

**START**

1377

**CASE**

7

I N D E X.

	Direct	Cross	Re-D	Re-C
Julia schaefer	3	13		
Lavinia Coles	27			
Fannie Griffin	33			
Frank May	35	38		42
William Travers Gibb	45			

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1277

I N D E X.

Direct Cross

Frank May

57

~~62~~

Lavinia Coles

68

7

COURT OF GENERAL SESSIONS OF THE PEACE

CITY AND COUNTY OF NEW YORK, PART V.  
(April Term continued.)

----- x  
T H E P E O P L E

against

E M M A S C H A E F F E R .  
----- x

B e f o r e  
HON. THOMAS C. T. CRAIN, J.,  
and a Jury.

New York, May 15th, etc., 1911.

Indicted for abduction.

Indictment filed May 8, 1911.

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

ASST. DIST. ATTY. T. CHANNON PRESS, for the People.

C. B. F. BARRA, ESQ., for the Defense.

Frank S. Beard,  
Official Stenographer

1377

TRIAL RESUMED.

New York, May 16, 1911.

MR. BARRA: The defendant moves, if your Honor please, for an order excluding the witnesses from the court room.

THE COURT: It is so ordered.

(The Clerk announces the order of the Court.)

JULIA SCHAEFER, a witness called on behalf of the People;

BY THE COURT:

Q How old are you? A Thirteen.

Q Do you go to school? A Yes, sir.

Q Where do you go to school? A To learn.

Q I say, whereabouts is the school? A 33rd street.

Q And what class are you in, or grade? A I am in the third grade.

Q Do you know that, if you testify here, you have got to tell the truth; do you understand that? A Yes, sir.

Q When were you thirteen years old? A February 12th.

THE COURT: She may be sworn.

MR. BARRA: Does your Honor hold that the witness is intelligent enough to be sworn?

THE COURT: The provision of law appears to be (Reads.) This young girl says she is thirteen, and she

1377

apparently does not come within the provisions of section 392.

MR. BARRA: Doesn't she come under that part of the section, "Apparently under the age of twelve"?

MR. PRESS: Do you question her age?

MR. BARRA: Yes, I question everything.

THE COURT: Then you may interrogate her, if you wish.

MR. BARRA: No, your Honor, I will stand on the exception, without any further interrogation.

THE COURT: She may be sworn.

(The witness is sworn.)

DIRECT EXAMINATION BY MR. PRESS:

Q Where do you live, Julia? A 134 West 133rd street.

Q Now, Julia, I want you to talk so that the last juror can hear you. Just please speak to him, and then all the other gentlemen can hear you. What is your mother's name? A Emma Schaefer.

Q Emma Schaefer? A Yes, sir.

Q And do you see her in court? A Yes, sir.

Q Where is she? A She is over there (indicating the defendant).

Q Indicating the defendant? A Yes, sir.

Q Now where did you see her last? A At home.

Q At home? A Yes, sir.

Q And where was that home? A 134 West, 133rd street.

1277

THE COURT: You might try to talk a little bit louder; will you please? I think you can talk a little louder. Don't be afraid and no one here will harm you.

BY MR. PRESS:

Q. And do you remember what day of the month you saw her last? A. The 8th of March.

Q. And at what hour of the evening was that? A. In the afternoon.

Q. Was there any person with you at that time -- A. No, sir.

Q. That you saw her, on the last occasion? A. No.

Q. Well, on that evening did anyone come to the house for you? A. Yes, sir.

Q. At what hour did that party come for you? A. About three o'clock.

Q. In the daytime or in the morning? A. In the morning.

Q. And who was that party? A. My brother.

Q. And what did you do? Did you go away with him, or stay there with him? A. I went away with him.

Q. And what was your brother's name? A. Lorenzo Coles.

Q. Now about how long had you lived with your mother at 134 West 133rd street? A. About a year.

Q. About a year? A. Yes, sir.

Q. And during that time that you had been living with her, were there any boarders in the house? A. Yes, sir.

1277

Q Who were the boarders in the house? A Norman Coles and Frank May.

Q Now were you living with your mother when Norman Coles came to the house first, or was Coles at the house before you came there? A Before I came there.

Q Before you came there? A Yes, sir.

Q You had been where? A In the south.

Q In the south? A Yes, sir.

Q Now, when you came to live with your mother, where did you sleep? A With my mother.

Q With your mother? A Yes, sir.

Q And was it in one of the rooms, or where was it you slept in the house? A In the bedroom.

Q Was there any other person that slept in that bed with you? A No, only her and me.

Q Now about how long did you sleep with your mother? Just approximately. About how long did you sleep with your mother? A (No answer.)

BY THE COURT:

Q You are not expected to tell exactly, but as nearly as you can remember? A I slept with her about --

THE COURT: And try to talk a little louder, because you see them all leaning forward in the jurybox to hear you, and they all want to hear you.

THE WITNESS: I slept with her about a year, I

127

think.

BY MR. PRESS:

Q You slept with her about a year? A Yes, sir.

Q Well, you say you came from the South about a year ago?

A Yes, sir.

Q So that you slept with her all the time; did you?

A Until she put me in the bed with Norman Coles.

Q Until she put you in the bed with Norman Coles?

A Yes, sir.

Q Now where was Norman Coles sleeping in the house, at the time that your mother put you in the bed with Norman Coles?

A He was sleeping with my other brother.

Q He was sleeping with your other brother? A Yes, sir.

Q And where was he sleeping? A In the dining room.

Q Well, at the time that your mother told you to sleep with Norman Coles, was your brother sleeping with Coles?

MR. BARRA: I object to that. She said, "My mother put me in the bed," and not, "told me to go there to sleep."

THE COURT: Objection sustained.

BY MR. PRESS:

Q Now at the time that your mother put you in the bed with Norman Coles, was your brother sleeping with him still? A No, sir; I was sleeping with him then.

THE COURT: Now, little girl, you will have to try to

1977

talk a little louder. You can talk a little louder;  
can't you?

THE WITNESS: Yes, sir.

BY MR. PRESS:

Q Now, will you tell us just what your mother said to you,  
and what you did --

MR. BARRA: Now, if your Honor please, I object on  
the ground it is too vague, and indefinite, and no time  
has been fixed. The allegation in the indictment is --

THE COURT: Well, the question was only half put  
when you began to take your objection. I will hear the  
question in full, and then I will hear your objection.

BY MR. PRESS:

Q When your mother put you in the bed with Norman Coles  
first, what did she say to you and what did you do?

MR. BARRA Now, I object to that, on the ground  
that is is too vague and indefinite, and no time has been  
fixed. The indictment reads the 8th day of March,  
and unless he proves --

THE COURT: I understand your objection. The objection.  
The objection is overruled.

MR. BARRA: Your Honor will note my exception.

A She told me to get in the bed with him, and I went on,  
and got in the bed with him. And then I told her I didn't  
want to sleep in there with him, and she said, "You have to sleep

1377

in there with him."

Q Well, did you say to her why you didn't want to sleep there? A Yes, sir, I told her I didn't want to sleep with him.

Q Yes.

THE COURT: Try to talk a little louder; won't you?

BY MR. PRESS:

Q And what is the reason you gave her?

MR. BARRA: Now, if your Honor please I must press my objection.

BY MR. PRESS:

Q What did you say?

MR. BARRA: I object, unless some time is fixed.

THE COURT: I will overrule your objection.

I understand that this relates to the first occurrence.

MR. BARRA: But there is no proof of that, your Honor as yet.

THE COURT: Yes, there is a statement by this witness that, at a certain time, the defendant put her in the bed with Norma Coles; and there is a statement by this witness that, at that time, the defendant said something to this witness, and she purports to state what that was, and what she said in reply.

MR. BARRA: Your Honor will note my exception.

THE COURT: Now, try and talk up loud. They all want

1281  
1977

to hear you. I am not going to tell you again. Now talk good and loud.

BY MR. PRESS:

Q What did you say to your mother? A I told her I didn't want to get in bed with him.

Q And did you say why you did not want to get in bed with him? A Yes, sir.

Q What did you tell her? A I said that he did something to me, that he laid on top of me, and that he put his privates in my privates, and she said maybe he didn't mean to do anything to me.

BY THE COURT:

Q How long was the first time that you were put in bed with Norman Coles before the 8th of March? A (No answer.)

Q How long before the 8th of March was it when you first got into bed with Norman Coles?

BY MR. PRESS:

Q About?

