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CASE #2140

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

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T H E P E O P L E

-against-

JOHN HUNT.

:
:
: B e f o r e :
:
: JOSEPH F. MULQUEEN, J.,
:
: and a Jury.
----- x

New York, January 6th, 1916, etc.

Indicted for rape in the first degree.

Indictment filed December 2nd, 1915.

A P P E A R A N C E S :

ASSISTANT DISTRICT ATTORNEY JAMES E. SMITH,
FOR THE PEOPLE.

LOUIS CUVILLIER, ESQ., FOR THE DEFENSE.

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TRANSCRIPT OF STENOGRAPHER'S MINUTES.

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Frank S. Beard,

Official Stenographer.

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THE PEOPLE'S TESTIMONY:

KATHERINE KERN, of 139 East 130th Street,
a witness called in behalf of the People, being duly
sworn, testified as follows:

DIRECT EXAMINATION BY MR. SMITH:

Q Where were you living on the 24th of October, 1915?

A I was home, sir, in my house.

Q Well, where were you living? A 139 East 130th Street.

Q And with whom were you living there? A My husband, sir.

Q Have you got any children? A No, sir.

Q Now do you remember the 24th of October, 1915, in the
evening, about 11 or 12 o'clock, that evening? A Yes, sir.

Q Where were you at that time, where were you going?

A Well, I was looking for my husband. He was drinking that
night, and I went to bed at seven o'clock, and woke up at
half past eleven, and he wasn't home, and I went out to look
for him, and, before I went to a saloon, I went to his boss,
and rang his bell.

Q Well, you were walking along 125th Street? A I looked
in the saloon at 124th Street and Second Avenue, and he wasn't
in there, and I was on my way home.

Q You were walking on 125th Street? A Yes, sir.

Q And you were going from Second Avenue over towards Third
Avenue? A Yes, sir.

Q Now when you were near 230 125th Street, did you see

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the defendant? A I seen him inside of the door. He opened the door.

Q What happened to you, if anything, when the door leading into the premises 230 East 125th Street, was opened? Where were you? A Joseph Hinchey had hold of me.

MR. CUVILLIER: She said that Joseph Hinchey had hold of her, which is not binding on the defendant.

THE COURT: Well, I will allow it for the present.

BY MR. SMITH:

Q Where was the defendant at the time? A He had hold of the door, hold of the latch, and he opened the door, and then Joseph Hinchey rushed me into the laundry.

Q And who was there in the laundry at the time? A Only Joseph Hinchey and the defendant.

Q Now in this room where the defendant and Hinchey were, what, if anything, happened to you? A Well, Joseph Hinchey threw me on the floor, and this man held by the two legs, this defendant.

Q And what did the defendant do, at that time, in that room, if anything? A Well, he had sexual intercourse with me.

MR. CUVILLIER: I object to that and move to strike it out.

THE COURT: Motion denied.

MR. CUVILLIER: Exception.

BY MR. SMITH:

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Q Well, what did he do? A Well, he used me on the floor.

Q Well, what did he do? What did he do with his private parts?

MR. CUVILLIER: I object to that as leading, if your Honor please. The defendants has some rights, I submit.

THE COURT: Yes; the defendant has some right, the right to have the truth brought out. If you have an objection or motion to make, make it. We know that the defendant has rights, and they will be religiously observed. And the People have rights also, and that is to bring out the facts, and there is nothing at all improper in Mr. Smith's question. Objection overruled.

MR. CUVILLIER: Exception.

BY MR. SMITH:

Q Go on now. A Hunt held me by the legs while Joseph Hinchey had sexual intercourse with me, and, when Hinchey got through, Mr. Hunt got on top of me and had sexual intercourse with me.

Q And did he put his private parts into yours? A Yes, sir.

MR. CUVILLIER: I object to that as leading.

THE COURT: Overruled.

MR. CUVILLIER: Exception.

THE COURT: He merely wishes to have the witness more explicit. Allowed.

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MR. CUVILLIER: Exception.

BY MR. SMITH:

Q And what did he do after that? A He took a pocketbook out of my hand and brought in beer and cigarettes, and they drank the beer and smoked the cigarettes.

Q What did you do? A Well, Hinchey was holding me, and I screamed, and wanted to get out. And when he brought back the beer, he brought back the foreman of the laundry with him, Mr. Cliff.

Q And what did you do then? A Why, I screamed and kicked, and they wouldn't let me out.

Q And how long were you in that room before you got out? A About four hours, very near. And Mr. Hunt says to Hinchey, "Let her out now," and I ran to the station house right away.

Q Where was that? A At 136th Street, between Second and Third Avenues, and I seen the lieutenant.

Q And do you remember what his name was? A I believe it is McLoughlin.

Q Is he in Court? A He is outside.

MR. SMITH: Ask if Lieutenant Stephen Loughman is outside, Captain.

Q Is this the Lieutenant you saw in the station house (indicating)? A Yes, sir.

MR. SMITH: That is all, lieutenant. That is Lieutenant Stephen Loughman.

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Q Then what did you do, if anything?

BY THE COURT:

Q What did you say to the lieutenant? A I told him what happened to me in the laundry.

Q You made complaint to him, did you? A Yes, sir.

Q Told him what had happened to you? A Yes, sir.

BY MR. SMITH:

Q And what did you do after that? Where did you go?

A He sent an officer to the laundry with me.

Q And you went right back to the laundry? A Yes, sir; and couldn't get in. The place was closed; the door was closed and locked.

Q What was the name of the officer who went there with you? A I think it was officer Stack.

Q And you went there and couldn't ^{get} in there? A Yes, sir.

Q How long did you remain there? A In the laundry?

Q No, when you went back with the officer? A Why, they were trying the door and that's all.

Q Where did you go then? A I went home, and an officer went home with me.

Q Now, the next morning, did you go anywhere, the next day? A Yes, sir; I went to the grocery store the next morning, Sunday.

Q This was on a Saturday night, was it? A Yes, sir.

Q And when did you next see the defendant Hunt? A Not

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until five days after. Mr. Hinchey was being tried in the Court, the Harlem Court, and I saw him at 122nd Street and Second Avenue, and I couldn't find an officer, and the lieutenant sent an officer with me, and he was arrested.

Q Had you ever seen him before the assault was made upon you? A Yes, sir; I think I saw him two times, but I never talked to him.

BY THE COURT:

Q When you think you saw him, under what circumstances did you see him, as far as you can remember? A Well, in 125th Street, standing on the corner.

Q How long have you lived in that neighborhood? A I don't live there. I have a friend lives there for fourteen years. I know her since I came to the country, and, when I used to live out, I used to go to see her.

Q You have been fourteen years in this country, have you? A Yes, sir.

BY MR. SMITH:

Q And how long have you lived in 130th Street? A Only going on four months up there.

Q Now do you remember which one it was that placed you on the floor, when you first went into the laundry? A Joseph Hinchey.

Q Did he strike you? A He caught me by the neck, and put his hands over my mouth, and threw me on the floor, and I

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screamed and kicked, and this boy here held me by the legs.

BY THE COURT:

Q There were two of them in the room then? A Yes, sir.

CROSS EXAMINATION BY MR. CUVILLIER:

Q Madam, how old are you? A Thirty-six.

Q How long have you been married? A Since the 26th of last August.

Q You live with your husband? A Yes, sir.

Q On this night in question you went to a saloon known as Murphy's saloon, didn't you? A Yes, sir.

Q On 134th Street and Second Avenue? A Yes, sir.

Q To see if your husband was there? A Yes, sir.

Q Did you have a drink there? A No, sir; I didn't.

I opened the front door and looked in.

BY THE COURT:

Q Well, he asked you whether you had a drink there. A No, sir.

BY MR. CUVILLIER:

Q Had you been drinking before you went there? A No, sir.

Q You do drink, though? A I drink a glass of beer, that's all, when my husband gets it, sometimes.

Q Now, on your way back from Murphy's saloon, you walked west on the east side of 135th Street? A Yes, sir.

Q On the south side of the street, I mean? A Yes, sir.

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Q And when you got in front of the laundry, you say Hinchey grabbed you? A Yes, sir.

Q And shoved you in the laundry? A Yes, sir.

Q And the defendant Hunt opened the door? A Yes, sir.

Q And Hinchey and Hunt were the only two there; is that right? A Yes, sir.

Q Now, which one took you back in the laundry, Hinchey or Hunt? A Hinchey.

Q Was Hinchey the first one that had sexual intercourse with you? A Yes, sir.

Q And while you were having sexual intercourse with him, you say Hunt held you? A Yes, sir.

Q How? A By the two shoes.

Q Where were your hands? A Well, I was using my hands, trying to push him off, to push Hinchey off me.

Q Did you strike him? A Yes, I tried to strike him.

Q When Hinchey got through with you, then you say that Hunt had sexual intercourse with you? A Yes, sir.

Q And did Hinchey hold you while Hunt had sexual intercourse with you? A No, he didn't. I wanted to go away, to go out, and he threatened to kill me, if I screamed.

Q Who did? A Joseph Hinchey.

