in this trial.

THE COURT: I don't know, it might be material.

MR. SIEGEL: If the Doctor testifies that he examined her in June 1908 that applies to her physical condition then, that is all.

THE COURT: If you can show by this witness that any statements were made by this defendant that she sustained a hernia prior to October 1906 the testimony would be admissible.

MR. McCORMICK: I don't think this Doctor can.

MR. SIEGEL: Of course you see if she said how long the hernia had been there this evidence would be admissible under the authorities, but your Honor is very familiar with the ruling in the case of the People against Mayer 80 New York that this is a similar transaction; she slipped on a banana peel, she made a claim against the Railroad Company, she made a claim for damages against a railroad on account of the hernia.

THE COURT: You will be obliged to negative that fact. In the other instances where I have allowed you

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to prove or give evidence of similar transactions the witness have testified that the hernia was of ancient appearance and the defendant told the witnesses that she had a hernia for some years.

MR. McCORMICK: That is exactly what I understand she told this doctor.

THE COURT: In this case all you can show is that she had a hernia.

MR. McCORMICK: I beg pardon.

THE COURT: How do you prove that she did not sustain this hernia as a result of the accident in 1906 or as a result of the first accident.

MR. McCORMICK: I am not offering it as proof of that, I am offering it as evidence of a similar transaction.

THE COURT: How are you going to negative that. You see you will require that proof.

MR. McCORMICK: I have already negated it by her own affidavit, that the day before she sustained a hernia. There is no better proof that could be offered.

MR. SIFFERT: He has not negated it. Does the District Attorney claim that statement was true when she made that affidavit.

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MR. McCORMICK: I understand that you now claim that she committed perjury when she said on the 18th she sustained a hernia? Do you claim it is false? I claim that her statement that she sustained a hernia on the 19th was false.

MR. SIEGEL: The District Attorney said that when she signed the affidavit that she sustained a hernia on the 18th---

THE COURT: The jury have a right to consider her guilty knowledge when she made the affidavit that she sustained a hernia the day before as bearing upon the statement made by her the next day.

MR. SIEGEL: As to the question of the intent it does not negative the proposition that the accident on the 19th did or did not cause this hernia.

(The Court admonished the Jury and takes a recess for fifteen minutes.)

After the recess.

BY MR. McCORMICK:

Q Now, doctor, will you state what conversation you had with this defendant relating to the injury? A She presented herself at my office and this was referred to my office by Mr. Cain our Claim Agent and she submitted to an examination; she said that she had hurt her abdomen.

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Q She said what? A That she had hurt her abdomen.

Q Give all of the conversation.

THE COURT: First show that no relationship existed.

MR. MCCORMICK: I think that is already shown by the testimony of the other witness.

MR. SIEBEL: I think that was stricken out.

BY MR. MCCORMICK:

Q Where did you see her first? A In my office in the Broad Street Station, Philadelphia.

Q Who else was there? A No one, that is in the room.

Q That was the first time you had seen her? A That was the first time I ever saw her.

MR. MCCORMICK: Do you claim that this was a confidential communication?

MR. SIEBEL: No.

THE COURT: Then let the defendant rise and you make the concession for her.

MR. SIEBEL: I waive the provisions of Section 834 of the Code of ~~Criminal~~ Civil Procedure.

THE COURT: Do you consent to the waiver, Madam?

THE DEFENDANT: Yes sir.

THE COURT: Now read by your counsel?

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THE DEFENDANT: Yes sir.

Q Now state what conversation you had with her and what examination you made of her? A She related how she had fallen on our steps.

Q Will you kindly tell the story what she had said to you as nearly as you can remember? A She said she had fallen or slipped on a bundle of refuse which had been thrown on the steps of the exit, one of the entrances or exits of the station.

Q Was that all the conversation? A And that---

Q Did you ask her any questions as to her injury. A No sir, not at that time, no sir.

Q Or at any time? A She submitted to an examination. And I found that she had what we call an abdominal hernia; I asked her about that and she told me that it had existed for quite a length of time, she didn't say how long, if she did I don't remember, but after an operation by Dr. Munde of New York for some internal trouble.

Q An operation by Dr. Munde? A In 1903 or 1902, I am not sure which.

Q Do you know what year that operation was performed in? A 1902 or 1903, I have it upon these notes here.

MR. MOSKOWITZ: Refresh your memory from any notes.

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THE COURT: There are certain rules to be followed before one can look at a paper for the purpose of refreshing his recollection.

BY THE COURT:

Q Doctor is there any method by which you can refresh your recollection as to when the defendant claimed to have been operated upon by Dr. Munde at which time she sustained a hernia? A Not unless I look at this paper; I can tell by looking at this paper just exactly all that she told me.

Q Look at this paper and refresh your recollection. This paper was made by you at the time in your own handwriting? A Yes sir.

Q You may look at the paper and after looking at the paper state whether your recollection will be refreshed. These are formal rules to be complied because sometimes a witness cannot even have his recollection refreshed, but where the paper is in the handwriting of the person, and it tends to refresh his recollection then the testimony consists of his refreshed recollection, and the evidence does not consist of the written declaration. That is a rule of law? A 1902.

Q In 1902? A Yes sir.

Q Is that all the conversation you had with her? A Tha.

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is about all. Of course we had some general conversation as to the treatment of this hernia, that is what she should do for her own comfort, I advised her to get a truss or a pair of corsets that women wear for that condition. The interview was very short as was my examination.

Q Was there anything said about this being an old or recent hernia? A She said it had existed for some time.

Q Prior to that had you said anything to her? A I had said "Mrs. Strula" or whatever her name is, I said "You have had this quite a little while", and she said "Yes"

Q When did you say that? When you first looked at it?