BY THE COURT:

Q About how long before the 8th of March? A About --

Q Well, I am waiting to hear your answer now? A (No answer.)

BY MR. PRESS:

Q Do you know how many days there are to a month?

A Yes, sir.

1277

Q How many? A Thirty, I believe.

THE COURT: Will you kindly talk out good and loud?

I am not going to tell you again.

BY MR. PRESS:

Q Was it a month or two months or three months, or how long was it? A About two months.

BY THE COURT:

Q On about how many different nights were you in bed with Norman Coles, before the 8th of March? A About two months.

Q Every night? A Every night.

BY MR. PRESS:

Q Now when was the last time that you slept in the bed with Norman Coles? A The 8th or 9th of March.

Q Was it the 8th or 9th? A The 8th.

Q Now, on that night, what time did you go to bed, about? A About ten o'clock.

Q And what, if anything, did Norman Coles do to you, that night, while you were in bed with him?

MR. BARRA: For the purposes of the record, we object to that, as being immaterial irrelevant and incompetent.

MR. PRESS: On the 8th of March, if your Honor please, the date charges in the indictment.

THE COURT: The objection is overruled.

MR. BARRA: Exception.

1377

BY MR. PRESS:

Q. What, if anything, did he do to you that night?

A. He waited until I got asleep, and then he got on top of me.

Q. Yes. A. And then he put his privates into mine.

Q. Yes. And then I woke up, and then he had his hand over my mouth, so that I couldn't holler.

Q. Now, on the 8th of March, 1911 did you see Lavinia Coles? A. Yes, sir, I did.

Q. Where did you see her? A. She was in my house.

Q. And did you speak to her? A. Yes, I spoke to her.

Q. And did you leave the house with her? A. Yes, sir, I did.

Q. Where did you go? A. I walked up to the corner with her.

Q. And had a talk with her; had you? A. Yes, sir.

Q. And at what hour was it that you left her? A. I think it was about eight o'clock.

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

Q. And when, then, did your brother come to the house?

A. He came about three o'clock in the morning.

Q. Of that same day? A. The next morning.

Q. The next morning? A. Yes, sir.

Q. What age are you? A. Thirteen.

Q. Do you know your birthday? A. (No answer.)

THE COURT: A little louder now. We all want to hear

you.

MR. BARRA: For the purposes of the record, we will concede that she is under the age of eighteen.

MR. PRESS: Will you concede that she is thirteen years of age, in February last?

MR. BARRA: I do.

BY MR. PRESS:

Q Now this place, 134 West 133rd street is in the county of New York; is it? A Yes, sir.

Q Now, during the time that you were sleeping with Norman Coles, how frequently did you speak to your mother about the matter? A I spoke to her on the 9th of March, and I had spoken before then.

Q You had spoken before this? A Yes, sir.

Q About how many times had you spoken to her?

A About three times.

Q And on each of those occasions what did you say to her, in substance? A I told her that Norman Coles got on top of me, and did something to me, and she said maybe he didn't mean to do nothing to me.

Q Now, when your brother took you away, where did he take you to? A No his house.

Q Where was his house? A Around in 32nd street.

Q And from there where did you go? A I went right up to his house.

1977

1977

Q Well, did you ever go to the house of Louis Tines, 344 West 72nd street? A Yes, sir.

Q And then after that you went to the home of Mamie Black, in Englewood, New Jersey; is that so? A Yes, sir.

Q Were there any women boarders in that house, 134 West 133 street? A No, only men.

Q Were there many visitors, men visitors, to the house? A Yes, sir.

Q Were there any lady visitors to the house?

MR. BARRA: One moment. Objected to as immaterial.

THE COURT: Objection sustained.

MR. PRESS: You may examine.

CROSS EXAMINATION BY MR. BARRA:

Q Now, young lady, the first time you went to bed--

MR. PRESS: Will you pardon me a moment?

MR. BARRA: Yes.

MR. PRESS: Will you ask Norman Coles to come in, please? If your Honor please, I want to have Norman Coles identified. Just one moment, Mr. Barra.

MR. BARRA: Certainly.

BY MR. PRESS:

Q When you refer to Norman Coles, is this Norman Coles (indicating a man at the bar)? A Yes, that's Norman Coles.

THE COURT: Now, for the purposes of the record, you want the name of the person who is at the bar. What name

1377

does he answer to?

MR. PRESS: Norman Coles, your Honor. You concede that is Norman Coles?

MR. BARRA: Yes. I don't know him, but I suppose it is he.

MR. PRESS: That's all. Pardon the interruption.

BY MR. BARRA:

Q. Now, young lady, when was the first time that you went to bed with Norman Coles, what month? A. I think it was on the tenth.

Q. The tenth of what? A. February.

Q. February? A. Yes, sir.

Q. Sure about that? A. Yes, sir.

Q. That was the first time? A. Yes, sir.

Q. What made you remember the 10th? A. Because I used to keep the day all the time.

Q. The day of what? A. Of the month.

Q. Of what? A. Of the month.

Q. Of the month? A. Yes, sir.

Q. And you are sure it was the 10th? A. Yes, sir.

Q. So it wasn't two months before; was it? It was about a month before? A month? A. Yes.

Q. You made a mistake before, when you said two months? You made a mistake; is that right? A. It was about the 10th of February.

Q It was about the 10th of February? A Yes, sir.

Q So that when you said to Mr. Press, in answer to his question, that it was two months, you were mistaken; is that right? A Yes, sir.

Q Yes. Now, on the 10th of February -- on the 9th of February you slept in bed with your mother? A Yes, sir.

Q How many rooms did you have there? A Five rooms and bath.

Q What is that? A Five rooms and bath.

Q Five rooms and bath? A Yes, sir.

Q How many bedrooms? A Two.

Q Who slept in the bedrooms? A My mother slept in the room next to the front room.

Q And you slept in there with her? A Yes, sir.

Q And the other bedroom, who occupied that? A Frank May.

Q Mr. May? A Yes, sir.

Q Did anybody else occupy the room but Mr. May? A No, nobody else.

Q He was alone? A Yes, he was alone.

Q And who occupied the other rooms? A I slept in the dining room with Norman Coles.

Q You slept in the dining room with Norman Coles?

A Yes, sir.

Q And who occupied the other room? A Nobody else slept in the front room.

Q Well, did your brother -- did he occupy any of the rooms? A No, sir, he wasn't living there.

Q When did he leave there? A He never lived there.

Q He never lived there? A No, he only came to see us there.

Q But he never lived there? A No, sir.

Q Was Mr. May's room nearer the dining room than your room? A No; there was a hall room.

Q A hall room? A Yes, sir.

Q Now which was nearer, which room was nearer to the dining room, the room where you slept with Norman Coles, your mother's room or May's room? A May's room.

Q Now, on the 10th of February, when you went to bed, who went to bed first, you or Coles? A Me.

Q You did? A Yes, sir.

Q Did you fall asleep? A Yes, sir.

Q Did you see Mr. Coles in bed? A Yes, I did.

Q Did you see him in bed? A Yes.

Q Were you still awake when he came into the bed?

A Yes, sir.

Q Sure about that? A Yes, sir.

Q How long had you been in bed before Coles came into the room? A Not long.

1977

Q How long before you went to bed did your mother tell you to go to bed in the dining room? A (No answer.)

Q Don't you remember? A No.

Q Was it the day before? A The day before.

Q Yes, the day before she told you? A Yes, she told me.

Q She didn't say anything the next day; did she?

A No, sir, she didn't.

Q The day before, she told you to go and sleep in the dining room; is that right? A Yes, sir.

Q So that the next night, who went to bed first, you or your mother? A I went to bed first.

Q And what time did you retire, what time did you go to bed? A About ten o'clock.

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

Q Mr. Coles wasn't in the room at the time; was he? A No, he wasn't.

Q How long after did you see Coles? A I saw him -- I don't know how long after.

Q Was Mr. May in bed? A Yes, he was in bed.

Q Didn't Mr. May see you in bed in the dining room? A Yes, sir.

Q He saw you? A Yes, sir.

Q Did he say anything to you? A No, he didn't.