Q But no one held you while Hunt had sexual intercourse with you at all? A No, sir.

Q Well, did you try to stop Hunt from having sexual inter-

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course with you? A I did, yes.

Q What did you do? A I tried to push him off me, and kicked, and he wouldn't get off me.

Q And when he got through what happened then? A Well, he took \$3 that I had in my little pocketbook, he took the pocketbook from my hand.

BY THE COURT:

Q You had a little pocketbook in your hand? A Yes, sir.

Q Where was the money? Was it in your pocketbook or in your hand? A It was in my pocket when I was left in there, in the pocketbook, and I knew the money would be taken from me -- and --

MR. CUVILLIER: Objected to.

THE COURT: Sustained. /

BY MR. CUVILLIER:

Q Well, why did you have it in your hand? A Because I took it out of my pocket, and held it in my hand.

Q Now didn't you take the \$2 out of your pocket and give it to him to go and get a pint of beer? A No, sir.

Q Didn't you say to Hunt, "I am dry. Have you got a can?" And -- A I didn't say nothing of the kind, sir, to him.

Q And didn't you say, "Here's two dollars"? A I did not.

Q Well, did you say anything to him when he took your money from the pocketbook? A I told him I wanted my money. I was after taking it out of the post office, in the morning

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early, two dollars for Sunday.

Q And how long was he gone for the beer? A About ten minutes.

Q And you were alone there with Hinchey? A Yes, sir.

Q And did you try to get out? A Yes, I did. And he put me up against the laundry table, and said he would kill me, if I screamed, and he brought in Mr. Cliff, the foreman of the laundry.

Q Did you drink any of the beer? A No, I didn't drink any of the beer.

Q Well, who drank the beer? A Well, I seen that boy Hunt and Hinchey drink.

Q Did Cliff drink any of it? A No, I didn't see him drink any of it.

Q Well, when the beer came in and they drank, what happened then? A Hinchey threw me on the floor, for Cliff, and then Mr. Cliff used me on the floor.

Q And what did Cliff do? A He was standing underneath the electric light, and he pulled the cap down on his eyes, and put the light out; he turned the light out when they were using me on the floor, and he pulled his cap down with one hand on his eyes, and pulled the chain with the other.

Q And how many times did you have sexual intercourse with Hunt? A Five or six times.

BY THE COURT:

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Q Do you mean Hunt, or all of them? A No, sir; each man.

BY MR. CUVILLIER:

Q And Hunt had it how many times with you? A Five or six.

Q And you were in there four hours? A Yes, sir.

BY THE COURT:

Q Did one other or two others come in? A One, when he brought the bear in.

Q There were three men there altogether? A Yes, sir. And Cliff used me on the floor and on the laundry table. And Joseph Hinchey said, "What time is it?" And he said, "It's two o'clock. Take the son-of-a-bitch upstairs now".

And they were taking me upstairs, and I looked out of the glass door, and I said, "Let me take my shoe off. There is a nail in it", and I thought I could fire it through the glass door, and somebody would hear it.

And so Hinchey said, "No, you son of a bitch, you go upstairs", and I screamed, and he caught me by the mouth and he threw me underneath the laundry window, and he was choking me, and if I was five minutes more there, I would be smothered.

MR. CUVILLIER: I object to that and move to strike that out.

THE COURT: Denied. It was part of the transaction, as she claims.

MR. CUVILLIER: Exception.

BY MR. CUVILLIER:

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Q Now, madam, when you got at the door of this laundry where you state they were going to take you upstairs, didn't Cliff go out then? A I don't know. Mr. Joseph Hinchey had me under the window, smothering me, and I don't know whether Cliff went out or upstairs.

Q Did he go out? A He went somewhere, yes, but I couldn't see where he went.

BY THE COURT:

Q But the other two remained with you? A Yes, sir.

BY MR. CUVILLIER:

Q And then didn't another man appear on the scene, after Cliff went some place? A Yes, sir.

Q Then there were four men? A Yes, sir. And they didn't take me upstairs.

BY THE COURT:

Q Now wait until he asks you questions. You will have an opportunity to tell everything.

BY MR. CUVILLIER:

Q When Cliff went somewhere, the other man showed up?

A Yes, sir.

Q And did you know who the other man was? A No, sir; I never seen him before.

Q Did you ever know a man named "Mickey"? A I heard that's the man, but I never knew him.

BY THE COURT:

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Q You have heard that since that night, do you mean?

A Yes, sir.

Q But you never knew him before? A No, sir.

BY MR. CUVILLIER:

Q Now when the third or fourth man came in, and you were in the front, what happened then? A Joseph Hinchey said, "After you letting that scream, I'll fix you", and he took me by the leg, and Hinchey by the shoulders, and stood me up between the two tables, and Joseph Hinchey said, "For letting that scream, you'll have to take off all your clothes", and I didn't take them off, and he took off my clothes, and laid me on the bare boards, and they used the floor for a toilet, and I had to lay on the floor, and they took me away in the back, and stood me up between the two laundry tables.

Q And what did the fourth man do? A He had sexual intercourse with me on the laundry table, and went after me the second time, and he gave me a crack in the jaw, and made me take my teeth out, and he put it in my mouth, and I vomited.

Q Now, did anyone have sexual intercourse with you after you were stripped naked? A Yes; after the other man, yes, he did, after the other man.

Q Now all these times that you had sexual intercourse with these four men, you say that you used your hands to try to get rid of these men, away from you? A Yes, sir.

Q Did you scratch any of them? A I scratched Hinchey

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and tried to kick him.

Q Did you scratch Hunt? A Yes, and pushed him away and tried to kick with my legs at him. The next day --

Q And how many times did you scream or holler? A Well, I screamed all the time, asking them to let me out; and so when Mr. Cliff got at me on the floor, I had my rosary beads on the floor, and he looked like an Italian, like a Catholic, and I said, "For Jesus' sake, I got pulled in here tonight", and told him I had two children, and was looking for my husband, and he tore the beads out of my hand, and went for me on the floor, and then had me up on the laundry table.

Q Now, when you went -- did you have any bruises on your person? A Yes, sir; on my neck.

Q Anywhere else? A Where I had on my legs, where they held me, and the wire of my shoes went through my flesh.

Q When you went to the station house did you tell the same story to the lieutenant, you are telling here? A Yes, sir; I did, sir.

Q Did you tell him that you were bruised? A I told him what happened; I told him everything that happened.

Q Did you tell him something was the matter with your neck? A I didn't know my neck was black, but it was sore then.

Q And did you take all your clothes out when you went out? A Yes, sir. They wouldn't let me put my clothes on all.

Q What did you leave there? A Two black petticoats.

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Q Where? A In the laundry.

Q Did you go back for them? A Yes, sir; with the officer.

Q When? What hour? A About four o'clock in the morning.

BY THE COURT:

Q Did you get into the laundry when you went back with the officer? A No, sir; the door was locked.

Q Did you ever get into the laundry again, after the night in question? A I did. I went in to tell Mrs. Sayre.

Q When? A The following Monday I couldn't move in the bed. I think it was on Tuesday I went back.

Q Now, please just answer my questions. Were you ever back in that laundry again? A Yes, sir.

Q When did you go in there? A When I went to give the foreman the summons.

Q Did you find your clothing then? A No, sir; I didn't find anything.

BY MR. CUVILLIER:

Q Now, madam, you dressed and went to the station house?
A Yes, sir.

Q Did you tell the lieutenant that you left two petticoats in this place? A I didn't tell him that time; I don't think I did.

Q Did you tell him at any time? A Yes, I told him my clothes was left behind.

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Q (Question repeated)? A Yes, I did.

Q When did you tell him that? A Well, I think it was when Mr. Hinchey was locked up. I am not sure.

Q Well, how did you happen to have two petticoats?

MR. SMITH: I object.

MR. CUVILLIER: I withdraw the question.

Q On the trial of Hinchey, you exhibited a skirt, didn't you? A Yes.

Q And an underskirt? A Yes.

Q And you didn't say anything then about leaving two petticoats in the laundry? A Why, I told the District Attorney that in the Harlem Police Court.

Q Now when you went to the station house and saw Lieutenant Loughman, he assigned an officer to go with you? A Yes, sir.

Q To the laundry? A Yes, sir.

Q And when you went to the laundry, and found it closed, you came back to the station house, didn't you? A Yes.

Q And then you saw Lieutenant Loughman, didn't you?

A Yes.

Q And he told you to come back at eight o'clock in the morning, didn't he? A Yes, sir; he sent an officer with me to my home.

THE COURT: Now please just answer the questions.

You will be given a chance, as I told you before, to tell anything, but you must answer his questions, without

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adding anything to the answer, where possible.

BY MR. CUVILLIER:

Q Now you didn't go back to the station house any more, did you? A No, sir.

Q Well, why didn't you? A Well, I went to the grocery to get some eggs and bacon for lunch, and I seen an officer at 125th Street, and told him what happened. He was an officer on post at Second Avenue, and he said I've got no evidence, and he said the best thing I can do is go to Court and get a summons.

Q No, I don't want that.

THE COURT: Well, you asked her why she did not go back to the station house, and she is telling you.