A Yes sir, when I first looked at it.

BY THE COURT:

Q But she told you that the hernia existed after the operation? A Yes sir.

Q By Dr. Munde? A Yes sir.

Q In 1902? A Yes sir.

CROSS EXAMINATION BY MR. SIEGEL:

Q Would you let me look at that paper which has refreshed your recollection, Doctor? A If it is permissible, certainly.

THE COURT: Yes.

THE WITNESS: If you can read it.

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Q Do you say that she told you that she had been operated upon in 1902? by Professor Munde for hernia. A No sir, not at all, not for hernia. She was operated upon.

Q Did you state in your examination that she said this had existed since 1902? A Not on that paper, if you will read it properly.

Q I can read the paper. Didn't you testify that she said the hernia had existed since 1902? Did you so testify? I will ask that the doctor's testimony be read on that point. (The Stenographer reads the testimony).

Q "She told me she had been operated upon by Dr. Munde for an ovarian trouble"? A That is what she told me.

Q She didn't tell you that this hernia was the result of this operation by Professor Munde, did she? A Did she tell me that? It did not come up.

MR. SIFERL: I am going to object to this double battery prosecution I don't think it is fair to the defense.

THE COURT: Yes.

THE WITNESS: She did not.

Q You could tell from your examination that the hernia that she had when you examined her on June 10th 1908 had existed for some time? A It appeared to be an old hernia.

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Q What do you mean by an old hernia? Six months? A

A hernia that had existed for some time.

Q Would you say six months? A Yes sir, that is an old hernia.

Q That is old? A Yes sir.

Q Doctor in all how much space of time elapsed from the time you first saw Mrs. Strula until she left you? A Do you mean the day of the examination, it was only one---it was not more than half an hour.

Q Was she in your office half an hour? A I think she was.

Q Would you say it was three minutes? A No sir; I would say it was half an hour.

Q You have never seen her since until to-day? A No sir.

Q How many people do you examine in your office a day? A I can't tell; we have a good many.

Q Twenty or thirty? A No sir, not that many; we examine a great many, but not so many women as men.

MR. STUBB: I respectfully move to strike out the Doctor's testimony, if your Honor please, on the ground that it is immaterial, irrelevant and incompetent. The doctor testifies that she had this hernia and all that he came away was that she admitted that

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she admitted that it was old. .

THE COURT: The doctor testified that she told him that after an operation by Dr. Munde in 1902 or 1903, she had this hernia. That is what I brought out by the doctor.

MR.

SIEGEL: I would refer to the Doctor's testimony and she if he specifically stated that she did not say---

THE COURT: She said it existed for some time.

MR. SIEGEL: Yes sir.

THE COURT: Existed for quite a length of time, how long she didn't say, but she sustained it after an operation made by Dr. Munde in 1902.

Q But I asked the doctor whether she stated that the hernia was the result of that operation and he said no.

A He did not say so.

Q All she said in relation to that hernia was that in June 1903 it was an old hernia--would you consider a hernia six months old an old hernia?

THE COURT: It is a matter for the jury to determine. It goes to the question of her knowledge as to the falsity of the statement made by her.

MR. SIEGEL: But if your Honor please there is no contention by either the prosecution or the defense

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that she had a hernia in 1908. We cannot get away from Dr. Coley's testimony.

THE COURT: The People claim that she did not sustain the hernia as the result of an accident. The People are trying to show that the hernia was an old hernia and that it existed prior to 1906.

MR. SIEGEL: I submit that that is not proven by this witness.

Q Could you say from your examination that this hernia had existed prior to 1906? A I haven't answered yet. Judging from the appearance of the hernia I would say I have seen a great many hernias, and I should say it was more than six months old.

Q That is as far as you would go? A Yes sir; that is as far as I dare say.

MR. SIEGEL: I move to strike the testimony out.
BY MR. MARKOWITZ:

MR. SIEGEL: I object to any questions by Mr. Markowitz. I do not think it is fair.

THE COURT: I will allow it.

BY MR. MARKOWITZ:

Q Where was the location of the particular injury at the time? A Of the injury?

MR. MARKOWITZ: I will withdraw that.

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Q You examined the abdomen, did you not, doctor?

A Yes sir.

Q You found an old scar? A Yes sir.

Q Was this rupture at the top part of that old scar?

Objected to.

THE COURT: Do not lead the witness.

Q Where was the location of this rupture at that time?

A In this is the umbilicus (Pointing to the figure) this is the median line, thus was the operation, this is the citatrix I should say that the rupture, the hernia was about in that line, a little below the umbilicus.

Q Near the umbilicus? A Yes sir.

BY MR. SIEGEL:

Q Just below it? A Yes sir.

BY MR. MOSKOWITZ:

Q Would umbilical hernia be the proper construction of that hernia? A No sir; umbilical hernia would ~~be~~ not be the appropriate designation for that condition; what they call a ventral hernia, a belly hernia; it came through the citatrix or above, at the upper end of the citatrix. It was a ventral hernia. We don't say it was umbilical unless it comes through the umbilical opening; a hernia below that or in any other position is ventral or belly hernia.

Q Is ventral hernia frequently called umbilical hernia?

A No sir umbilical hernia comes through the umbilicus.

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Q You saw the scar of the old operation? A I did.

Q That is the only scar you saw? A Yes.

Q And this hernia was where located with respect to that scar? A At the upper angle.

Q Right at the upper angle? A Yes sir.

Q This scar is the operation which she said she had performed in 1900? A In 1900 I think she said.

Q That is it? A That is the scar.

Q These scars she said was the result of an operation in 1900? A Yes sir.