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

Q. When did you speak to your mother for the first time about what happened to you in the dining room? A. The next day.

Q. What day was that? A. I think it was Thursday.

Q. On the 11th of the month? A. Yes, sir, the 11th of the month.

Q. And what time of the day did you tell her? A. In the afternoon.

Q. You didn't say anything in the morning? A. No, sir.

Q. Your mother didn't tell you to do anything wrong with Coles; did she? A. No.

Q. She didn't say, "Let him have intercourse with you; did she? A. No, sir.

Q. At no time she told you that? A. No, sir.

Q. Never told you to do anything wrong with Norman Coles; did she? A. No, sir.

Q. Do you go to school? A. Yes, sir.

Q. So you spoke to your mother after you came home?  
A. Yes, sir.

Q. After you came back from school; is that right?  
A. Yes, sir.

Q. Did your mother examine you? A. No, she did not.

Q. Did you show her your clothes? A. No, sir.

Q. How were you dressed when you went to bed? A. I had on a nightgown.

Q Only a nightgown? A Yes, sir.

Q And had everything else off? A Yes, sir.

Q There were sheets on the bed; weren't there? A Yes, sir.

Q White sheets? A Yes, sir.

Q And the next night you went to bed again in the dining room? A Yes, sir.

Q Is that right? A Yes, sir.

Q Now what did you say to your mother in the afternoon?

A I told her I didn't want to sleep with him any more.

Q And what else did you say? A Because he laid on top of me, and put his privates into mine.

Q Now who told you to say "privates"? Where did you first hear that word "privates"? Since you have been in the Gerry Society? A (No answer.)

Q Who was it told you to use the word "privates"? A (No answer.)

Q Some man in the Gerry Society? A Yes, sir.

Q Now tell us some more that that man, that same man in the Gerry Society, told you to say here? A Nobody in the Gerry Society told me. ) Somebody here told me.

Q Who was it? A That gentlemen there (indicating Mr. Press.)

Q Mr. Press? A Yes, sir.

Q What did he say to you? A He said did he put his privates into mine, and I said yes.

1377

Q You had never heard of the word "privates" before Mr. Press used it? A No, sir.

Q Is that right? A Yes, sir.

Q Did anyone in the Gerry society tell you to use the word "privates"? A No, sir, nobody in the Gerry society.

Q Did you tell your mother that you had bled? A Yes, sir.

Q You did tell her that? A Yes, sir.

Q Why didn't you tell us that when Mr. Press asked you, was questioning you? A she looked at my clothes, that night.

Q She did what? A She looked at my clothes.

Q Why did you say, a little while ago, that she didn't examine your clothes?

MR. PRESS: Now I object. He asked her if the mother had examined her, and the child said no; and this is an examination of the clothes that he is asking about now, if your Honor please.

THE COURT: Very well.

MR. BARRA: Then I misunderstood the testimony.

BY MR. BARRA: Well, did she examine your clothes?

A Yes, sir.

Q What clothes did she examine? A My drawers.

Q But you say you didn't have any drawers on, that night?

A No, sir, when I went to bed I didn't have any on.

Q So that there was nothing on the drawers; was there?

110 111

1877

A She took them in the room with her.

Q Who did? A My mother.

Q When? A I don't know when it was.

Q How long after the first night? A That was the first night she looked at them.

Q Now, when you went to bed, you didn't have any drawers on; did you? A No, sir.

Q You only had your nightgown on? A Yes sir.

Q So that there was nothing on the drawers? A No; I didn't see anything on them.

Q You didn't see anything on them? A No, sir.

Q What clothes did your mother examine? A My underwear.

Q Your underwear? A Yes, sir.

Q How often did you change your underwear? A Every Saturday night.

Q Every Saturday night? A Yes, sir.

Q And so was it on Saturday that your mother examined your underwear? A Yes, sir.

Q On a Saturday? A Yes, sir.

Q And not the next day? A No, sir.

Q So that you were mistaken, when you said it was the next day that your mother examined your drawers, and took them into the room? A Yes, sir.

Q And on the Friday night did you go to bed? A Yes, sir.

1377

Q You went to bed every night thereafter? A Yes, sir.

Q And did Coles get on top of you every night? A Right along, every night.

Q Every night? A Yes, sir.

Q Sure about that now? A Yes, sir.

Q So the only time you spoke to your mother about what Coles had done was at three o'clock in the afternoon of the day after the first night?

MR. PRESS: Now, one moment. I object, because the witness has not testified to that.

MR. BARRA: But I am asking her, on cross examination.

MR. PRESS: The witness testified that she had told her mother several times.

MR. BARRA: But, if your Honor please, that was on the direct examination she testified to that, and I am now cross examining.

THE COURT: The objection is overruled.

BY THE COURT:

Q About how often did you tell your mother about it? talk right up now. Twelve men want to hear you? A When I would get a chance.

Q And that was about how often? A About four times I told her.

BY MR. BARRA:

Q Four times? A Yes, sir.

1977

Q And you saw your mother every day; didn't you? A Yes.

Q Now do you know what menstruation is, what periods is?

A Yes, sir.

Q You were menstruating; weren't you? A Yes, sir.

Q How long were you menstruating? A I had been in March.

Q Was that the first time? A No, I had them all the time.

Q For how long a time did you have your monthlies?

A I think it started in February.

Q In February? A Yes.

Q That was before Coles went to bed with you; is that right? A Yes, sir.

Q You are sure about that now? A Yes, sir.

Q Did you tell your mother that you had your periods?

A Yes, sir.

Q She knew it; did she? A Yes, sir.

Q Do you know what day in February it was you had your periods? A No, I don't know what day it was.

Q Was it before Coles went to bed with you? A Yes, sir, before.

Q How long before? A Before he went to bed with me.

Q Well, how long before? A Couple of weeks or a month?

A A month.

Q A month? A Yes, sir.

1377

Q Well, it was in January then? A Yes, sir.

Q You said it was in February. Now which is it?

A January.

Q In January? A Yes, sir.

Q Sure about that now? A Yes, sir.

Q And when was the second time you spoke to your mother about what Coles had done to you? A I told her on the 9th of March.

Q You told her on the 9th of March? A Yes, sir.

Q Why, you went away 8th; didn't you? A Yes.

Q Did you see your mother, the next day? A I told her on the 8th of March.

Q 8th of March? A Yes, sir.

Q That was the second time you told her? A Yes, sir.

Q The first time was the day after the first night, and the second time was the 8th of March? A Yes, sir.

Q The day that your brother took you away from the house? A Yes, sir.

Q Is that right? A Yes, sir.

Q So that you told your mother twice, in all; is that right? A Yes, sir.

Q And the last time -- the first time was a day after you went to bed with Coles, in February? A Yes, sir.

Q And the second time, the last time you told her, your mother was arrested afterwards? A Yes, sir.

1377

Q Your mother was arrested? A Yes, sir.

Q On the same day that you left, the 8th of March?

A Yes, sir.

Q Your mother always treated you kindly, didn't she?

A Yes, she was nice.

Q She was nice to you, you say? A Yes, sir.

Q She clothed you; didn't she? A Yes, sir.

Q And she took these boarders and from the money that she got from the boarders for the rent, you know, dont you, that she was keeping you?

MR. PRESS: I object to this, if your Honor please. It isn't material.

MR. BARRA: I press the question.

MR. PRESS: But how does the girl know? How does she know the source from which her mother's money came?

THE COURT: You may ask her what the mother did.

MR. BARRA: I will, sir.

BY MR. BARRA:

Q What did your mother do? Did she keep a furnished room house? A She had white men to come in there, and she sent me out for the women, for the colored women to come in there.

Q She did that? A Yes, sir.

Q Sure about that? A Yes, because I saw them.

BY THE COURT:

1977

Q What floor of the house did your mother live on?

A The first floor.

Q You mean by that one flight up? A Yes, sir.

BY THE TENTH JUROR:

Q When your mother sent you out for women, what did she tell you? A She told me to go out -- she told me to go and get a lady and tell her to come down, that she wanted to see her.

Q Who was this lady? A I don't know the lady's name.

Q Where did she live? A She lived up in the next block to us.

Q Was she colored or white? A She is colored.

Q And did she come to the house when you went for her?

A Yes, sir.

Q Do you know what she did there? A No. My mother would send me out.

Q Your mother would then send you out, after you brought her there? A Yes, sir.

Q Do you know what the men were there for? A No, sir.

BY MR. BARRA:

Q Did your mother do washing? A Yes, sir.

Q She is janitress there; isn't she? A Yes, sir.

Q And takes in washing? A No, she don't take in no washing.

Q Does she do any washing? A She does her own washing.

L A V I N I A C O L E S, of 29 West 132nd street, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. PRESS:

Q Are you in any way related to the defendant, Mrs. Schaefer? A Yes, sir.

THE COURT: Talk up good and loud now. We all want to hear you. Just answer that question over again. What is your answer?