BY THE COURT:

Q Is that all? A Yes, sir. The officer told me I had no evidence and I had better get a summons.

Q And that is why you did not go back to the station house? A Yes, sir.

BY MR. CUVILLIER:

Q You didn't report then at eight o'clock in the morning, as he told you to? A No, sir.

THE COURT: The lieutenant had no right to tell anything, but to go out and get the men charged with crime; that is his business. Let us have no false issues here, but she has told you now why she did not go back.

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BY MR. CUVILLIER:

Q Now after you had this conversation with the officer on post, what did you do? A I went home.

Q And stayed home, didn't you? A Yes, sir.

Q When you got home, at five o'clock in the morning -- wasn't it that hour, on that Sunday morning? A It was a quarter after four.

Q And was your husband at home? A Yes, sir; in bed, asleep.

Q Did you wake him up and tell him about this? A No, sir; I didn't. He woke up himself at seven o'clock, to go to work. I didn't tell him until then.

BY THE COURT:

that

Q He was working on Sunday, was he? A Yes, sir.

Q Well, now then, he asked you, did you tell him? A Yes, sir. I didn't wake him up when I first got in, because he was in bed, drunk.

Q But when he woke up you told him? A Yes, sir.

BY MR. CUVILLIER:

Q And you told him the same story you are telling now?

A Yes, sir.

Q And what did he tell you about it? A Why, he told me --

MR. SMITH: I object to that.

THE COURT: Objection sustained. It is entirely

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immaterial what anyone told her, as I told you before.

MR. CUVILLIER: Exception.

BY MR. CUVILLIER:

Q Well, you did nothing on that day, Sunday, in regard to finding out these men? A No, sir.

Q And you stayed in the house on Sunday night? A Yes.

Q And on Monday? A On Monday I was in bed. I was in bed, and my bones were all sore, and I was spitting up blood from the abuse I got.

Q Did any officer come to your house about the case?

A No, sir.

Q Well, when did you go to Court? A I think it was Wednesday I went to Court to get a summons for Mr. Cliff, the foreman of the laundry.

Q And you got a summons? A Yes, sir.

Q And that case was dismissed, wasn't it?

MR. SMITH: I object to that as immaterial, irrelevant and incompetent.

THE COURT: I will sustain the objection. There may or may not have been a mistake made, and this case will not be dismissed on any mistake. It will be squarely be presented to the jury on the evidence, and what some Magistrate may have done as to Mr. Cliff is not pertinent or material here. Mr. Cliff may be walking the streets now, a guilty man, or he may be innocent. We will come

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to him later.

BY MR. CUVILLIER:

Q Now did you say anything to Lieutenant Loughman, or to any police officer, at the time that you made this complaint, that this man Hunt was one of them? A I didn't know his name then.

Q What? A I didn't know his name then.

Q Did you know it was he? A I didn't know his name.

BY THE COURT:

Q You had him in mind when you were telling Lieutenant Loughman your story? A Yes, sir.

Q But you didn't know who he was? A No, sir.

BY MR. CUVILLIER:

Q You said on your direct examination that you thought you knew the defendant Hunt before this night in question? A Yes, to see him.

Q Well, how came you to think you knew him? Did you ever see him before? A Yes. In 125th Street, a couple of times.

Q Whereabout? A At Second Avenue and 125th Street.

Q Well, a year before or a month before? A I seen him last summer.

Q Last summer? A Yes, sir.

Q And that's the only time? A Yes, sir.

Q What? A Yes, sir.

Q And this night --

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BY THE COURT:

Q And you had a good look at him during those four hours in the laundry, didn't you? A Yes, sir.

Q And you see him here now? A Yes, sir.

Q And you have no doubt, have you, that he is one of the four men that did what you have described? A No, sir.

BY MR. CUVILLIER:

Q Now you know that this boy has a twin brother, don't you? A Yes.

Q How do you know that? A Why, he came up to my house about seven or eight times since that happened.

BY THE COURT:

Q Who did? A Mr. Hunt's brother.

Q Yes, that is, a person called himself Hunt's brother?
A Yes, sir.

Q But you don't know whether he is his twin brother or not, do you? A No, sir.

Q He told you that? A Yes, sir; he told me so.

Q And that's all you know about his being his twin brother or not? A Yes, sir; that's all.

BY MR. CUVILLIER:

Q Now did you know where Hunt lived, the defendant?

A I did not.

Q Did you see him from the time of this alleged assault, or rape was committed on you, up to the time of his arrest,

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on November 3rd? A No, sir; I didn't see him since.

Q At the time he was arrested, was he with any man?

A Yes, sir.

Q And that man you subsequently found out was his brother?

A Yes, sir.

Q What did you say to the officer when you saw Hunt?

A There was no officer on post, I couldn't see any, and I went to the station house.

Q Well, where was Hunt then? A I think it was 132nd Street and Second Avenue.

Q And he was with this other man? A Yes, sir; his brother, coming up the avenue.

Q And you looked for an officer? A Yes, sir.

Q And you couldn't find one and went to the station house? A Yes, sir.

Q And brought an officer with you? A Yes, sir.

Q And what did you say to the officer, when the officer and you saw Hunt? A The officer came down Second Avenue, and I told him -- I pointed out this man, with his brother, I pointed him out to the officer, and told him he was one of the men who attacked me in the laundry.

Q Did you say which one attacked you? A Yes, I did. I put my hand on his shoulder.

Q Did you put your hand on his brother? A No, sir.

Q Did you say to the officer, "Take both of them"?

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A No, sir; I didn't. His brother ran.

BY THE COURT:

Q You say you pointed this brother out to the officer?

A Yes, sir.

Q And no one else there? A Yes, sir.

Q And did the officer arrest him? A Yes, sir.

Q And you had no doubt about this defendant's identity?

A No, sir.

BY MR. CUVILLIER:

Q Did the officer run after the other man?

MR. SMITH: I object to that.

THE COURT: I will exclude that. You have a right to show that she at any time made statements differing from those made here today, that is proper cross examination, but she says she did not.

Q What did the defendant say when he was arrested? A He didn't say anything until he was near the Court House, and he said he was innocent, and wanted me to take him back to the laundry, to Mr. Sayre, and I said Mr. Sayre didn't know anything about what had happened.

Q Did he attempt to run away?

MR. SMITH: I object to that.

THE COURT: Sustained.

MR. CUVILLIER: Exception.

Q His brother ran away? A Yes, sir.

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BY THE COURT:

Q You never made any charge against the brother, did you?

A No, sir.

THE COURT: Well, that is a different proposition altogether, Mr. Cuvillier. Proceed.

BY THE COURT:

Q Do you mean to say that this man spoke to you about the laundry on the way to the station house? A Yes, sir; he wanted me to take him back to the laundry, to prove that he was innocent, that he was not one of the men.

Q Well, who had said anything to him about the laundry? You didn't say anything about the laundry, did you? A He wanted to know why he was locked up. He asked the officer, and the officer told him what I told the officer.

Q You told the officer that he was outraging you in the laundry? A Yes, sir.

Q And then he wanted you to take him to the laundry? A Yes, sir.

BY MR. CUVILLIER:

Q Now you know a woman by the name of Mrs. Gibson, don't you? A Yes, I do. I know her for fourteen years.

THE COURT: I told you before that if you would only answer the questions yes or no, we would get along faster.

BY MR. CUVILLIER:

Q And on this Sunday you went to Mrs. Gibson's house, didn't

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you? A No, I didn't. Sunday a week from that I went to her house.

Q You testified before Judge Rosalsky, didn't you, in the Hinchey case? A Yes.

Q Did you testify that you went to Mrs. Gibson's, that Sunday? A I didn't go near Mrs. Gibson's.

THE COURT: Now which Sunday?

MR. CUVILLIER: The Sunday after the assault.

BY MR. CUVILLIER:

Q This happened on Saturday night and Sunday morning?

A Yes; a week from that Sunday I was in Mrs. Gibson's house.

Q You heard two women testify in that case, didn't you?

A Yes, and falsely. They were paid to do it.

THE COURT: Now, please produce those witnesses here, if you wish to. We don't care what they testified to in another trial. Let them come here before this jury, if you have such witnesses. And the jury will not infer anything from what Mr. Cuvillier asks in this respect, as to any differing statement on the witness's part. It is the answer which you must remember, gentlemen of the jury, in connection with the question. Now this woman denies that she ever made a different statement.

BY MR. CUVILLIER:

Q Were you in a saloon?

THE COURT: When?

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MR. CUVILLIER: On Sunday morning, the morning of the assault.

A No, sir.

THE COURT: - Do you mean before or after the assault?

MR. CUVILLIER: Afterwards.

Q About eleven o'clock in the morning? A No, sir; no, sir.

Q Did you stay at Mrs. Gibson's house, on the morning after the assault happened?

THE COURT: She has already answered that. She says no, positively no. And she added further that the statement, if any was made that she was there, was false.

BY MR. CUVILLIER:

Q Isn't that so? Did you say that, madam? A Yes, sir.

Q It is false that you were at Mrs. Gibson's, that morning? A Yes, it is.