Q How long have you been treating hernias? A I have been treating hernias---I never treat hernias.

Q In your experience how many?

MR. STONE: I will admit that the doctor is qualified.

Q How many hernias have you treated? A Hundreds, that is mechanically, not by operation.

Q Well doctor if any one had told you that the hernia that you found that day was a hernia six years old or ten years old, could you scientifically disprove the fact?

Objected to.

MR. MOSKOWITZ: This is a hypothetical question.

THE COURT: The motion made by defense to strike out Dr. Town's testimony is granted and the jury will

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disregard the same. Now, Mr. District Attorney, you should be careful in the presentation of the other evidence. You have not to follow closely the line set out by the court in these cases.

HARRY W. ANDRUS, a witness for the People.

DIRECT BY MR. MCCORMICK:

Q Where do you reside? A 50 Church Street, New York City.

Q You are employed by the Erie Railroad Company, are you not? A Yes sir.

Q In what capacity? A Claim agent.

Q I did not get your name? A Andrus.

Q You remember receiving some papers in the case of the claim of Anna Strula against the Erie Railroad? A Yes sir.

Q What year was it? A 1906.

Q What were those papers, do you remember? A There was a claim against our road for personal injuries, the investigation, the opinion of the attorneys, the statement of the surgeon, showing the injuries.

Q Was there any paper bearing the signature of Anna Strula? A Yes sir.

Q Now what has become of those papers. Were

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you the custodian of them? A Yes sir.

Q How long did they remain in your custody, that you know of. A They were in the custody of my office, in my custody in the office up to the time that these charges were brought against Mrs. Strula, and the papers were then taken out of the file and shortly after that disappeared.

Q Can you fix the date? A No sir, I cannot.

Q Within how long a time about? A You mean after?

Q About how long ago did you ~~xxxx~~ see the papers the last time? A Well it was after these charges were brought and it was several months ago.

Q Have you made diligent effort to find them?

MR. SIEGEL: I object to the question if your Honor please. "Have you made any effort" calling for a conclusion.

A A very diligent effort.

Q What have you done? A The papers are attached to the release--that I may say was attached to the papers and vouchered in the settlement. In due course the papers would go down, be signed by myself and by the General Attorney and passed down through into the auditor's and Treasurer's office and then filed away in the auditor's office; they were there when we secured them, with the voucher attached.

Q Do you know where they are now? A No sir, I do not.

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Q They have been lost? A Yes sir.

Q Is that right? A Yes sir, they have gone somewhere, I can't tell you where.

MR. McCORMICK: Do you concede they have been lost.

MR. SIEGEL: Certainly not.

CROSS EXAMINATION BY MR. SIEGEL:

Q Let me ask you is the release in evidence from the Erie Railroad Company. You have offered so many leases.

MR. McCORMICK: I think so.

THE WITNESS: No you have not. The release was attached to the papers.

Q Do you remember when the charges were brought against the defendant, do you know, Mr. Andrus? A Well, I don't definitely, no sir.

Q Where were the papers in your office at the time these charges were brought? A Well, as I say they went down-

Q Where were they in respect to your office? A They were in the Auditor's office.

Q In the Auditor's office? A Yes sir.

Q What position do you hold with the Erie Railroad?

A Claim Agent.

Q Claim agent? A Yes sir.

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Q Now, do you know what the auditor did with the papers? A Yes sir; sent them to my office, on our request, on my request.

Q Did you see them at your office? A Yes sir.

Q When did you see them for the last time? A I can't tell you exactly, several months ago, following these charges.

Q When did you have them in your own hands--- A Yes sir, I examined them.

Q What did you do with them? A I laid them there very carefully, went over the papers, in the pile with Mr. Trencher, who made the settlement, as we expected that he would testify.

Q What did you do with the papers? A I threw the papers, I remember distinctly, after talking the matter over with Mr. Trencher, and Mr. Early, one of our claim agents, and one or two boys in the office we were all discussing this case being a little bit out of the ordinary.

Q What did you do with the papers? A I threw the papers in the basket. We have a large basket where we throw them, put a cross on them which means file in my office, in our files--our file clerk I suppose got the papers and filed them away.

Q That is the last time you ever saw the papers? A

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Yes sir; the last I saw of them.

Q You put them in this basket? A Yes sir; lying right at the corner of my desk.

Q For filing? A Yes sir.

Q Did you give anybody any directions to send them over to anybody else who was interested in the prosecution?

A Why yes sir, I give Mr. Trencher directions.

Q You did give Mr. Trencher directions what to do with these papers? A Well, the papers disappeared---

Q Yes or no? Did you give Mr. Trencher directions what to do with these papers in the Strula case? A Yes sir; I gave him directions to carefully keep the papers and recall what was, and when he was called upon to testify to take the papers over and hold them subject to the orders of the court.

Q Take the papers over where? A To this court I suppose, or the prosecutors.

Q You don't know whether he did or did not take them?

A Well, I know he did not.

Q I mean of your own knowledge now Mr. Andrus. Of your own knowledge do you know what Trencher did with the papers, if anything? A I threw the papers in the basket and Trencher came to me after that for them.

Q What did you do with the papers in the basket four times.

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Q Do you know after you told Trencher to take care of these papers and deliver them to the prosecutor when needed what he did with the papers? A He didn't have the papers---no sir, I don't know; he may have had the papers, I don't know who got the papers.

BY MR. McCORMICK:

Q Have you made a complete statement as to the search you made for these papers? A I don't know that I have. We have searched our files as carefully,---I made a personal search with out file clerk.