THE WITNESS: Yes, sir.

THE COURT: Now then talk so that the jury can hear you.

BY MR. PRESS:

Q What is the relationship between you? A Her son is my husband; I am married to her son.

Q And what is his name? A Lorenzo Coles.

Q And now did you ever visit the defendant at her residence, at 134 West 133rd street, in the county of New York? A Yes, sir.

Q When was the last time you visited there? A The 8th of April.

Q The 8th of April? A Yes, sir -- March I meant to say.

Q The 8th of March? A Yes, sir.

Q And what hour of the day were you there? A It was in the evening, at about eight o'clock.

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

Q Did you see the last witness, Julia Schaefer, there?

A Yes, sir.

Q And did she speak to you? A Yes, sir, she did.

Q When you left the house, did she accompany you?

A Yes, sir; to the corner.

Q To the corner? A Yes, sir.

Q And while you were then walking to the corner, did she speak to you? A She did.

Q And, as the result of what she told you, did you tell your husband? A I did.

Q And what did your husband do? A Well, on the 9th, between two and three o'clock, he went and brought the child to our house.

Q Now, had you visited that house before that date?

A A week before then.

Q A week before? A Yes, sir.

Q And at about what hour of the day or night was it that you visited there? A Twelve o'clock in the evening; just as I came from work.

Q Twelve o'clock in the evening; just as you came from work? A Yes, sir.

Q Now what room did you go into, when you visited, on that occasion? A The dining room.

Q Just tell us what you saw in the dining room, when you were in there? A Well, I saw the two of them in the bed.

1277

MR. BARRA: Now, one moment, if your Honor please, I object to that as immaterial, irrelevant and incompetent.

THE COURT: Overruled.

MR. BARRA: May I state my further ground, your Honor?

THE COURT: Yes.

MR. BARRA: That this is attempting to prove an act not specified in this indictment, and for which the defendant is not on trial, namely, a week before.

THE COURT: Well, it is all competent, as bearing on the knowledge of the defendant as to what the conditions were. In other words, if it had been a single and isolated occurrence, upon a single occasion, that would be one condition of fact. Upon the other hand, if it was a repeated occurrence, that would be another condition of fact.

MR. BARRA: But, your Honor, unless they establish, beyond every fair and reasonable doubt, the charge made in the indictment, the charge which is the foundation of the indictment, they can't build up proof of other and different acts, on other occasions.

THE COURT: No, counselor, you mistake what the proposition is. They have got to prove the charge contained in the indictment.

MR. BARRA: Yes, sir.

THE COURT: One element to be proved by them,

necessarily, is the knowledge, the intent and purpose of this defendant.

MR. BARRA: Yes, sir.

THE COURT: And evidence which bears upon the condition was there, what witnesses saw, at or about the time, or somewhat prior to the time, has some bearing on the question of the knowledge or lack of knowledge of the defendant.

MR. BARRA: Your Honor will note my exception.

BY MR. PRESS:

Q Now what did you see? A Well, when I went in there, the two was in bed together.

Q What two? A Norman Coles and Julia.

BY THE COURT:

Q Now when was that? Give me the date? A I couldn't give you the date.

Q What month? A In March.

BY MR. PRESS:

Q You said it was a week, I believe, before the 8th?

A Yes, sir, a week before the 8th.

Q Now had you been to the house before that? A Before the 8th?

Q No, before that visit of a week before the 8th. Had you been to the house before that? A Well, I hadn't been there for some time.

Q. Now what did you see when you had been there on previous occasions?

MR. BARRA: I object, unless some time is fixed.

THE COURT: No. You must fix the time.

BY MR. PRESS:

Q. Well, can you fix some time when you were there before that time? A. No, sir.

BY THE COURT:

Q. Were you there at all in the month of February?

A. Yes, sir.

Q. Were you there after Washington's birthday, and before the 1st of March -- that is, the 22nd of February -- were you there between the 22nd of February and the first of March? A. Yes, sir, I was there.

BY MR. PRESS:

Q. Now on that occasion, what time did you get there?

A. Well, often during that time I was around there in the daytime, but didn't stay long.

Q. Now, did you ever see this child in bed with Coles prior to that time? A. (No answer.)

BY THE COURT:

Q. Before? Prior means before.

BY MR. PRESS:

Q. And, if so, when?

MR. BARRA: I object to that as leading and suggestive

1377

to the witness.

THE COURT: Objection sustained.

BY MR. PRESS:

Q How many times altogether did you see this child in bed with Coles? A I only seen them once.

Q Did you say anything to the defendant on that occasion?

A I did not.

Q You did not? A No.

Q Did you say anything to the mother of the girl?

A I did not; I didn't say anything to the mother at all.

Q You did not? A No.

MR. PRESS: You may examine.

MR. BARRA: No questions.

MR. BARRA: Now, if your Honor please, for the purposes of the record, the defendant moves to strike from the record the testimony of the last witness, on the ground that it is immaterial, irrelevant and incompetent; nor is it germane to the issue here.

THE COURT: I will allow it to remain, as bearing upon the question of the knowledge or lack of knowledge of the defendant.

MR. BARRA: But, your Honor, there is no proof that the defendant had knowledge of that particular occasion as to which the witness is testifying.

THE COURT: There is some proof of the number of rooms,

1377

and the location of the rooms, and some proof as to the people who occupied the rooms.

MR. BARRA Yes, sir.

THE COURT: And, if it is shown that a certain thing happened in one of a set of rooms on a number of occasions, the defendant being an occupant of the apartment, it is conceivable that an inference may be drawn, where the same inference would not be drawn, if it were shown to have occurred on only one occasion.

MR. BARRA: Your Honor will note my exception.

FANNIE GRIFFIN, of 125 West 133rd street, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. PRESS:

Q Are you related to the defendant, Mrs. Griffin?

A Half sister.

Q Half sister? A Yes, sir.

Q Did you ever visit her at her home at 134 West 133rd street? A Yes, sir.

Q When did you visit her last? A Well, I really couldn't say the very date.

Q Well, could you tell us what month it was? A Well, no, I can't just remember the month, but I know it has been at least five and maybe six months. But I haven't been there.

within five or six months, until the night after her arrest.

Q Well, were you there five months before? A Yes, sir.

Q Visiting? A Yes, sir.

Q And what hour of the day or evening were you there?

A Oh, I suppose I was there all day, in and out, different times.

THE COURT: What bearing as this, five months before?

MR. BARRA: I submit that that wouldn't be competent or material.

MR. PRESS: One moment, if your Honor please.

BY MR. PRESS:

Q You say it was five months before her arrest?

A At least five months since I have been in her house, and it may be six, but I am positive it was five. Of course I haven't kept any account specially.

MR. PRESS: Well, your Honor, the witness is withdrawn.

THE COURT: The witness is withdrawn?

MR. PRESS: Yes, sir.

(The Court then admonished the jury in accordance with section 415 of the Code of Criminal Procedure, and took a recess until two o'clock.)

## AFTER RECESS.

FANNIE GRIFFIN, on the stand.

MR. PRESS: Do you wish to cross examine?

MR. BARRA: No, I don't care to examine the witness.  
I waive that.

MR. PRESS: You waive that?

MR. BARRA: Yes. You withdrew her and I don't  
care to examine her. I waive that privilege.

FRANK MAY, of No. 7 West 135th street, a witness called  
on behalf of the People, being duly sworn, testified  
as follows:

DIRECT EXAMINATION BY MR. PRESS:

Q Did you live prior to the 8th of March 1911 with  
Mrs. Schaefer, at 134 West 133rd street? A Yes, sir.

Q Are you still living there? A No, not now.

Q When did you cease living there? A After she was  
arrested.

Q Before the 8th of March 1911, immediately before the  
8th of March 1911, who resided in that flat, who lived in that  
flat? A Who lived in the flat?

Q Yes. A Well, there was another fellow living  
there by the name of Norman Coles.

Q Yes, and who else? A Well, that's the only one.

Q Norman Coles and yourself? A Yes, sir.

Q And did Mrs. Schaefer live there? A Yes, sir, she lived there, sure.

Q And did her daughter live there? A Yes, sir, sure.

Q How long had you been living at that house before the 8th of March 1911? A Well, I came there in August.

Q August of 1910? A Yes, sir, of 1910.

Q And you lived there continuously up to the 8th of March, 1911? A Yes, sir.

Q Now, about a week before the 8th of March, 1911, were you in the dining room of that house? A Sir?