Q Did you give a description of the defendant to the police officer, at the time you made a complaint? A (No answer.)

BY THE COURT:

Q Do you know what a description means? A Yes.

Q Did you tell him what he looked like? A Yes; and that he wore a cap down on his eyes.

Q But the police didn't get him, though, did they? A No, sir; they didn't.

THE COURT: The police are not on trial here.

MR. CUVILLIER: No, sir. That's all.

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MR. SMITH: That's all.

THE COURT: Now, madam, you may take a seat back there in the Court room, but you must not talk to anyone, because you may be recalled as a witness.

STEPHEN LOUGHMAN, of the 41st Precinct,
a witness called in behalf of the People, being duly
sworn, testified as follows:

DIRECT EXAMINATION BY MR. SMITH:

Q Lieutenant, on the 24th day of October, 1915, did you
see the complainant in this case, Katherine Kern? A Yes, sir.

Q Where did you first see her? A In the station house,
43rd Precinct.

Q And what time of the day or night was it? A About a
quarter to four in the morning.

Q And were you on desk duty at that time? A Yes, sir.

Q And she came into the station house at that time?

A Yes, sir.

Q Do you remember what her condition was at that time?
A Her hair was hanging down and the bosom of her dress was
all open, all the way to the skin, and she had a dishevelled
appearance all the way through.

Q And you had a conversation with her, did you? A Yes.

Q And as a result of that conversation what did you do?

A She said that, in 125th Street, between Second and Third

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Avenues --

BY THE COURT:

Q No. She made a complaint, didn't she? A Yes, sir.

Q Against whom? A Against four men.

Q And that related to the occurrence in the laundry?

A Yes, sir; on 135th Street.

Q And you made an entry at the time in your book, didn't you? A Yes, sir..

Q And that shows that the complaint was made at what hour? A At about 3:45.

BY MR. SMITH:

Q Did you notice that her neck was bruised? A I didn't notice that.

Q She simply told you she had been assaulted and raped in a certain store?

MR. CUVILLIER: I object to that.

MR. SMITH: I will withdraw that.

THE COURT: The people have a right to show that this woman made a complaint, without naming the people against whom she made the complaint.

BY THE COURT:

Q Well, she told you that she didn't know the names of the men, didn't she? A Yes, sir.

BY MR. SMITH:

Q Did she tell you that it was in a laundry? A Yes, sir.

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Q You didn't go but you sent an officer with her? A Yes.

Q Did you see her again that morning? A Yes, she came back shortly afterwards, after, about fifteen or twenty minutes afterwards with the officer that I sent out with her.

Q And a report was made to you at the time? A Yes, sir.

Q And that report was what, if anything? A That she had been --

THE COURT: No, that is not admissible.

BY THE COURT:

Q She did go out with an officer? A Yes, sir.

Q And returned with that officer to the station house?

A Yes, sir.

BY MR. SMITH:

Q And what happened after that? A She left for home, accompanied by that officer.

BY THE COURT:

Q You sent an officer home with her? A Yes, sir; the same officer.

BY MR. SMITH:

Q Did you see her again, that morning? A No, sir.

CROSS EXAMINATION BY MR. CUVILLIER:

Q Now, officer --

BY THE COURT:

Q Well, did you form any opinion as to her sobriety when

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7 she was there? A Well, I was under the impression that she might have been drinking, your Honor.

Q But she understood apparently what you said to her?

A Yes, sir.

Q No difficulty about that? A No, sir.

Q And she was not in such a state of intoxication as not to know what she was doing? A No, sir; she was rational.

Q You would not call her drunk, in other words? A Yes, positively she was not drunk. I understood everything that she said, and she seemed to understand me.

Q And you have seen a number of drunken people in your time, have you not? A Yes, sir.

BY MR. CUVILLIER:

Q Do you remember appearing in the Police Court? A Yes, sir.

Q And do you remember a lawyer named Levy defending this defendant and Hinchey? A I don't know who the lawyer was.

Q In response to a question why you didn't enter the complaint in the book, did you say that she was drunk and you didn't believe her?

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

THE COURT: Well, he says he did enter the complaint in the book.

THE WITNESS: No, your Honor; I didn't enter the complaint, but I entered the fact of the officer leaving with the complainant, and the location, at that time.

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Q But you didn't know whom to enter a complaint against, did you? A No, sir; I was awaiting developments in the case.
BY MR. CUVILLIER:

Q Now did you say in the police court that this woman was drunk? A If I remember rightly, I said she might have been drunk, from her appearance she might have been drunk.

Q And that is the reason why you didn't enter the complaint? A No, sir; I didn't make any such statement, counsellor.

Q You didn't enter any complaint, did you? A No, sir.

THE COURT: Well, that is immaterial, whether he entered a complaint or not. The question is whether this woman made a complaint, and she did, and that's all the law requires. The failure of a police officer to do anything, does not amount to anything, except as to his merit as a police officer, and the Lieutenant says that he omitted nothing that he ordered done.

BY THE COURT:

Q Is that so? A Yes, sir.

Q You were not under any obligation to enter any complaint, until you knew against whom it should be made? A No, sir.

THE COURT: Now, the Lieutenant is not on trial for neglect of duty, but, even if he did neglect his duty, it would not matter here. All the ^{law} requires is that the woman made a complaint as soon as possible after the

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occurrence, and she says that she went direct to the station house, and tells the time that she got there, and he tells the time that she left with an officer, who was sent in consequence of what she told him.

Q Is that so, officer? A Yes, sir.

Q And that was a quarter of four in the morning? A Yes, sir.

THE COURT: Now, don't misunderstand them, Mr. Cuvillier. If the Lieutenant said she was drunk at that time, you have the right to bring that out, and to show that she or any other witness made different statements elsewhere, that is, any statements which differ from those made here before this jury, and the jury must determine whether there is a difference or not, and how much weight they will give the contradiction or difference, if one should appear.

BY MR. CUVILLIER:

Q She did appear to you to have been drinking? A I said, counsellor, that she might have been drinking from her appearance. I didn't smell any liquor off her, and I could understand her statement.

Q Well, now, officer, you testified in the Hinchey case?

A I did.

Q And this question was put to you by me:

"Q What was her condition, if you know, as to being sober? Did she appear to be drinking? A Her condition at the time, I didn't form any opinion about it, any definite opinion about

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her condition".

A That's right.

Q "As to whether she was drunk or sober, she certainly wasn't drunk"? A That's right.

THE COURT: That is what he said here today.

BY MR. CUVILLIER:

Q Now you don't remember testifying then/in the Magistrates Court in the Hinchey case? A I do not. My statement was the same at all times, as I remember, counsellor. I stated in the Magistrates Court that this woman might have been drunk, might have been drinking; that she looked as if she might have been drinking.

Q And for that reason you didn't pay any attention to her story? A Well, I did pay attention to her story.

Q But did you say that in the Magistrates Court? A I don't remember that.

Q You may have said that, though? A Yes, I may have.

THE COURT: Well, that is immaterial, what he may have done. If you have any evidence of his making contradictory statements at any time, you may produce it.

And it goes only to the credibility of the witness. His testimony amounts only to her making a complaint, and he has not mentioned the name of Hunt or anyone else.

BY THE COURT:

Q She did make a complaint in the station house, didn't

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she? A Yes, sir.

THE COURT: And that is all the law requires.

BY MR. CUVILLIER:

Q Well, what is the complaint that she made? A She stated that at 11:45 the night before -- that was on the 23rd of October -- she was in 125th Street between Second and Third Avenue, and was suddenly grasped by the back of the neck by a man, and he put his other hand over her mouth, and rushed her into the premises on 125th Street, and another man let them in the door, and both of them criminally assaulted her.

BY THE COURT:

Q Well, do you mean that they raped her? A Yes, sir.

Q That was her charge? A Yes, sir. And, shortly afterwards, two other men came in, and they also raped her; and they kept her there until a quarter of four, until the time she came to the station house. She said she came directly from there to the station house.

BY MR. CUVILLIER:

Q Now did she give you a description of the men? A Not at the time. I didn't go into the details of description. I sent the officer forthwith with her.

Q Did you ask her if she knew the first man? A I might have, but I don't remember that I did.

Q Well, did she say that she knew them, or any of them, either personally or by name? A No, sir; she didn't mention

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any names.

Q Did she say she had seen any of them before? A Not that I recollect.

Q Did you ask her, when she came back with the officer from the laundry, to report at the station house at eight o'clock in the morning? A Yes.

Q And she said she would? A Yes.

Q And she didn't? A She didn't.

THE COURT: Well, that is conceded, that she did not. She was not obliged to go back. That does not affect the case, one way or the other.

BY THE COURT:

Q You had no news for her at eight o'clock in the morning, had you? A No, sir; no, your Honor. My object in getting her back was to send an officer over there with her, to take some of the men, when the place was open. She said she missed some combs there.

BY MR. CUVILLIER:

Q Did she say that she left two petticoats, or an undershirt there? A I don't recall her saying that, but she said they undressed her, took all her clothing off.

Q But she said nothing about leaving any of her clothing there? A I don't remember that she said that, counsellor.