Q Where were they supposed to have been at the time you missed them? A After I threw them in the basket they were supposed to go into our files, in my office. There is a card index and I have the card in my pocket---

Q Since that time you have not directed that they be sent to out of the office any place? A No sir.

Q You have not taken them out or sent them out? A No sir.

Q You can't find them there now? A No sir.

BY MR. TRENCHER:

Q You know that Trencher was a witness before the grand jury? A Yes sir.

Q Do you know where the papers were brought over here? A He didn't say.

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Q Where is Mr. Trencher? A Well I think he is living in Brooklyn and that he is home sick, as I understand it.

Q All these papers that you say you saw in the Strula case were all on white paper? A I don't recall.

Q Were they all on white paper? A No sir.

Q Various colored papers that were in the bundle? A I should say mostly yellow, some white probably.

Q Why do you remember that there were yellow papers? A Well I remember that the Surgeon's report is on a yellow sheet, is it called G. S. S.

Q You remember it was yellow because all the surgeons reports are yellow, isn't that the fact? A I think that is right.

Q You are saying now there was a yellow paper there because you want the surgeon's report in the papers, isn't that a fact. A No sir, there are yellow papers and various colors.

BY THE COURT:

Q You said you read the doctor's report? A Yes sir.

Q Are you familiar with the contents of this report?

A What report do you refer to?

Q The doctor's report. A Yes sir; in a general way.

THE COURT: You may examine him on that branch if you desire, Mr. District Attorney.

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MR. McCORMICK: I prefer to call the doctor as to that.

Q. Will you kindly state what was in the report?

MR. SIEGEL: I object to the question as immaterial, irrelevant and incompetent. This witness has not proven that these papers have been lost or destroyed.

THE COURT: He has described the efforts he made to look for them.

MR. SIEGEL: He said he gave certain instructions to Trencher.

THE COURT: He said he personally looked for the papers but could not find them.

MR. SIEGEL: There is no accounting by Trencher who has been a witness before the Grand Jury.

THE COURT: He says he knows Trencher did not bring the papers, because search was made for them before Trencher came here.

THE WITNESS: Yes sir.

THE COURT: In the case of the People against Deane 186 New York the Court of Appeals held "While it is a general rule that where it is sought to give evidence of other matters than the one charged in the indictment, the facts upon which such evidence is predicated must be produced, yet where such

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papers have been produced by the defendant pursuant to notice served upon him by the prosecution, and there is evidence that forged papers were returned to the defendant in the ordinary course of business a question of fact is presented for the determination of the trial judge and his decision thereon, permitting the prosecution to give secondary evidence of the content of the forged papers is not reviewable in the Court of Appeals.

MR. SIEGEL: I don't think Your Honor's discretion should be used in this matter.

THE COURT: I see no objection to it.

Q Will you kindly state what was in the report?

A The report---

MR. SIEGEL: I object to the question of this witness and to his testifying to what was in the report.

Objection overruled; exception.

MR. SIEGEL: I submit that Dr. Terriberry, if this witness is going to testify to the contents of this paper, should be excluded from the room.

THE COURT: Yes.

MR. McCORMICK: Your Honor rules that all witnesses should remain out at all times.

MR. SIEGEL: I ask Your Honor to instruct the

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Jury to disregard what I am now about to say---I don't assume the District Attorney is communicating with the witnesses outside. Your Honor has directed that the witnesses be excluded and there should be no communication between counsel and the witnesses.

THE COURT: I see no occasion for making any such remarks, Mr. Siegel.

MR. SIEGEL: Except this, your Honor, that the other district attorney is continually going in and out. It may or may not be so, but I don't think it ought to be here.

THE COURT: You may question the witness as to whether there was any consultation. It is the duty of counsel on both sides to question witnesses in order to find out what the witness will testify to because it expedites business and saves time.

Q Will you answer the question? A In a general way the report bore on very serious female disorders, womb trouble. I don't want to go into the particulars of it, and the report looked very bad to me at the time.

THE COURT: Strike out "The report looked very bad to me".

THE WITNESS: Displacement of the womb.

Q What did that report made up of, questions and

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answers?

A Yes sir.

Q Do you remember any of the questions? A Including the statement of the woman personally as to how the accident occurred, her age, nativity, her residence, the extent of the injury, permanent or otherwise.

Q Can you state whether this is the form upon which it was written? A Yes sir.

Q Was the balance of it in handwriting? A How is that?

Q Was the balance of it, in addition to this, in handwriting? A Yes sir.

Q Whose handwriting, do you know? A Dr. Terriberry filled the report out, and his statement of the injured person was signed by Mrs. Strula.

BY THE COURT:

Q Did you know Mrs. Strula? A No sir. I never saw her before to-day, no sir.

BY THE COURT:

Q You were familiar with the handwriting of Dr. Terriberry? A Yes sir.

Q You have seen him write frequently? A Yes sir; hundreds of reports.

Q You are familiar with his handwriting? A Yes sir.

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BY MR. McCORMICK:

Q What was written on the paper where the question was asked: "How was the injury received?" A As I recall, a violent jolt of a train.

Q Do you remember what was put on the report where the question is: "State the nature and extent of the injuries"?

A The extent of the injuries, as I recall, the doctor reported, were permanent. The nature of them I can't tell you exactly. I think displacement of the womb, or some other serious womb trouble.

Q Did the statement of the injury, which was a part of the report, say whose fault it was that she was injured? A The fault of the Railroad Company, violent jolt of the car.

Q Did it state whether the party had ever been injured before? A I cannot remember; my recollection is, if you want that ---

MR. McCORMICK: I offer this blank in evidence.

MR. SIEGEL: Objected to.

Objection sustained.