Q About a week before the 8th of March 1911, were you in the dining room of that flat? A Yes, sir, I was in there every morning.

Q Every morning? A Yes, in the mornings.

Q Now, in the morning, about a week before the 8th of March, what hour did you enter the dining room? A I always went in there, every morning, about six o'clock or five or ten minutes before six, to get my meals, and go to my work.

Q Now, was there a bed in that dining room? A Yes, sir, there was a kind of a draw-bed there.

Q There was a kind of a draw-bed there? A Yes, sir.

Q And who occupied that draw-bed, during the time that you were there? A Well, when I first went there, there was a fellow there then occupied that, when I first went there, by the name of -- I forget this fellow's name now.

Q Well, did Norman Coles ever occupy that bed? A Yes, sir.

Q And when did he start to occupy that bed, to the best of your recollection? A Well, it was somewhere in February I think.

Q In February? A Yes, sir.

Q Now, during the months of February and March did you go into that dining room in the mornings? A Sure, yes, sir.

Q What did you see that the times that you went in there, at that hour of the morning?

MR. BARRA: I object, unless some time be fixed more definitely.

THE COURT: Yes.

BY MR. PRESS:

Q In the week before the 8th of March, were you in that dining room? A Sure, yes.

Q Did you see anyone in that bed?

MR. BARRA: I object to that as immaterial, irrelevant and incompetent, for the purposes of this record, and not germane to the issue before this Court and jury.

THE COURT: Overruled.

MR. BARRA: Your Honor will note my exception.

A Did I see anyone in that bed?

BY MR. PRESS:

Q Yes. A Certainly, yes.

Q. Whom did you see in that bed? A. Well, I saw Norman Coles in there, and this little girl, Julia.

Q. Yes. And the last time you saw that bed, and saw those parties in that bed, when was that? A. The last time that I saw Norman Coles in that bed there, it was on the 8th of March.

BY THE COURT:

Q. Well, who was in the bed at that time? A. Well, on that day, the 8th, Norman Coles was in there alone.

BY MR. PRESS:

Q. Well, a week before that, who was in that bed? A. Well he and this little girl was in there, a week before that.

MR. PRESS: You may examine.

CROSS EXAMINATION BY MR. BARRA:

Q. What day of the week was this? A. What day in the week?

Q. Yes. A. Well, I just can't tell what day it was, right away now.

Q. Well, what makes you fix it as one week before the 8th?

A. One week before the 8th?

Q. Yes. What makes you fix that time in your mind?

A. (No answer.)

Q. Might it have been a month before? A. Well no, it wouldn't be that long; when I saw him in there, it couldn't be that long, when I saw them in that room there together.

Q Well, you can't tell us more definitely what fixes that time in your mind; can you? A Why did I see them there in that week?

Q Yes. A Because I was passing through that room there.

Q (Question repeated). A (No answer.)

BY THE COURT:

Q How do you know that it was a week before the 8th?

A Well, after this here come out, I knew it was just about a week before.

BY MR. BARRA:

Q Somebody told you it was a week or about a week before?

A No, sir, nobody didn't have to tell me. I was living right there.

Q Well, was it in February? A Was it in February?

Q Yes. A No, it was in March.

Q What day of March? A Well, I didn't take no notice.

Q You didn't make any memorandum of that day; did you?

A No, sir.

Q Did you write it down? A Certainly I didn't make no special memorandum of what day it was, because I didn't pay no attention to it.

Q And that was the only time you saw Julia in bed there with Coles; wasn't it? A Or no sir; I saw them more than once.

1977

Q Well, the last time was a week before March 8th?

A Yes, sir, about a week before when I saw them in there.

Q Where was the mother of the girl? A I don't know. she was in front somewheres, but I didn't go in front.

Q You didn't see the mother? A She was in front somewheres. I didn't visit in front. I didn't sleep in there, in front, and so I didn't visit in there.

Q How long had you been living with Mrs. Schaefer?

A Since August, 1910.

Q And how much did you pay a week? A Five dollars a week.

Q And did you know how much Coles was paying? A No, sir, I didn't know nothing about nobody but myself.

Q Did you know Coles long? A No, I didn't know him until I went to stop there; I didn't know anything about him until I went there.

Q How many boarders in all were in those rooms? A Well, we lived there, I and Coles. There wasn't nobody but I and Coles. But, of course, there was some more that took meals there.

Q There were others who took meals there? A Yes, sir.

Q And you were present and had meals with them?

A Yes, sir, I did.

Q And Mrs. Schaefer was the woman in charge of the apartment there? A Sure.

1977

Q And she took table boarders? A Yes sir, sure.

BY THE COURT:

Q When was the last time that you saw the little girl in the bed in the dining room? A Well, the last time that I remember seeing them in bed, it was on -- about the 7th.

Q The 7th of what? A Of March.

Q The 7th of March? A Yes, sir.

Q And who was in bed at that time? A Norman Coles.

Q And where was the bed? A It was in the dining room.

Q Well; who did you see in that bed in the dining room on the 7th of March? A On the 7th of March, that morning when I went in there to get my meals?

Q Yes. A That morning, Norman Coles was in there alone, on the 7th.

Q When was the last time that you saw the little girl in the bed in the dining room? A The very last morning I remember seeing her in the bed in the dining room was the 6th of March.

Q The 6th of March? A Yes, sir.

Q And who was in bed at that time in the dining room, on the 6th of March? A That time when I went in there?

Q (Question repeated). A Norman Coles and this little girl were in bed together, that morning.

BY MR. PRESS:

Q And when you say the little girl, you mean Julia

Schaefer, do you not? A Yes, sir.

RE-CROSS EXAMINATION BY MR. BARRA:

Q On the 8th of March, you saw Coles in the bed alone?

A Yes, sir.

Q And what time did you go in there? A I was in there, every morning, about five or ten minutes before six, to get my meals, to go to my work; and that morning, when I went in there, he was alone, on the 7th of March.

Q On the 7th or 8th of March Julia Schaefer wasn't in bed with Coles? A No, sir; the 6th of March was the last time I saw her in that bed with him.

BY THE COURT:

Q Did you see her anywhere in the apartment, on the 7th of March? A I didn't see her that morning. Two mornings there I didn't see her there.

Q You did not see her anywhere in the apartment? A No, sir.

Q Did you go into the dining room, that morning? A Yes, sir, sure, I went in there that morning.

Q On the 7th and 8th of March, also? A Yes, sir, sure.

BY MR. PRESS:

Q Were you in the dining room on the 5th of March?

A That morning?

Q (Question repeated) A Certainly. I goes in the dining room, every morning. I goes in there every morning.

Q Now, just a moment. On the 5th of March did you see Norman Coles in bed with that girl? A Yes, sir.

Q On the 4th of March, did you see Norman Coles in bed with her, with that girl? A Well, I don't remember about the 4th, this time in the morning. Some mornings, when I come in there, there was a light in the dining room and --

Q Yes. A And some mornings I come in there there was no light in the dining room, and I passed through the dining room to the kitchen, to get my meals, and, if there was no light in the dining room, I couldn't see, and I couldn't tell who was in the bed. That's just the way it was.

Q Now, on the first of March, can you recollect whether you saw her in bed, on the first of March? A No, sir, I don't recollect where she was, that morning, because, if there was no light in the room, I couldn't tell.

Q Now you say that you saw this little girl and Norman Coles in bed many times? A Certainly I have seen them in the bed together.

Q And the only times that you missed seeing him in bed with her was the 7th of 8th of March? A Sure; that's right.

Q And, the other mornings, you saw her in bed with him there? Now is that correct or not correct? A Yes, sir, itn't correct.

BY MR. BARRA: \_\_\_\_\_

Q Well, you say that you don't remember whether you saw her

on the first of March; don't you? A (No answer.)

Q There were a number of days that you didn't see the girl in bed; isn't that right? A Yes, sir; because, whenever they didn't have no light in the dining room, I couldn't tell who was in the bed, that's right, because you know, at six o'clock in the morning, when I go out to work, if there weren't no light in the room, how could I tell who was in the room?

Q Yes. You have your breakfast in the kitchen?

A Yes, sir, in the mornings, certainly; but, in the nights, when I come home, I ate in the dining room. But when I went out in the mornings, there wasn't nobody to get breakfast for me, and so she always fixed the table in the kitchen for me and so I passed through the dining room into the kitchen to get my meals.

BY THE TENTH JUROR:

Q You say she had some other men besides Coles and yourself, to take meals there? A Yes, sure.

Q Were they colored or white men? A Colored men.