Q You didn't send anyone to get the clothing that she left there? A No, sir.

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Q And if she said that she had left clothes there, you would have sent an officer there?

MR. SMITH: Objected to.

THE COURT: Sustained.

Q Now, officer, the complainant brought to the station house a man by the name of Cliff, didn't she? A What was that question, counsellor?

Q (Question repeated)? A Yes, sir; some days afterwards.

Q And what statement did she make to you then? A She was accompanied by an officer at the time. She stated that this man Cliff -- she had him in the Fifth District Court on a summons, and that the Magistrate and the District Attorney held a sort of investigation into her case, and, for some reason, discharged this man. I don't know what the reason was, but that was her statement.

Q Did she at any time from the time you first saw her until the last time, when Cliff was brought to the station house, say anything about Hunt, the defendant? A Not by name, didn't mention Hunt's name.

Q Were you on the desk the day when Hunt was arraigned before you? A I wasn't on the desk, but I was present at the time he was brought in.

Q And you heard the conversation that she had with the officer at the desk, didn't you? A In the Hunt case?

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Q Yes? A No, I don't recall the conversation, counsellor.

Q Did you hear any conversation by the defendant Hunt with the officer at the desk? A No, I don't remember any of the conversation.

THE COURT: Well, what do you wish to bring out? That Hunt denied his guilt?

MR. CUVILLIER: Yes, sir; and the conversation he had with the complainant there, and that she made contradictory statements.

THE COURT: Yes. The defendant said that he was innocent, and he claims it now, and never admitted his guilt. That may be conceded. I will allow you to prove, if they sought to prove by the officer that he did make admissions of guilt, to prove whatever you can as to what he said.

MR. CUVILLIER: My object is to show that the complainant contradicted herself there.

THE COURT: Now, the complainant cannot be contradicted by proving what the defendant said, do you understand? You can prove that she made different statements elsewhere from what she has made here.

BY MR. CUVILLIER:

Q Now, officer, did she make any statements there? A Well, counsellor, I was very busy with other duties at the time, and

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I didn't pay any attention to the matter.

THE COURT: Of course, the jury understand that they must pass on the credibility of witnesses, and the Court has only to rule on the questions of law that arise, and I say only what I deem it necessary to say, in view of the cross examination of counsel for the defendant. It is not intended to limit his right, or prejudice the defendant in any way, but to keep the real issues before you. The real issue here is whether he did or did not assault this woman in the way she claims, and he says that he did not, and that he is innocent. Now is that clear, Mr. Cuvillier?

MR. CUVILLIER: Yes, sir; that's perfectly clear. That's all.

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

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AFTER RECESS:

EDWARD SIEBER, of 22 East 129th Street, a witness called in behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. SMITH:

Q Now where were you living on the 23rd of October, 1915?

A 22 East 129th Street.

Q And what was your business at that time? A Plumber.

Q Where was your place of business then? A 22 East 129th Street, and 45 East 128th Street.

Q Do you know Mr. Kern? A Yes, sir.

Q Do you know Mrs. Kern? A Yes, sir.

Q Did you see Mrs. Kern on the night of the 23rd of October, last year? A Yes, sir.

BY THE COURT:

Q Do you know that woman (indicating the complaining witness)? A Yes, sir.

Q Is that the woman that you know as Mrs. Kern? A Yes, sir.

BY MR. SMITH:

Q Where did you see Mrs. Kern on that day? A About eleven o'clock at night, at my front door. I have a private house, and the door is even with the level of the street, at 22 East 129th Street.

Q And do you know what her husband's business was at that time?

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THE COURT: Well, that is immaterial.

MR. SMITH: He was working for him at the time, and she went to inquire about her husband.

BY THE COURT:

Q You saw her that night at eleven o'clock? A Yes, sir; about that.

BY MR. SMITH:

Q And what was her condition at that time as to sobriety?

A Nothing out of the usual.

BY THE COURT:

Q Well, what is the usual? A Well, as much as I see of her, she was sober, in her usual condition.

Q Was she drunk or sober? A She was sober.

Q Did you talk with her? A Yes, sir; she asked me where her husband was.

Q Her husband worked for you, did he? A Yes, sir.

(GROSS EXAMINATION: NONE.)

J O H N K E R N, of 129 East 130th Street, a witness called in behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. SMITH:

Q The complainant in this case, Katherine Kern, is your wife? A Yes, sir.

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Q How long have you been married? A 23rd of August, 1915.

Q And on the 23rd and 24th of October, 1915, where were you living? A 129 East 130th Street.

Q Now do you remember the morning of the 24th day of October, 1915? A Yes, sir.

Q Now did you see your wife that morning? A Yes, sir.

Q What time? A That was at seven o'clock.

Q Where did you see your wife? A Up in our house, where we are living.

Q Up in your own house? A Yes, sir.

Q And did you notice what the condition of your wife was at that time? A Yes.

Q Well, state to the Court and jury what her condition was at that time as you observed it. A Her hair was hanging all around, and knotted up, and on the side of the neck here (indicating), there was a lump, a scratch, on it, and on one shin it looked like a scratch.

Q Well, was it a scratch or bruise? A Yes, sir; a bruise.

Q And what was the condition of her hair? A Her hair was all mixed up and everything. And she started to comb it out, and there was kind of chips of wood or splinters in it.

Q Now did you have any conversation with her as to where she had been the night before? A Yes, sir.

Q And what did she say, if anything? A She told me that

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she went out looking for me, and that she got pretty near killed on account of me being out, that night.

Q Did she state where she had been? A She said that she went around in saloons, in different places, looking for me.

Q Now, did she tell you anything happened to her? A And about coming through 125th Street, and a man caught her by the mouth, and dragged her in a laundry, and what the other men done there.

CROSS EXAMINATION BY MR. CUVILLIER:

Q Mr. Kern, you were drinking that night, weren't you?

A Yes.

Q You got intoxicated, didn't you? A Sir?

Q You got intoxicated, you were drunk, weren't you?

A Yes, sir.

Q And you went to bed; eh? A I went to bed. I don't know what time it was, however.

Q And you don't know what time your wife came in, do you?

A No, sir.

Q You woke up in the morning and found your wife at home?

A Yes, sir.

Q And you were still under the influence of liquor, weren't you? A Yes, sir; in a kind of stupor.

Q And do you remember her telling you those things that you have testified to? A Yes, sir.

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Q And what did you say to your wife when she told you about this? A I asked her if she got any of them, and she said no, not at that time.

Q And did you go to work? A Yes, sir.

Q And did you go to the police station to find out whether the men could be found? A No, sir; I didn't go.

Q You didn't make any attempt at any time? A Well, after that Sunday I went around, but I couldn't identify the men.

Q You went around? A Yes, sir.

Q Did you go to the station house? A No, sir.

Q You didn't testify in this case before, did you, in the Harlem Court? A Yes, sir.

Q In the Harlem Court? A Yes, sir.

Q In the Hunt Case? A I was up there. I don't know if it was Hunt.

Q You were not called as a witness, were you? A I testified to what happened that Saturday and Sunday.

Q Were you called as a witness? A Yes.

Q In the Hunt or Hinchey case, which? A In the Hinchey case.

THE COURT: Well, he means the whole transaction.

BY THE COURT:

Q Do you not? A Yes, sir.

Q You don't know who you testified against? A No, sir.

BY MR. CUVILLIER:

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Q Did your wife say anything about this defendant Hunt being one of the men? A Well, she didn't mention any names to me.

Q I mean after he was arrested, did she tell you he was one of the men, Hunt? A Yes.

Q When did she tell you that? A That was about two or three days afterwards.

Q After you say he was arrested? A After the man got taken in, then she found out what the name was.

Q And what did she say? A She told me that she had caught the second man, one of the other men.

Q Now, when you noticed your wife on Sunday morning, did she appear to you to have been drinking? A No, sir.

Q She does drink, doesn't she? A A glass of beer. Sometimes we get a pint of beer night time, or Sundays, and she takes a glass of beer.

Q What time did you get home on Sunday, after you had finished your work? A I got home around six or seven o'clock.

Q In the evening? A Yes.

Q Was she home? A Yes.

Q And did she stay home that Sunday night? A Yes.

Q And she was home on Monday? A Yes, sir; all day.

Q Do you know a woman named Mrs. Gibson? A Yes, sir.

Q Where does she live, do you know? A On Second Avenue.

I don't know the number.

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Q Have you ever been in her house? A Yes, sir.

Q Do you know whether your wife was there on the morning of October 23rd, the morning of the assault?

MR. SMITH: The 24th.

BY MR. CUVILLIER:

Q The 24th. A Not as I know of.

Q Did she tell you she had been there? A I don't remember her telling me that.

Q Do you know of anybody by the name of Mary Ellery?

A No, sir.

Q Or Kate Duane? A No, sir.

Q Or Margaret Cortina? A No, sir.

Q Now do you know a man by the name of Commerford, who lives on the same floor where you live? A I don't know the name. I don't know any of the names in the house.

Q Well, did you have a talk with the man who lives across the hall from where you live, about this case? A No, sir.