CROSS EXAMINATION BY MR. SIEGEL:

Q Mr. Witness, how many times did you say you received reports from Dr. Terriberry, in his handwriting? A Oh, hundreds of times.

Q Hundreds of times? A Yes, sir.

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Q Would you say five hundred times? A Well, the Doctor has been with the company about twenty years; I have been down here about five.

Q You have been there five years? A Yes, sir; Oh, I would say three or four or five hundred times, possibly.

Q Five hundred times you have seen written reports by him in five years? A I wouldn't say five hundred times, no, sir.

Q Didn't you just say five hundred times? A Well, two or three hundred possibly; I can't tell you exactly; a great many reports. The Doctor has been with the Company a good many years.

Q I am not talking about that. I am not talking about how many years the Doctor has been connected with the Company? A I understand; I wouldn't say the number, a great many reports. I never counted them.

Q Did you ever see Dr. Terriberry write in your presence?

A I don't think I ever did.

Q How do you know this was Dr. Terriberry's writing on the report? A Well, his name was signed to it.

Q That is the only reason why you know it is his report?

A He has written in for passes, quite a number of passes ---

Q That is what he usually does, writes in for passes?

A Yes, sir; he has written in for passes, and sent in the reports. I can't say I ever saw him sign his name.

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Q You didn't see him sign his name? A I don't think I did.

Q Then how did you come to answer his Honor's question that the report in this case was written by Dr. Terriberry?

A Why, I don't know how to answer your question, sir.

Q Have you talked this case over with the District Attorney before you took the stand here? A This young gentleman here talked to me two or three minutes.

Q When did he talk to you? A Just before I came in.

Q Told you why he wanted you as a witness here? A I think he did, yes, sir.

Q Did he tell you he wanted you to testify about Dr. Terriberry's report being lost? A Yes, sir.

Q Are you now connected with the Company? A Yes, sir, I am Claim Agent.

Q You are familiar with this prosecution, too, aren't you? A In a general way; this is the first time I have ever been over here in connection with this case, or in any other case for that matter. The first time in the building.

Q How many reports did you say you received from Dr. Terriberry in five years? A I couldn't tell you. A Great many.

Q Would you say four hundred? A No; I wouldn't state any definite figure.

Q Three hundred? A No, sir, I would not say definitely.

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Q Two hundred? A I should say yes, probably two hundred reports, if I wanted to guess at it.

Q That would be at the rate of about forty a year?

A Forty a year, yes, sir.

Q Would you say more than forty a year from Dr. Terri-
berry? A I should think they would run in that neighbor-
hood; maybe more or less; you can't tell; it depends on
the run of accidents, don't you know.

MR. SIEGEL: I renew my motion to strike out his
testimony in relation to this report.

THE COURT: You mean his testimony in relation
to the contents of the report?

MR. SIEGEL: I withdraw the motion. I will
allow his testimony to stand.

THE COURT: You move to strike out the contents?

MR. SIEGEL: No, sir, I will let it stand.

DR. GEORGE J. HOLMES, a witness for the People,
having been duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. McCORMICK:

Q Your address? A 17 Elizabeth avenue, Newark, New
Jersey.

Q Dr. Holmes, where do you live? A 17 Elizabeth avenue,
Newark, New Jersey.

Q In the year 1908 were you connected with any public

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service railroad company in Newark, New Jersey? A Yes, sir.

Q Doctor, during that year did you have a conversation with the defendant in this action? A Yes, sir.

Q Do you remember the date? A It was on the 29th of May, 1908.

Q May what? A 29th.

Q Where? A At Dr. Potter's office on Halsey street, Newark.

Q What were the circumstances under which you had this conversation? A Why, I was notified to go there for the purpose of examining the plaintiff who had received an accident.

Q Where was this place that the examination was made? A Dr. Potter's office.

Q Who was present besides the defendant? A Dr. Potter.

Q Now, Doctor, just tell the jury what took place on that day there? (No answer).

BY MR. SIEGEL:

Q Are you a physician? A Yes, sir.

MR. McCORMICK: There is no objection on that ground, is there?

THE COURT: Is there any objection?

MR. SIEGEL: No objection.

THE COURT: Again let the defendant rise and make the waiver.

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MR. SIEGEL: The defendant waives her privilege through Section 834 of the Code of Civil Procedure.

THE COURT: Is that so, Madam?

THE DEFENDANT: Yes, sir.

BY MR. McCORMICK:

Q Now, what took place there, Doctor? A Why, I went there about eleven thirty in the morning and heard the plaintiff's statement as to where she was injured, and was prepared to examine her. She claimed an injury to the lower portion of her abdomen, below the navel, in the median line, and at the base of her right thumb. At the base of the right thumb there was a red mark as if the skin had been rubbed off, a small red mark. The principal injury and claim was that she had a rupture.

MR. SIEGEL: I object to that statement and ask the Doctor to tell us the entire conversation he had with the defendant, and then his examination afterwards.

THE COURT: Yes.

THE WITNESS: It is impossible to give it word for word, your Honor.

BY THE COURT:

Q As near as you can remember? A I questioned the plaintiff about her previous history; she admitted having had an operation.

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THE COURT: Is there any objection to the word "admitted"?

MR. SIEGEL: No, sir.

THE WITNESS: (Continuing) Fifteen years ago for some ovarian trouble; that after this she had a small sac or swelling at the site of the scar, where the operation took place in the abdomen; she claimed at that time when I made my examination that this accident for which I was sent there to examine her had increased the size of this rupture, and caused it to be painful, which it had not been before.

BY MR. SIEGEL:

Q Did she use the word rupture? A I don't think she used the word rupture; she was referring to this swelling or sac, and said "It is now painful and much larger as the result of my fall yesterday than it was prior to that time."