Q Did you ever see any whitemen come into that flat?

A Yes, sir.

Q And colored women? A Yes, sir; both colored women and white men. I have seen white men and colored women come in, sure, but I don't know their business.

THE JURY

1277

W I L L I A M T R A V E R S G I B B, of 42 West 75th street, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. PRESS:

Q What is your business? A I am a physician.

Q Duly licensed under the laws of the State of New York,

A Yes, sir.

Q And how long have you been so engaged? A Going on twenty-six years.

Q And are you connected with any hospitals, doctor, or with any associations? A I am visiting surgeon at the Workhouse, almshouse and Penitentiary, and St. Elizabeth's Hospital in this city; and I am examining physician for the New York Society for the Prevention of Cruelty to Children.

Q And in that capacity, in the latter capacity, how many cases have you examined?

MR. BARRA: I will concede the doctor is an expert, if your Honor please.

THE COURT: Very well.

MR. PRESS: That simplifies matters.

Q Doctor, did you examine Julia Schaefer? A Yes, sir.

Q And when? A On the 28th day of April of this year, at the rooms of the Society, 297 Fourth avenue in this city, at two o'clock in the afternoon.

Q And in what condition did you find her genital organs?

1977

MR. BARRA: One moment. That's objected to, first, upon the ground that it is immaterial, irrelevant and incompetent; and on the further ground that it is over a month after, too remote altogether, too long after the time specified in the indictment.

THE COURT: Overruled.

MR. BARRA: Exception.

A I examined her genital organs, and found her hymen completely ruptured, indicating complete penetration of her genital organs by some blunt object.

BY MR. PRESS:

Q From your examination, and based upon your experience, would you say -- can you state your opinion as to whether it was a recent penetration or otherwise?

MR. BARRA: One moment. That's objected to, if your Honor please. It is purely speculative, and is a hypothetical question, not in proper form.

THE COURT: I think I will allow it.

MR. BARRA: Your Honor will note my exception.

A It was not a recent -- the first penetration was not recent. The parts were entirely healed, and it was impossible for me to say when the first penetration had taken place.

BY MR. PRESS:

Q Can you state, Doctor, with any degree of certainty, what time it takes to heal the parts, after a penetration?

MR. BARRA: That's objected to, upon the ground that it is immaterial, irrelevant and incompetent, and purely speculative, and purely hypothetical.

THE COURT: I will allow it.

MR. BARRA: Your Honor will note my exception.

A My experience is that, when the hymen is ruptured from the first penetration, it usually takes from three to ten days for the parts to heal, dependent upon the extent of the injury and the thickness of the hymen.

Cross examination: None.

MR. BARRA: Now I move to strike out that part of the doctor's testimony which relates to the examination of the witness Julia Schaefer, and I ask your Honor to instruct the jury to disregard it.

THE COURT: Denied.

MR. BARRA: Your Honor will note my exception.

MR. PRESS: Now, if your Honor please, I move to amend the indictment, which lays the offense as on the 8th day of March, 1911, by making it the first day of March 1911.

MR. BARRA: And we object to the amendment, first, upon the ground that the defendant claims surprise; and on the further ground that the Court has no power to amend the indictment, inasmuch as the Grand Jury, the majority of the Grand Jury, find an indictment, and it is only within

the province of the Grand Jurors themselves to amend the indictment so as to meet the facts.

THE COURT: There is power in the court to amend with respect to a date.

MR. BARRA: Your Honor, I think not, and I want to raise this question, and I have had it in mind for a long time.

THE COURT: Unless there is surprise.

MR. BARRA: We claim surprise.

THE COURT: I will give you any reasonable adjournment of the case that you request.

MR. BARRA: Your Honor will give me a chance to speak with my client?

THE COURT: Certainly.

MR. BARRA: If your Honor please, I am in no position to ask an adjournment. I ask that a juror be withdrawn.

THE COURT: I will allow the case to stand over until any day that may suit your convenience.

MR. BARRA: If your Honor please, we were ready to meet the issue on the 8th, and that is the only issue we expected to meet.

Now, the District Attorney comes forward, and asks for an amendment of the indictment, so as to meet certain allegations -- certain proof -- brought out before

the court and Jury, and we claim that we are totally surprised.

And your Honor allowed evidence to go in on the 8th, what happened on the 8th, and on the 7th and 6th, at a time other than what my friend now asks your Honor to amend, and, first of all, all of that would have to be stricken from the record, I submit, as being immaterial, irrelevant and incompetent.

And I would have made other objections, if I knew that he was going to rest on the first of March, I would have made other objections to the proof as brought out by the witnesses, in what I believe to be the proper preservation of the rights of this defendant.

I ask seriously, if your Honor please, that a juror be withdrawn, and a mistrial directed.

MR. PRESS: If your Honor please, you thoroughly understand, I know, because I have had cases before your Honor, and I know your Honor's knowledge of the law, that it is within the inherent power of the Court to amend an indictment almost for a year, and indictments have been amended, and I believe, in one case that was tried before Your Honor quite recently, the amendment was dated as of a year back. Mr. Barra is thoroughly familiar with the fact that --

THE COURT: That amendment was by consent.

MR. PRESS: Yes, sir, I understand that. But there are innumerable cases where the indictment has been amended for months beyond the date laid in the indictment, and yet here is only four or five days. One week is all that is asked as an amendment.

And Mr. Barra is thoroughly familiar with the fact that, in every one of these cases, the People have got to depend largely upon the evidence of children, and that frequently the dates are given in a wrong manner by the children, or they are unable to tell what day of the week or what day of the month it was on. And the claiming of surprise is certainly a surprise to me; I am surprised to think that Mr. Barra, with his vast experience, would raise such a purely technical objection.

MR. BARRA: I raise the objection, if your Honor please, because I believe it to be my duty.

THE COURT: Oh yes, I understand.

MR. BARRA: Now, the girl gave testimony that she was in bed with Coles on the 8th day of March. Now, if your Honor please, if I knew that my friend was going to amend the indictment, I would have objected to that testimony, because under the law, and the decisions of the Court of Appeals, such testimony I believe to be incompetent.

1977

THE COURT: Yes, I think that is so. I am disinclined to allow the amendment.

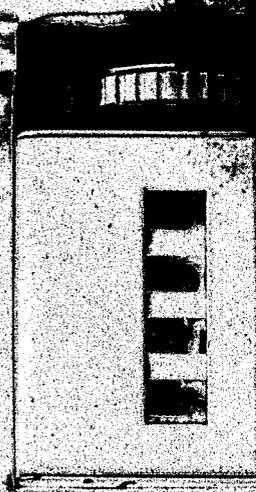
MR. PRESS: Your Honor is not inclined to allow the amendment?

THE COURT: I am not inclined to allow the amendment, in view of the circumstances of the case, and in view of the character of the case.

MR. PRESS: Well, the character of the case, your Honor, you understand thoroughly, with your vast experience, that in these cases we have children to contend with, and we have got to get the evidence as best we can from those children. Children are not keeping memorandum books, and keeping dates, as to when they are having connection with this or that man. This woman has been shown to have been keeping, practically, a disorderly house there.

MR. BARRA: And I object to the remark of the District Attorney, as utterly unfair to the defendant, and prejudicial to her interests.

MR. PRESS: And I say it is in the evidence, and that that evidence was brought out by Mr. Barra himself, in asking the complaining witness about white men and colored women coming there. The child has stated that, for a long time, she had been sleeping nightly with this man, and the daughter-in-law of the defendant was on



1277

the witness stand, and she stated that, a week before, she had been in the premises, and had seen the girl sleeping there with Coles; and May has gone on the witness stand, and said that about a week before, he had seen her sleeping there with Coles, which is all corroboration of the child's statement that she was occupying the bed with Coles.

And it does seem to me that, in view of the seriousness of the case, and in view of the fact that we have got to depend for our cases on such evidence as that, that there should be some broad and liberal rule adopted by which we can get our cases before a jury, for otherwise these people will walk about our streets, unpunished.

THE COURT: I will not allow the amendment.

MR. BARRA: And I now ask for the withdrawal of a juror, on the ground that the statement of the District Attorney is prejudicial to the interests of the defendant, the statement before the Court and jury that the defendant was actually keeping and maintaining a disorderly house.

MR. PRESS: Why, that testimony was given here, your Honor, and that testimony was brought out by Mr. Barra himself.

MR. BARRA: No, it wasn't.