Q You say anything to your wife about Cliff? A Did I say anything to her about him?

Q Yes? A Well, not that I know of.

Q Did you say anything to your wife about Cliff paying her money in this case? A No, sir.

Q Are you sure of that? A Yes, sir; I am sure of it.

Q Did you say anything to the woman that lives across the hall from you about Cliff paying her any money in this

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case? A No, sir.

JAMES J. STACK, of the 43rd Precinct, a witness called in behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. SMITH:

Q Now, officer, you remember the 34th day of October, 1915?

A I do, sir.

Q Where were you about four o'clock on that morning?

A I was in the station house.

Q And that is located where? A 136th Street, near Lexington Avenue.

Q In the County of New York? A Yes, sir.

Q Now, on that morning, did you see the complainant, Katherine Kern?

MR. SMITH: Stand up, please, Katherine Kern.

A I did, sir.

BY THE COURT:

Q And where did you see her first? A In the station house

BY MR. SMITH:

Q And were you on reserve duty at the time? A No, sir. I was on the station house post.

Q The station house post? A Yes, sir.

Q And were you on post at the time she was in the station house? A I was in the station house.

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BY THE COURT:

Q What do you mean the station house post? A It takes in Lexington Avenue, from 124th Street to 127th Street.

Q Do you mean you were on the beat where the station house is located? A Yes, sir.

BY MR. SMITH:

Q Now you received a message from the lieutenant in charge? A Yes, sir.

Q And you went to the station house? A I was in the station house. I had to call in every hour, and I happened to be calling in.

Q Did you see the complaining witness in the station house that morning? A Yes, sir.

Q And what was her condition when you first saw her? A Her hair was hanging down her back, and her clothing was torn, and she seemed to be very much excited.

MR. CUVILLIER: I object to that.

BY MR. SMITH:

Q Well, was she excited or not? A Yes, she was excited.

THE COURT: I will allow it.

MR. CUVILLIER: Exception.

BY THE COURT:

Q Did you notice her condition as to sobriety? A Yes, sir.

Q Was she sober or drunk? A She was sober.

BY MR. SMITH:

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Q And where did you go with her, that morning, if anywhere? A I went with her to the laundry in 125th Street, between Second and Third Avenues.

Q Was the complainant, Katherine Kern, with you at that time? A Yes, sir.

Q And what did you do when you got to the laundry? A I asked the woman to show me the place where she was assaulted, and she went to the door of the laundry, and I told her to try the door, if it was open, "Because", I said, "if there is anyone in there and they see a policeman, they will not open the door". And she tried the door and it was locked, and I tried it, and it was locked.

Q And could you see inside of the laundry at that time in the morning; could you see if anyone was in the laundry?

A Yes.

Q Was anyone in the laundry at the time? A No, sir.

Q I am speaking now of the front part of the laundry.

A Yes, sir.

Q You couldn't see into the rear rooms? A No, sir.

Q What did you do then? A We came back to the station house.

Q And you made your report to the Lieutenant? A Yes, sir.

Q What did you do after that? A The lieutenant told me to accompany the woman home to her house.

Q Then what did you do? A I accompanied her to her

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house, as far as the doorway of her house.

Q And where was she living at the time? A 130th Street and Lexington Avenue, the northwest corner.

Q And you saw her enter her house? A Yes, sir.

Q And what time was that as far as you can remember?
A About four o'clock.

BY THE COURT:

Q Well, did you make any note of the time? A No, sir.

Q You first saw her about what time? A Between three and four, about a quarter to four.

Q And then you went to this laundry? A Yes, sir.

Q That was some distance, was it not? A Yes, sir; about a block and a half.

Q And you walked back to the station house with her?

A Yes, sir.

Q And then the lieutenant told you to escort her home?

A Yes, sir.

Q And where did you go? A To Lexington Avenue, and north on Lexington Avenue to 130th Street.

Q And saw her go into the house? A Yes, sir.

BY MR. SMITH:

Q And you didn't see the complainant after that, did you?

A No, sir.

CROSS EXAMINATION BY MR. CUVILLIER:

Q Now, officer, you testified in response to his Honor's

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question, did you not -- his Honor wanted to know if she was sober, and you said yes. Now you remember testifying in the Hinchey case, don't you? A Yes.

Q This question was put to you on cross examination:

"Q Will you swear that she was sober?"

THE COURT: No, ask him first if he remembers the question.

BY MR. CUVILLIER:

Q Do you remember this question: "Q Will you swear that she was sober? A I will swear that she was well able to take care of herself". A (No answer.)

BY THE COURT:

Q Do you remember giving that testimony, officer? A Yes, sir.

BY MR. CUVILLIER:

Q Do you remember this question: "Q Will you swear she was sober? A That's a question for a physician". Do you remember that? A Yes, sir.

THE COURT: Well, but the Court of Appeals differs with you there. The Court of Appelas says that even a child of six years of age can say whether a person is drunk or sober.

BY THE COURT:

Q Now you have seen a lot of people in your time, haven't you? A Yes, sir.

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Q And they were not all sober, were they? A No, sir.

Q Now on your beat you have met lots of drunken men and women, haven't you? A Yes, sir.

Q And you can tell whether the man or woman is sober or drunk? A Yes, sir.

Q So that it is not a question for a physician, is it? A Well, the counsellor at that time, your Honor, was trying to bring out whether this woman was under the influence of intoxication.

Q Well, that is what he is trying to do now, and what we are all trying to bring out. Was she or was she not drunk? A Well, she gave no signs of being drunk. She seems to be perfectly able to take care of herself.

Q In your opinion, she was sober? A Yes, sir.

Q You would not have taken her up on a charge of intoxication on your post; would you? A No, sir.

Q And when you say she could take care of herself in your opinion, you mean that she was sober? A Yes, sir.

Q But you would not swear that she had not taken a drink? A No, sir; I would not.

BY MR. CUVILLIER:

Q Did you smell her breath? A Well, I found no smell of drink on her at any time.

Q I am asking you if you smelled her breath? A No.

Q Now the question was put to you: "Q You have

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arrested many persons, haven't you, charged with intoxication"?

A Yes.

Q And your answer was: "A Yes"? A Yes, sir.

Q Do you remember this question: "Q You can recognize persons under the influence of liquor? A Yes.

"Q And tell whether such person has been under the influence of liquor? A Yes, your Honor.

"Q In this case, was there anything in the appearance of this woman? A Your Honor, the woman was very much excited, and when you get a person excited like that, they look as though--

"Q Did you smell her breath? A I didn't smell any liquor on her breath."

Did you so testify there? A Yes.

Q Now you can state whether the woman was drunk or sober, can't you? A I can state that the woman was very well able to take care of herself; as far as I could see, the woman was sober.

Q Now you went out to the laundry with her? A Yes, sir.

Q And brought her back to the station house? A Yes, sir.

Q And when you went down with her, did she state to you how many men had assaulted her? A No, I don't remember.

Q Eh? A I don't remember her stating anything about the number of men.

Q Did she tell you what time she went into the laundry?
A No, sir.

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Q Did she say how long she had been in the laundry?

A No, sir.

Q Did she tell you, when you got to the laundry, that there were two petticoats in the laundry belonging to her?

A No, sir.

THE COURT: Well, he didn't get into the laundry at all.

BY THE COURT:

Q Did you? A No, sir.

BY MR. CUVILLIER:

Q Well, when you got in front of the laundry, did she tell you that there were two petticoats in the laundry belonging to her? A No, sir.

Q Did she say that there was a comb in there belonging to her? A No, sir.

Q Did she say anything about any of the men taking two dollars from her, and getting a pint of beer? A No.

Q Did she say -- did she describe the men to you at all? A No.

Q Did she mention a man by the name of Hunt to you?

A No, sir.

Q What did she say to you? A She said that the men that assaulted her were in there.

Q Did she use the word "assaulted"? A I think she did.

Q You are not positive? A I am not positive.

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Q Did she say that she had had sexual intercourse there, in the place? A Yes, I think she did.

Q You are not positive? A I am not positive.

Q You didn't hear her say anything to the lieutenant about having sexual intercourse with the man? A I didn't pay any attention to what she said to the lieutenant.

Q Well, when you returned to the station house with her you reported your investigation to the lieutenant at the desk?

A Yes, sir.

Q And that was lieutenant Loughman? A Yes, sir.

Q Did you hear the lieutenant tell her to come back to the station house at eight o'clock in the morning? A Yes, sir.

THE COURT: Well, what has that to do with the case? It is conceded that she did not go back, and I have said that she could go back or not, just as she pleased. You may make any argument that you please upon the fact that she did not go back. There is no dispute about that. She says that she did not go back.

BY MR. CUVILLIER:

Q Now, officer, how long have you been in the 43rd Precinct? A About seven years.

Q And you are pretty well acquainted with the thoroughfare of 135th Street, between Second and Third Avenue, aren't you? A Yes.

Q And you know this laundry pretty well, don't you, the

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location of it? A Yes.

Q It is a wholesale laundry, isn't it, that is, it is a laundry that does wholesale laundrying?