BY MR. McCORMICK:

Q Did she tell you where and how she fell? A Why ---

THE COURT: That is not an injury in this case.

Q She said she had this rupture for years, is that right?

A Yes.

MR. SIEGEL: I ask that that question and answer both be stricken out, if your Honor please. I don't think the District Attorney ought to lead the witness

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in that way.

THE COURT: It is merely repetition.

BY THE COURT:

Q At no time during the conversation did she use the term rupture, Doctor? A Well, after I used it she may have done so; she referred to it as a swelling or sac.

Q Now, you said she called it a rupture? A A swelling or a sac --- I am certain that after the examination got under way that she referred to it as a rupture; positive of that.

Q Positive of that? A Yes, sir.

BY MR. SIEGEL:

Q Didn't you just answer me that she didn't use the word "rupture"? A Yes, sir.

Q You said she did not? A Well, she did not when she was stating her first statement.

Q Now, you want to qualify that? A Yes, -- I don't want to qualify it at all, because I was asked the question, -- it was the conversation prior to my examination; that was the previous history and she gave it to me.

BY THE COURT:

Referring to the conversation when she used the term that there was a sac, a small sac, she had a small sac or swelling at the site of the scar, is that it? A When I was getting her story.

Q In the conversation did she use the word rupture? A

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yes, sir.

Q Before the examination?

MR. SIEGEL: I object to the District attorney interrogating as he is now doing.

THE COURT: Strike out the question propounded by the District Attorney and the answer given by the Doctor wherein the term rupture was used by both. The jury will disregard the same.

Have you given us all the conversation, Doctor, all the conversation you had with her? A We had further conversation as to where she lived, what she did, where she was going, and as soon as the examination was over the conversation was in a general way as to how she was injured, and that she had stayed over night at that Doctor's office, and the doctor that was with her ---

MR. SIEGEL: I move that this testimony be stricken out, if your Honor please.

BY THE COURT:

Now, Doctor, in the conversation that you had with the defendant you stated that some reference was made to the word rupture. Who used that term? Now, I want you, Doctor, to be very careful. If you have any doubt in your mind, state so. This woman is not here to bring suit against any railroad company for injuries which she has sustained, or which she claims to have sustained. This is a prosecution

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by the People of the State of New York against her, and if there is any doubt in your mind, resolve that doubt in her favor? A Why, there is absolutely no doubt in my mind that she referred to that swelling as a rupture, and that we conversed about it as a rupture.

Q She said to you she had this rupture for some years?

A For years; that was her own word. I can tell you why I feel positive.

THE COURT: You don't need to do that unless counsel asks for it.

BY MR. SINGEL:

Q Let me ask you this: Did you make a report in writing at that time? A Yes, sir.

Q Have you got it with you? A Yes, sir.

Q Would you mind showing it to me? A This is a copy of the report that went to the Company, one of my own copies which I keep, and for that reason it is not signed; made by myself.

Q Would you be able to describe the location of this rupture that she stated she had? A Yes, sir.

Q Would you mind bringing that figure over, Officer? Just point to the location of the rupture? A This is the umbilicus or navel (illustrating).

Q You are placing that chalk mark there as the umbilicus? A Yes, sir, as the umbilicus or navel. I don't know what

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this is here for, but if this is the pubic bone or the pelvis bone ---

Q Just a minute. Did you notice a scar on her? A Yes, sir.

Q Will you locate the scar on the figure?

(Witness indicates.)

A The scar is in this neighborhood here (illustrating).

Q About how long? A I should say the scar was at least four inches in length. The scar was incorporated with, part of the swelling, hernia, or rupture, and this no doubt was meant as the seat of the operation; this rupture consists of --- the contents of the abdomen pushing the weakened abdominal wall forward and pushed the scar forward; it was located in this region here. From coughing it reached the size of a small child's head; that is the strain of coughing would force out the contents into this swelling, and get it into the size of a small child's head. It was not an umbilical hernia, it was a ventral hernia, a hernia of the wall of the abdomen at the site of an old operation and pushed forward and was covered in a way by this scar.

Q Now, sir:

Q In either event in your opinion it was a hernia?

A Absolutely no question about it.

Q Name the different kinds of hernia? A Well, we have the umbilical hernia, we have the inguinal hernia, and the

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femoral hernia. These are hernias coming out of the natural openings that exist in every one.

Q How about ventral hernia? A That is a hernia ---

Q You include that also among the category of hernias?

A But that is a different thing, it does not come out of a natural opening.

BY MR. SIEGEL:

Q That would be the result of the parting of the muscular tissue of the abdominal wall, would it? A Natural parting? I cannot conceive of a natural parting.

Q A spreading of the muscular tissues? A Yes, sir, that is what does take place, but it isn't natural.

Q It would have to be a cut, would it not? A No, sir.

Q What would it result from? A One could be born with ventral hernia.

Q What other causes contribute to ventral hernia? A A congenital condition, such as being born with the two recti muscles, the muscles of the abdominal wall, not being in firm position, -born that way is ventral hernia.

Then the operation, particularly an operation where drainage has taken place and the wound has not closed up.

Q Would also produce a ventral hernia? A Yes, sir, that is frequently, very commonly followed by ventral hernia, even though there is a natural union later on, the pressure from behind forces out that weakened abdominal wall.

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Q That would be termed a ventral hernia? A Yes, sir, I can conceive of a very severe injury to the abdominal wall, so severe as to injure the muscles, or cause degeneration of the muscles, being followed by ventral hernia.

Q In your medical opinion it was not umbilical hernia?