THE COURT: No. There were certain questions asked by some of the jurors along that line, which were not

PAGE 1377

objected to by counsel for the defendant. But those questions were not proper, gentlemen.

MR. PRESS: But Mr. Barra brought it out before that, your Honor, from the complaining witness, in his cross examination.

THE COURT: And, if the case should go to you, gentlemen of the jury, I would instruct you to disregard that element of the case entirely.

MR. PRESS: And, in view of that ruling, your Honor, I submit to your Honor that the People have established their case, and that, even though the girl has testified that it was on the 8th of March, 1911, that the corroboration that has been submitted here by the two witnesses who saw her there prior to the 8th of March, is sufficient for the purpose of submitting this case to the jury.

THE COURT: Is it not a question of fact for the jury, Mr. Barra?

MR. BARRA: No, sir. I respectfully submit, in all seriousness and earnestness, that the people have failed to establish, by competent evidence, corroboration of the girl's testimony as to what took place on the 8th.

We all know, your Honor, that the prosecution must first establish the allegations in the indictment. The indictment reads that, on the 8th day of March, 1911,

1277

the defendant -- the second count of the indictment -- that the defendant, on the day and in the year aforesaid, at the Borough and County aforesaid, that one Norman Coles did take and detain her, the said Julia Schaefer, who was then and there a female under the age of eighteen years, to wit, of the age of 13 years, for the purpose of sexual intercourse.

Now, if your Honor please, there is no evidence, except the testimony of the complainant herself, that Coles did perpetrate an act of sexual intercourse on the person of Julia Schaefer, and there is no evidence to corroborate the testimony of Julia Schaefer that the said Emma Schaefer, on that day, the 8th day of March, being then and there the parent, guardian and person having legal charge of Julia Schaefer, feloniously did consent to such taking and detaining of her, the said Julia Schaefer, for the purpose of sexual intercourse.

Now, unless they establish beyond a reasonable doubt, by competent testimony -- and her testimony must be corroborated by other evidence -- that the defendant did knowingly permit her to have sexual intercourse, being the guardian or mother of the complaining witness, then the case fails.

They can't claim corroboration because, on another

1977

day, a week before, or a month before, the defendant did a certain thing. She is bound to answer that on another charge, on another indictment. But that wouldn't be corroboration that, on the day of the 8th of March, the defendant did knowingly permit her daughter to have sexual intercourse.

Unless they first establish the allegations in the indictment, I submit that they have no right to build up a case. When they have established the foundation of the indictment, the charge in the indictment, then and then only, when they have laid that foundation, have they the right to build up a case.

MR. PRESS: We contend that we have not got to corroborate that date, the 8th of March, because this was a continuous use and holding for the purpose of sexual intercourse.

MR. BARRA: The prosecution charges the defendant by this indictment that, on that day, she did commit a certain crime, the crime of abduction, in that she allowed her daughter to submit to sexual intercourse.

THE COURT: Now, certain testimony has been given in this case, and the only question now is: Is it not a question of fact for the jury to pass upon?

MR. BARRA: I submit that there is positively and absolutely no corroboration to support the testimony of

1977

the girl that, on the 8th day of March, the defendant knowingly permitted her to have sexual intercourse with the man Coles.

THE COURT: Well, suppose that the indictment had read on or about the 8th of March; what is the significance of that date?

MR. BARRA: And in that case I would have moved for a bill of particulars, I would ask the Court to force the District Attorney to give me a statement of the dates on which he relies. And I will state now to your Honor that I am going to rest my case now, and that is my case, and I am willing to assume the responsibility on the question of law.

THE COURT: I will admonish the jury, and get a copy of the record, and let the jury go until to-morrow morning, and I will determine the matter to-morrow morning.

(The Court then admonished the jury in accordance with Section 415 of the Code of Criminal Procedure, and adjourned the further trial of the case until Wednesday morning, May 17th, 1911, at 10:30 o'clock).

1277

Trial resumed.

New York, May 17th, 1911.

MR. PRESS: I would like, if your Honor please, to recall Frank May. Will your Honor allow me to do so?

THE COURT: Yes, I will allow the People to recall the witness.

F R A N K M A Y, being recalled by the District Attorney, testified as follows:

MR. BARRA: If your Honor please, for the purposes of the record, the defendant objects to the recalling of the witness, on the ground that the People have closed their case, and a motion is under advisement by the Court as to whether the defendant shall be acquitted by direction or not.

THE COURT: I will allow the People to reopen their case, and, upon the conclusion of the entire case, you may renew your motion. I would have granted the defense the same privilege, under similar circumstances.

MR. BARRA: Your Honor will note my exception.

DIRECT EXAMINATION BY MR. PRESS:

Q I believe you said, on your direct and cross examination, that there were five rooms in this apartment? A Yes, sir.

Q Occupied by the defendant? A Yes, sir.

Q Consisting of what rooms? Was there a sitting room there? A A sitting room?

Q Yes, a parlor? A Yes, sir.

Q And where was that situated? In the front or rear?

A In the front.

Q And it opened -- the windows opened on what street?

A On to 33rd street.

Q Now back of that room --

BY THE COURT:

Q You mean 133rd street? A Yes, sir, 133rd street.

BY MR. PRESS:

Q And back of that room, what was there? A Back of that room was the next room, a bed room.

Q And can you tell us how that flat was arranged?

BY THE COURT:

Q You just tell us in your own words the arrangement of those rooms, that is to say, the order in which they came, how they were situated with respect to each other? Now you tell us about that flat. Do you understand the question? A Yes, sir. Well --

Q Now suppose you are in the front room, what room is that? A Well, if I was in the front room now, this is the parlor room or sitting room, they call it, and I go right on through there, and there is a bed room there, and, as I go

1977

right straight on through, there is a little private hall, and a bed room off it, and the next room is the bath room, and then the dining room and then the kitchen.

Q So that the kitchen is the rear room? A Yes, sir.

Q And the sitting room or parlor is the front room?

A Yes, sir.

Q And the dining room is the room next to the kitchen?

A Yes, sir.

BY MR. PRESS:

Q Now is there a private hall? A Yes, sir, there is a private hall.

Q Where does that private hall run from? A Well, it don't go right into the front room. Here is the front room, and the hall comes right in here (illustrating), and goes right through there, and goes on that way, and that leads back that way.

BY THE COURT:

Q The front room is the full width of the apartment; is that it? A Yes, sir.

Q And then the room next to the front room is not quite as wide as the front room, because there is the hall alongside of it? A Yes, sir.

Q And the room next to that is not, also, as wide as the front room, because there is the hall alongside of it?

A Sure, yes, sir.



Q And the dining room is not quite as wide as the front room, because the hall is alongside of it? A No, sir. The dining room is cut off -- the hall room cuts it off.

Q The dining room is as wide as the front room; is it not? A Yes, sir, because the hall stops there.

Q The private hall runs from the end of the front room to the beginning of the dining room? A Yes, sir.

BY MR. PRESS:

Q Now what room was occupied by the defendant during the months of February and March? A Well, I don't know which room, if it was the front room or the next room. I don't know where she was sleeping at.

Q Well, can you enter the kitchen from any of the bed rooms, without going through the dining room?

MR. BARRA: One moment; I object to that as purely hypothetical.

THE COURT: Now, that objection will be sustained, for the moment.

BY THE COURT:

Q How many doors were there to the kitchen? A How many doors to the kitchen?

Q Yes, how many doors? How many doors were there going into the kitchen? A There wasn't but one.

Q One door? A Yes, sir.

Q And that door opened into what room? A Right in from

the dining room.

Q And that was the only door going into the kitchen?

A Yes, sir.

Q Is that so? A Yes, sir, that's the only door going into the kitchen.

BY MR. PRESS:

Q Now at what hour in the morning were you in the habit of getting up during the months of February and March? A Well, about a quarter to six, or something like that.

Q And where did you take your breakfast in the morning?

A In the kitchen.

Q And who made your breakfast for you? A Mrs. Scheafer.

Q And was she always in the kitchen when you passed through into the kitchen, for your breakfast? A Yes, sir, she was fixing my breakfast for me.

Q Every morning? A Yes, sir.

Q And on the occasions that you have testified about here, that you saw Coles and the little girl in bed together, those mornings she was in the kitchen, preparing your breakfast in advance of you? A Sure.

Q Is that correct? A Yes, sir.

Q Now I ask you this question. Could any one in that flat get into the kitchen other than by passing through the dining room?

MR. BARRA: I object to that.

THE COURT: No, that is not necessary. I sustain that objection.