THE COURT: Well, what do you mean by wholesale laundry?

MR. CUVILLIER: Well, it is a laundry that does work for other laundries.

A I am not informed as to that fact.

BY MR. CUVILLIER:

Q Well, it covers a large space and has machinery in it?

A Yes, sir.

Q And there are large plate glass windows in it; the whole front is plate glass window, practically? A Yes.

Q Across the street is a school house? A Yes.

Q And in front of the school house is a large arc light, is there not? A Yes. There is a light ^{near} the laundry, on the block, but I don't know which side it's on, to tell you the truth.

Q Well, you know where the Carnegie Public Library is, don't you? A Yes.

Q And that next to the library there is a vacant lot?

A Yes.

Q And next to the vacant lot is the laundry? A Yes, sir.

Q And do you know that, at the intersection of the library and the lot, there is a large arc light? A I don't know that.

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I don't remember that.

Q Well, would you say from your experience of being on post, and going through that section at any hour of the night, that, if any person was in that laundry, a pedestrian on the street could look in and see anybody that was there, if they were there?

MR. SMITH: Objected to.

THE COURT: Sustained. He may describe the conditions and let the jury determine that. It isn't his opinion that counts on that; it is the jury's opinion.

BY THE COURT:

Q Did you ever notice this laundry specially, officer?

A No, sir; I didn't.

PETER MC DERMOTT, of the 43rd Precinct,
a witness called in behalf of the People, being duly
sworn, testified as follows:

DIRECT EXAMINATION BY MR. SMITH:

Q Officer, in October and November, 1915, what Precinct were you assigned to? A 43rd Precinct.

Q And do you know the complainant Katherine Kern?

MR. SMITH: Stand up, Mrs. Kern?

A Yes, sir; I know that lady.

Q When did you first see her? A The day after Election, the 3rd of November, she came to the station house when I was

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standing in front of the desk, and she went up to the lieutenant and she said, "I saw one of those men that assaulted me standing at 125th Street and Second Avenue, and I want you to send a policeman out to arrest him", and the lieutenant told me to go out and try to find him.

And she and I went down to Second Avenue and 124th Street, and I seen this young man and another young man come up Second Avenue.

And I said, "Now you go ahead and point out which one of these two assaulted you".

And so she went ahead of me and pointed him out and I arrested him.

Q How far ahead of you did she go? A Only five or six yards.

Q And, as she approached the defendant, what did she do, if anything? A She pointed her finger (illustrating), and I ran up and grabbed him.

Q Now when you grabbed him what became of the man who was with him at the time? A He ran away, and the policeman on post followed him, but she said that she didn't need that man; that this was the right man, that assaulted her.

Q And what did the defendant say when you arrested him? A He said that she had the wrong person.

Q Well, who spoke first, you, or the defendant, or the complainant? A The defendant.

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Q What did he say? A He told the lady, "You have the wrong person", and she said, "No, I have the right person. You are the right person that assaulted me", and he was pleading with her all the way up to the station house.

CROSS EXAMINATION BY MR. CUVILLIER:

Q Did he say anything about asking the complainant to go to the laundry? A No, sir.

Q You didn't hear anything like that? A No, sir; I didn't hear him say anything like that.
BY THE COURT:

Q Well, you don't remember, if he did? A No, sir; there was only a few words that were spoken.

BY MR. CUVILLIER:

Q Well, you were there and you heard everything that he said and that she said? A Yes, sir; he was begging all the way up to let him go; that he was the wrong person.

Q And you didn't hear him say to her, "You've got the wrong man, and I can prove it. Take me to the laundry"?

A No, I didn't hear him say anything about the laundry.

Q Well, when she pointed out Hunt, where was he standing?

A He was walking up towards me, himself and another man.

Q And did you have a uniform on? A I had. She was going ahead of me.

Q She was going ahead of you? A Yes, sir.

Q And how far were you from the defendant when you first

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noticed him? A He just come around on the El there at 124th Street, and she was about seven or eight yards ahead of me, and she went up and pointed her finger like that at him (illustrating).

Q And did she stop him? A She didn't stop him, but I ran up and grabbed him. I didn't give him time to get away.

Q Now you say that the other man with him ran away?

A Yes, sir; up 125th Street to Third Avenue, and the policeman on post followed him and he lost him at --

THE COURT: Well, that is immaterial. The only thing that would be material would be if she charged the other man, and the officer says that she did not.

BY MR. CUVILLIER:

Q Did she say to you, "Arrest both of them"? A No, sir; she pointed out this man (indicating the defendant), and when the other man saw me arresting him, he ran.

Q Do you know whether the other man was his brother?

A Well, he said he was. I didn't know either of them.

MR. CUVILLIER: That's all.

MR. SMITH: That's all. The People rest.

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MR. CUVILLIER: Now, may it please the Court, I move that the complaint be dismissed, and for a direction of a verdict in this case:

First, on the ground of Section 2010 of the Penal Code, in that there is no evidence to show that the complaining witness was raped by the defendant, and that there is no proof whatever to show, either by the complainant or anybody else that there was force used, or fear, against the complainant, that, if she didn't submit, she would be assaulted, or receive bodily harm.

And, second, on the ground that there is no proof that any drug, or any other narcotic, or intoxicating liquid was used to put her in a condition of fear.

And, third, that she could not use her will.

Fourth, I move to dismiss, and ask for a direction to acquit, on the entire evidence given in behalf of the People, under Section 2113, on the ground that no conviction can be had unless there is corroboration, and there hasn't been a scintilla of evidence or corroboration as to this crime of rape in the first degree; and on the ground that the corroboration must extend to every material fact necessary to constitute the crime.

Fifth, the fact that the defendant had sexual intercourse with her against her will, to prove that fact, I mean, there must be other evidence in support of it

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before there can be a conviction, and it must be conclusive evidence, not merely circumstantial.

Sixth, on the question of corroboration as to force being used, the mere fact that the defendant had sexual intercourse with the complainant is not sufficient to sustain a conviction of rape in the first degree.

THE COURT: There is a count of assault in the second degree, that you have overlooked, Mr. Cuvillier. Now the motion is based upon an argument on the question of corroboration, and I will reserve my decision on that for the present. The law does not require any corroboration on the question of assault.

MR. CUVILLIER: No. If your Honor will bear with me, because if I go into a defense in this case, I want to have the record state --

THE COURT: Well, that is my most earnest wish also. Take your time now, and get the record straight.

MR. CUVILLIER: Now, I move your Honor, at this time, that your Honor submit the case on the second count of the indictment, which charges the defendant with the crime of assault in the second degree.

THE COURT: That I do what?

MR. CUVILLIER: I ask your Honor to submit the case to the jury on the second count of the indictment, charging the crime of assault in the second degree.

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THE COURT: I said, for the time being I would deny your motion to take away the first degree from the jury.

It is a debatable question as to whether there is sufficient corroboration here or not, or whether there is any corroboration; but, for the present, I am going to deny your motion, without prejudice to your right to renew it; and, as far as the second count is concerned, I will submit that count, as well as the other to the jury. The law does not require any corroboration on the question of assault. Have I made my ruling clear to you, Mr. Cuvillier?

MR. CUVILLIER: If your Honor will allow me to renew my motion, at the end of the case.

THE COURT: Yes, you may renew it, and I will give the question of corroboration more consideration. But I will deny it absolutely as to the second count in the indictment.

Of course, the jury understand that the Court is passing upon questions of law, not of fact. I do not decide that the defendant did or did not do anything. That is for the jury to determine on the testimony. I am merely passing on the law.

MR. CUVILLIER: Yes, sir.

THE COURT: And, before you begin your opening, I

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would like to hear from the District Attorney on the
question of corroboration. Not now, though. Go on
with your opening, Mr. Cuvillier.

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J O H N H U N T, the defendant, of 168 East 128th Street,
being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. CUVILLIER:

- Q Now, Hunt, how old are you? A Twenty years old.
- Q Have you a twin brother? A Yes, sir.
- Q And does he live with you? A Yes, sir.
- Q And do you live with your parents? A Yes, sir.
- Q Your father and mother? A My stepfather and mother.
- Q And your twin brother? A Yes, sir.
- Q Now have you ever been convicted of any crime? A No, sir.
- Q Were you ever arrested for any crime? A Yes, sir.
- Q For what? A Suspicion.
- Q When? A Last year.
- Q What was done with you? A I was let go.
- Q Suspicion for what? A Around 124th Street, between
Second and Third Avenues.
- Q Suspicion of doing what? A Lead pipe.
- Q Oh, lead pipe? A Yes, sir.
- Q Do you mean being a burglar or thief? A Well, I suppose so.
- Q And you were discharged? A Yes, sir.
- Q And this time and that time are the only times you have
ever been in Court? A Yes, sir.
- Q Is that right? A Yes, sir.
- Q Now you heard the testimony of the witnesses here, didn't

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you? A Yes, sir.

Q Did you ever see -- did you ever see Katherine Kern?

A No, sir.

Q Before the day you were arrested? A No, sir.

Q Never knew her? A No, sir.

Q And never saw her in the street before? A Never.