A Absolutely not; the umbilicus was not involved.

Q At the time you saw it? A Yes, sir.

BY MR. SIEGEL:

Q Would you give a positive opinion, as to the age of the rupture you found? A I cannot fix the actual age, no, sir.

Q Would you say it was six months old? A Decidedly so; she herself admitted it was years old.

Q What is that? A She herself admitted it was years old.

Q It could be two years, couldn't it? A Must have been over two years, or at least two years.

Q Can you give us a positive opinion as to that?

MR. MOSKOWITZ: I object to that; we have her own statement that it was there for six years. Two years would bring it to 1906.

Q Can you give a positive opinion as to the age of that rupture, Doctor? A I cannot positively fix the date when that rupture first began to present itself.

Q Assume that the witness's condition in October 1906 was such that unless an immediate operation was performed she would have died of strangulation of the intestines as

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the result of then suffering from ventral hernia --- assuming that that be true, Doctor, would you be able to give it now as your positive opinion, that that was the date of the origin of this hernia that you examined? A That is subsequent to that operation in 1906. Could it have occurred subsequent to 1906, subsequent to that operation? Why yes I think it is possible.

BY MR. MOSKOWITZ:

Q What is the distinction between umbilical hernia and ventral hernia? A The distinction is that in umbilical hernia there is a separation of the muscles around the umbilicus or navel; that is where the veins and arteries come out of the child, and they have either never entirely closed the opening, closed around these veins, and allowed the abdominal contents to poke out there; or if the closure was imperfect, and some later strain in life, lifting a weight, or something, had brought it out.

Q And a hernia might be called umbilical and still be a ventral hernia? A It cannot be anything else.

Q Unless it comes directly through the umbilicus it is not umbilical hernia, it must come through the umbilicus?

A Yes, sir.

Q So that is the only distinction which you draw?

A Yes, sir.

Q Between umbilical and ventral? A Yes, sir.

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BY THE COURT:

Q Is it frequently referred to as umbilical or ventral hernia because it is in the region of the umbilicus? A No, sir, that would not be justifiable any more than saying that an inguinal hernia was a ventral hernia; both come out of the abdomen.

BY MR. MOSKOWITZ:

Q Did you ever see a hernia called an umbilical hernia that was near the umbilicus? A Yes, sir, by reason of that, yes, sir.

BY THE COURT:

Q Then this was a ventral hernia? A It was in this case; it was in the median line, below the umbilicus, at the site of the scar, but the scar was claimed to have been caused by an operation.

Q In either event, whether ventral hernia or umbilical hernia, it was a hernia, but the name accurately describes the nature of the hernia? A Yes, sir; it was a hernia, no question about that; the name simply locates the hernia.

BY MR. MOSKOWITZ:

Q The hernia is located right at the top part of that scar? A The scar?

Q The top part of the visible scar? A No, sir, the hernia was so large it takes in the whole scar; the scar itself was four inches long, and it took in the scar. When she

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enoughed it was the size of a small child's head. A small
child's head placed there would take up the whole place.

BY MR. SIEGEL:

Q Didn't the defendant tell you when she saw you that
the hernia she said was years old had been enlarged by the
accident for which you were examining her? A She certainly
did.

(The Court then admonished the jury, calling
their attention to Section 415 of the Code of Criminal
Procedure, and took a recess until ten minutes after
2 o'clock.)

AFTER RECESS.

MR. SIEGEL: If your Honor please, having dis-
cussed with the defendant this morning, before your
Honor took the Bench, I deemed it my duty to properly
apprise the defendant as to the case which has been
progressing. I have advised her that the best thing
for her to do was to acknowledge her guilt and throw
herself upon the mercy of the Court, and let the
Court determine what is to be done with her. Now,
the defendant has acknowledged to her counsel and
is prepared, if your Honor will permit her now, in
the midst of the trial, to plead to the indictment.

THE COURT: She may do so. Swear the defendant.

The defendant is sworn.

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THE COURT: Madam, on November 10th, 1910, you entered a plea of guilty to this indictment.

On November 15th, 1910, when you were arraigned for sentence you had gathered somewhere the impression that I was not going to extend extreme clemency to you, and you then pleaded that you were not guilty of this charge, and that the District Attorney's office was moved by these companies to proceed against you, and instead of the case proceeding along the lines of a prosecution, the case has been transformed into a persecution.

Judge Whitman personally stated that if you were not guilty of this charge that he would recommend that you withdraw your plea of guilty so that the issue could be submitted to a jury. Do I understand now that by your confession of guilt you voluntarily admit that the representations made by you to the representatives of the New York Central & Hudson River Railroad Company concerning the injury, consisting of a hernia, whether it be a ventral hernia or an umbilical hernia, or any other kind of a hernia, was not sustained by you as the result of this accident, and that in obtaining the money from the Railroad Company you did so upon the representations that you had sustained this injury? What is

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your answer?

THE DEFENDANT: Yes, sir.

THE COURT: My recollection is that I interrogated you concerning some eighteen or nineteen cases where you claimed to have sustained a similar injury, on account of accidents that you have met with. Is that so?

THE DEFENDANT: Yes, sir.

THE COURT: Now, I want you to be absolutely honest with me, Madam. It will help you if you tell the truth. I don't want you to tell any untruth, acting under the belief that I shall deal mercifully with you. As a matter of fact, did you meet with any accident at 125th street and Park avenue?

THE DEFENDANT: If your Honor please, it was not the cause of the rupture. It caused a great deal of pain; but it did not tear any of the intestines. That is the truth. I had this previous trouble from the result of the Pennsylvania Railroad accident.