MR. BARRA: Now, for the purposes of this record, the defendant moves to strike out the testimony of the witness, as immaterial, irrelevant and incompetent.

THE COURT: Motion denied.

MR. BARRA: And on the further ground that the People have closed their case, and it is improper to re-open the case at this time.

THE COURT: The motion is denied.

MR. BARRA: Exception.

BY THE THIRD JUROR:

Q I want to find out if the door between the dining room and the kitchen was a folding door or a swing door. What kind of a door was it? A The door between the kitchen and the dining room?

Q Yes. A Yes; it was a swinging door.

BY THE COURT:

Q Were there hinges on it? A Yes, sir.

BY THE THIRD JUROR:

Q Were there hinges on it? A Yes, sir.

Q Was it a swinging door? A Yes, sir.

CROSS EXAMINATION BY MR. BARRA:

Q Now you remember testifying, yesterday? A (No answer)

Q You remember testifying in this case yesterday, I say? A Yes, certainly I was on the stand, yesterday.

Q Didn't you say, yesterday, that your breakfast was prepared the night before? A My breakfast was prepared the night before?

Q Yes. A No, sir, I didn't say that.

Q You didn't mention, yesterday, that Mrs. Scheafer was in the kitchen, when you ate your breakfast; did you?

A Why, they didn't ask me that.

Q They didn't ask you that? A No, sir.

Q Now, is there a door that leads from the hallway in which the stairs are, in the building proper, into the kitchen? A I don't understand that.

Q Suppose that you are outside entirely of Emma Scheafer's flat, but you are in the house in which the flat is, and you are on the same floor as the flat, but ~~xx~~ you are outside of the front door of that flat. How many doors are there there which you can go through, from the outside, into the flat of Mrs. Scheafer? Now, if you don't understand that question, just say so. A If I was outside in the street, how many doors --

Q Now you are outside in the street, and you go up the stairs and you get to the floor where Mrs. Scheafer's flat is, and you want to go into that flat. Through how many different

1377

doors, if more than one, could you pass to get into the flat?

A To get into her flat?

Q Into her flat? A If I am on the outside, I have three doors to go through.

Q In other words, you could choose one of three doors?

A Yes, sir.

Q I want you to understand me, and if you don't understand, I want you to say so. You are out doors, and you pass through the front door of the house, and you go up the stairs, and you get to the floor on which Mrs. Scheafer's flat is. Now do you understand that, so far? A Well, her flat --

Q Now wait. Do you understand that? A Yes, sir.

Q Now, being on that floor, you want to get into her flat. Now how many doors are there through which you can pass, when you are on that floor, to get into her flat?

A Well, you have got to go through only one door, when you get on the floor, to get into her flat.

Q Now is there more than one door on her floor leading into her flat from the outside? A No, sir.

Q Only one door? A Yes, sir. There is two doors on the outside. There is two doors to get into her flat on the outside.

Q Two doors? A Yes.

Q There is a door, is there not, leading from what you call the private hall, inside of Mrs. Scheafer's flat, out to

1277

the main hall of the building? Yes or no? A Yes, sir.

Q Is there any door in Mrs. Scheafer's flat leading outside of the flat, except the door that you have now spoken of in her private hall? A Not from the private hall. There is another door that leads in right into the parlor room. One door on the floor leads right into her parlor room. That don't lead right into the hall.

Q Suppose you are inside of Mrs. Scheafer's apartment, and you want to go outside of it entirely, into some other part of the building. How many doors are there that you could choose between, as to which one to use to go outside?

A There is two.

Q And where are those two doors? A One leads out from this hall room, and then the other leads out from the parlor room, the front room.

Q That is to say, one leads from the parlor into the main hall of the building? Do you understand me? A Yes, sir.

Q And the other leads from the private hall, which is inside of Mrs. Scheafer's flat into the main hall of the building; is that so? A Yes, sir.

Q Now is there any door leading from the kitchen into the main hall of the building? A No, sir; not from the outside.

BY MR. BARRA:

Q Is there a door leading from the stairs, the outside

1377

hall, into the kitchen? A From the stairs?

Q Yes. A That leads into the kitchen?

Q Yes, into the kitchen? A No.

Q The kitchen is the nearest room to the stairs of the building; isn't it? A The kitchen is the nearest room to the stairs?

Q Yes? A Oh, no, sir.

Q Well, what room is nearest? A This here hall room door is the nearest to the steps.

Q Well, that is the private hall; isn't it? A Yes.

Q And that private hall is on the side? A Yes, sir, it is every bit on the side.

Q Yes, and how wide is it, about? A Well, just a little wider than from here to the jury box.

Q From this table to the jury box (indicating the counsel table)? A Yes, sir.

Q Now, right off the private hall is the kitchen, the dining room, two bed rooms and the parlor; is that right? A Yes, sir.

Q Now, aren't there doors from the hall, this private hall, leading into the kitchen, and another door leading into the dining room? A No, sir, there is only one door.

BY THE COURT:

Q In other words, at the end of the private hall, there is a door leading into the dining room? A Yes, sir.

1977

Q And at the other end of the private hall, there is a door leading into the front room? A Yes, sir.

Q And, about the middle of the private hall, there is a door leading from it into the main hall of the building?

A (No answer)

Q When you are in the private hall, you can step out of the private hall into the main hall of the building, without going into any room in Mrs. Scheafer's flat; isn't that true?

A Yes, sir.

Q Now, I don't want you to say yes unless it is so. If you understand the question, say so. Suppose that you are in the private hall, inside of her flat, and you want to step out of the flat entirely, can you step through a door leading from the private hall into the hall of the building, on the outside of her flat, or have you got to go through some room in her flat? A No, you don't have to go through no room in her flat, to get on the outside. You just step right out of that hall, and you will be right out of her flat.

Q But the dining room runs across the full width of the flat? A Yes, sir.

BY MR. BARRA:

Q Your room is right off the private hall; isn't it?

A Yes, sir.

Q And is there not a door leading from that room into the private hall? A My room?

1977

Q Yes. Isn't there a door in your room? A There is a door to my room, yes.

Q That leads into the hallway? A That leads into the little private hall, yes.

Q And then there is another door leading into the kitchen, the same way? A Yes, right up --

Q And then there is another door leading into the dining room in the same way from the hall? A After you get to the end of this hall, there is a door right there (indicating). That's the dining room. After you get to the end of this hall, there is a door right there, and then you are in the dining room, and then, to get out of the dining room and into the kitchen, there is a door there (indicating).

BY THE COURT:

Q In other words, you have got to pass through the dining room to get into the kitchen? A Yes, sir, sure.

Q Can you get to the kitchen in any way except by passing through the dining room? A No, sir; not unless you go through the window.

L A V I N I A C O L E S, being recalled by the District Attorney, testified as follows:

DIRECT EXAMINATION BY MR. PRESS:

Q Can you describe this flat occupied by the defendant at 134 West 133rd street? A Yes, sir.

1277

THE COURT: Now talk up. Twelve men want to hear you.

BY MR. PRESS:

Q Will you tell us how that flat is arranged, in your own way?

MR. BARRA: For the purposes of the record, I make the same objection as I made to the last witness.

THE COURT: Do you want this evidence?

MR. PRESS: No, not if the Court doesn't feel it ought to be given. Witness withdrawn. The People rest.

MR. BARRA: I move for an acquittal, at the close of the People's case, at the close of the People's case as it now stands.

THE COURT: Motion denied.

MR. BARRA: Exception. And I move that your Honor withdraw a juror, and declare this a mistrial, because the remarks of the District Attorney, in the hearing of the jury, and in the presence of the Court, tended to prejudice the defendant in the minds of the jury, and were prejudicial to her rights.

THE COURT: No, I decline to do that. I told the jury very plainly what could not be considered by them.

MR. BARRA: And your Honor will note my exception. And, if your Honor please, I will waive my right to sum up. I have a very bad cold, and don't feel able, physical-

1277

ly, to sum it up.

THE COURT: Then let your partner, who sits beside you, sum it up.

MR. BARRA: No, sir, he couldn't do it, because he hasn't followed the case as I have. We waive the summation.

MR. PRESS: I am sorry that I can't agree with Mr. Barra on the question of summation. But, of course, if Mr. Barra wishes to avail himself of the privilege, he may.

MR. BARRA: No, I waive it, Mr. Press.

MR. PRESS: You waive it?

MR. BARRA: Yes.

THE COURT: Then sum up, Mr. District Attorney.

(Mr. Press then closes the case for the People)

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1377