THE COURT: But, Madam, the record shows that in the course of two years you had nineteen accidents.

You have been a most unfortunate woman in meeting with accidents, and most fortunate in securing settlements from the companies. You know the milk of human kindness does not flow in the veins of any

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corporation. It is an entity. It has no soul, and they never give any money unless they are satisfied the circumstances warrant them in doing so. Now, here you have eighteen or nineteen accidents in the course of two years, and in each instance you collected. In the majority of cases you claimed to have stepped upon a banana peel, slipped and sustained a rupture.

THE DEFENDANT: Your Honor, I would like to ask you one question now in regard to this statement that the doctors have written out here. There were only one or two that I have read over. They read them over themselves, and at no time do I remember of admitting to any of these physicians that I had had a previous rupture. Particularly the one who testified last. The conversation with me was, if I remember correctly, only a few words. I made no demands on these people, but I don't care to go into that question now. I am sorry it has happened.

THE COURT: Of course, Madam, you see you figured in nineteen accident cases, and you stole from public service corporations by means of making false representations of negligence on the part of the companies resulting in serious injuries to your person, and in every instance you claimed that you sustained a

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hernia. There is no doubt in my mind that you did sustain a hernia some time ago, but it was not due to any accident, or due to the negligence of any of these public service corporations. Isn't that true, Madam? Is that true?

THE DEFENDANT: Yes, sir.

THE COURT: As I understand it, there is no doubt this unfortunate woman has had a hernia. She has had this hernia for many years.

MR. SIEGEL: From the first accident on the Pennsylvania.

THE COURT: When was the Pennsylvania accident?

MR. SIEGEL: June 1906.

THE COURT: Did you meet with an accident the night before, October 17th, 1906?

THE DEFENDANT: It was not in reality an accident.

MR. SIEGEL: One of the simulated accidents.

THE COURT: On the 18th that was not an accident?

THE DEFENDANT: No, sir.

THE COURT: Now, I want to state to you, Madam, that all of the companies, when you appeared before me the last time, instead of showing any spirit of vindictiveness towards you, on the contrary showed

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evidence of sympathy, but I felt that if the interests of justice ---so the companies asked extreme clemency for you, --- that I could not as a judge afford to grant extreme clemency because of the number of crimes that you have committed. Then you contested the issue, went to trial here, and took up the time of the Court for the last four days, almost four days, in order to establish your guilt. Now, you knew you were guilty when you pleaded guilty before. Nobody urged you to do so. The evidence in this case was overwhelming, and proof of the fact that you made false representations to this corporation as to an existing fact was overwhelming. You knew that. Your son interested some very estimable gentlemen in this town, one man in particular, for whom I have the highest regard and respect, whereby the claim was made that you were an innocent woman, the victim of circumstances, and that you were kept in the Tombs seeking a trial for the past six months, and unable to obtain a trial. Now, as I understand it, you now withdraw all statements concerning the attitude of the companies and the District Attorney's office, is that right?

THE DEFENDANT: Yes, sir. I have had nothing but the utmost respect from the District Attorney's

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office. The District Attorney's office has been very respectful to me. I have absolutely no complaint to make against the District Attorney.

THE COURT: I want you to understand that so far as I am concerned I have absolutely no animus against you; I have not against any person charged with crime. It is a great misfortune that we have so many in this town that transgress the law, but it is my sworn duty to uphold the law, and in certain instances to impose punishment. Instead of having any spirit of vindictiveness towards you, why I feel sympathetic towards you. I know you are a woman in very delicate health; no doubt about that. All parties here agree to that, but if you had made this statement truly, as you do now, and trusted to justice to determine whether you should be sent to jail or not you probably would have been far better off.

THE DEFENDANT: If your Honor please, with reference to the editorial articles and with reference to these friends of mine that called upon the District Attorney ---

THE COURT: What editorial articles?

MR. SIEGEL: I understand there was one, and she knew nothing about it.

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THE COURT: I don't know of any editorial article.

MR. SIEGEL: I understood there was some article in the paper reflecting upon the District Attorney's office.

THE DEFENDANT: I knew absolutely nothing about it, or the gentlemen who called upon the District Attorney. A number of these friends lived at my house and they were utterly surprised to know about it. My son didn't know anything of this. No one knew of it at all. For that reason I would ask you to excuse any of my friends.

THE COURT: I do not make any charge against any of your friends, except that you deceived your friends.

THE DEFENDANT: Yes, sir.

THE COURT: Why, your son appeared at my chambers on the day of sentence, and of course, as a son, I felt very warmly for him, and for the stand he took on behalf of his mother. He insisted that you were innocent. That boy certainly took your word at par, he believed in his mother, and he is a good son, but you, Madam, knew at the time whether or not you were violating the law. It was locked up in

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your breast. We have had evidence here to show that the circumstances unerringly pointed in the direction of your guilt. As I said throughout the case, without expressing any opinion to the jury, at the time, I allowed all the other offenses not as proof of guilt on your part as to the particular charge made against you in the indictment, but the law permits similar acts, similar declarations, similar offenses, to be presented to the jury on the question of whether or not you had guilty knowledge at the time you made this statement to the Company that you had sustained hernia as the result of negligence due to the Company's carelessness. That was admissible on the question of the intent with which you made the claim, and it was for that purpose that the jury could consider the other offenses, as bearing upon the guilty knowledge and intent with which you committed this act. I feel that the gentlemen of this jury, after the District Attorney should have rested, would not have hesitated in convicting you upon this charge, because the District Attorney has some eighteen or nineteen other witnesses here to call. I shall take into consideration the fact that you have pleaded guilty, and shall

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impose sentence one week from to-day.

(Defendant remanded.)

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