Q Now, where were you on the 24th day of October, 1915?

A Home. October 24th?

Q Yes. A I was home, sleeping, when this occurred.

Q Now how do you know that you were at home sleeping when this occurred? A I have proof.

Q How did you know that it occurred? A I didn't know it had occurred until I was locked up on November 3rd, 1915, and the officer told me.

Q Well, do you know what day October 24th was? A Saturday night.

Q Saturday night? A Yes, sir.

Q And how do you know you were home that night? A I have proof.

Q Well, what proof? A That I was in bed with my brother.

Q Did you work that day? A October 24th?

Q Yes? A No, sir.

Q Well, what time did you get home? A I was home all day until about eight o'clock, and then my mother didn't feel good, and my aunt, Rose Smith, my brother and I went to market.

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Q What market? A 129th Street market. And then we went over to the delicatessen store, and my brother done all the marketing,--while Rose Smith did the marketing -- and we reached the house a little after nine o'clock, and I wasn't out after that.

Q Where do you live? A 168 East 128th Street.

Q And between what avenues is that? A Third and Lexington.

Q And this laundry is in 125th Street, between Second and Third Avenues? A (No answer.)

Q Do you know where this laundry is? A Yes, sir.

Q And you got home you say about nine o'clock? A About a little after nine.

Q And you came home that night? A Yes, sir.

Q What time did you go to bed? A Around eleven o'clock.

Q Who do you sleep with? A My brother.

Q And did you stay in the house all night? A Yes, sir.

Q What time did you get up in the morning? A About ten o'clock, on Sunday morning.

Q Now, do you drink anything? A No, sir.

Q Beer? A No, sir.

Q Whiskey? A No, sir; I got a pledge by Archbishop Farley, at Mount Loretto, Staten Island.

Q Do you smoke cigarettes? A No, sir.

Q Did you ever smoke them? A No, sir.

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Q Now you were arrested on November 3rd, weren't you?

A Yes, sir.

Q Whom were you with when you were arrested? A My brother.

Q Where were you? A I was in a furniture store.

BY THE COURT:

Q Where were you when you were arrested? You were on the street, weren't you? A Yes, sir.

Q Well, that is what he asked you. You were on the street? A Yes, sir; I was with my brother.

Q Walking in the street? A Yes, sir.

BY MR. CUVILLIER:

Q Did you see the officer testify a while ago, the last officer? A Yes, sir.

Q And did you see him then? A No, not until he grabbed me.

Q When he grabbed you? A Yes. I was busy talking to my brother, and he came over and grabbed me, and I was astonished, because I didn't know what I was grabbed for.

And I said, to the officer, "What did you grab me for? You are mistaken". And he said, "You assaulted this woman, and used your tool on her."

And I said, "No, you are mistaken. I wasn't out that night at all." He told me it was Saturday night, October 24th.

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And so he was bringing me around in 125th Street to the station house, and I heard it occurred in that laundry, and I said, "Come on in that laundry, and prove it", but no one would heed me, and they brought me to the station house, and I wasn't hardly allowed to speak, and they sent me to the Harlem Court, and I wasn't allowed to speak there, and so I am down here for sixty-five days, and I don't know what for.

And I would like to have that woman prosecuted, if I get the chance, and I'll prosecute her.

Q Now you say that when you walked past the laundry, you say that you heard the woman claimed to have been assaulted there? A Yes, sir; the policeman told me that the woman --

THE COURT: Well, I will tell the jury to disregard all this. It is immaterial.

MR. CUVILLIER: Well, I want to get it.

THE COURT: Well, you've got it in evidence already, that he never made any admission of guilt, but he always protested his innocence. If there was any claim that he had made any admission of guilt, this would be proper evidence, but, otherwise, it is not. What he said to the officer amounts to nothing, and that he was 65 days in jail is of no materiality here. I would have liked to have tried him immediately for the assault/^{if it} was possible, but we can do only a certain amount of work here at a time. Now let us proceed with that understanding, that he

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vigorously protested his innocence then, and does so now.

Let that be understood as conceded.

BY MR. CUVILLIER:

Q Now do you know a man named Hienchey? A I seen him a lot of times.

Q Yes or no? A Yes, by sight.

Q How long had you known him? A Around 125th Street.

BY THE COURT:

Q He said how long have you known him. A Oh, a few months, I suppose.

BY MR. CUVILLIER:

Q Well, did you associate with him? A No, sir; never.

Q Did you see on the night of the 24th of October?

A No, sir.

Q Do you know a man named Cliff? A No, sir.

Q Were you ever in this laundry? A No, sir.

Q Never was in it in your life? A No, sir.

Q You heard the complainant make a statement at the station house, didn't you, as to what occurred? A Yes, sir.

Q I say, you heard her make a statement in the station house? A Yes, sir.

Q What? A Yes, sir.

Q And what did she say? A She said that she wanted me arrested, and that the officer had the right one.

Q Did she say anything about anyone else not being arrest-

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ed? A No, sir.

Q Did she mention the name of any other man? A No, sir; not that I know of.

Q Did she say that some man -- that she looked for some other man?

THE COURT: Why, he told you just what she said to the officer, that he had the right one. She was only dealing with one at the time.

BY MR. CUVILLIER:

Q Where have you been working? A The last place?

Q Yes. A On a cement boat.

Q For whom? A S. Guy & Company, on the River. It went to Gold Street, Brooklyn.

Q When did you work last? A Around October something.

BY THE COURT:

Q What is your occupation? A My occupation is laborer. I have a trade, too.

Q Well, what is your trade? A Lithographer.

BY MR. CUVILLIER:

Q For whom did you work as a lithographer? A (No answer.)

BY THE COURT:

Q How long did you work as a lithographer? A A year and eight months, for L. E. Newman & Company, and then I became a laborer.

Q He asked you for whom you worked. A I worked on the

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cement boats, as a deck hand.

BY MR. CUVILLIER:

Q Did you work for anybody else? A Yes, for L. E. Fisher & Company, furniture, Second Avenue, between 124th and 123rd Street, when I left school. I left school in May, 1911. I was fifteen past.

Q Did you hear the complainant say to the officer to arrest both of them, when you were arrested? A Yes, he said it.

Q Who said it? A I mean the woman said it.

Q Said what? A "Grab the both of them".

Q And did your brother run away? A Yes, sir.

Q You didn't run, did you? A No, sir.

BY THE COURT:

Q Well, you didn't get a chance, did you? A No, sir; I was grabbed. I was astonished.

Q You were grabbed and could not have run? A No, sir.

BY MR. CUVILLIER:

Q Well, you wouldn't have run if you had a chance, would you?

MR. SMITH: Objected to.

THE COURT: Sustained.

MR. CUVILLIER: Exception.

BY THE COURT:

Q That was a good, husky policeman that had you, wasn't he?

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A Well, the last fellow that was on the stand.

Q Well, he was a pretty good looking man. A Good looking?

Q Yes, strong. A Well, he was pretty old.

Q Well, you don't think that you had a chance to get away from him, if you tried, do you? A Well, I was astonished.

Q Well, did you know that he was going to hold you, when he caught you? A I don't know whether he could or not.

Q You don't? You thought you could get away from him?

A No, sir; I wasn't trying to get away from him.

CROSS EXAMINATION BY MR. SMITH:

Q When did you first meet Hinchey? A Hinchey?

Q Yes. A About three months before that occurred.

BY THE COURT:

Q Before what occurred? A That crime what she claimed.

BY MR. SMITH:

Q Where did you meet him? A In 135th Street, Second and Third Avenues.

Q Near where the laundry is located? A No, sir.

Q The laundry is located between Second and Third? A I know, but down further.

Q At the vacant lot? A Down further.

Q At the library? A Down towards Second Avenue.

Q You know that Hinchey is about 19 or 20 years of age; don't you? A I seen his age in the paper, nineteen.

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Q About your age? A I am twenty.

Q Did you know where he lived at the time? A No, sir.

Q You learned afterwards where he lived? A In the paper.

Q In 126th Street? A 310 East 126th Street.

Q That's near Second Avenue? A I don't know where it is.

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

Q How long have you lived up in Harlem? A Harlem?

Q Yes? A Well, I come out of Mt. Loretto, Staten Island, in September, 1909, and I am at home ever since.

Q Now you said you worked on cement boats as a deck hand?

A Yes, sir.

Q When did you work last and who paid your salary? A A man named Wilson.

Q When was that? A Well, I can't remember when.

Q What month? A When I quit the place.

Q What month was it that you got the last money for working on a cement boat? A What month?

Q Yes? A Around May, I think.

Q So that from May up until the time of your arrest, you had done no work? A Yes, I worked for a grocery fellow.

Q What was the name of the grocer? A J. Weiss, 2403 Second Avenue.

Q What street is that near? A 123rd and 124th. Well, it's right by the corner of 123rd Street.

Q And when did you go to work for him? A I don't remember

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I quit around November.

Q Why, you were arrested in November. A I mean October.

Q Now which was it? You testified on your direct examination that you worked on the cement boat up until October. Now you say that you quit in May, and went to work for a man named Weiss, in the grocery business. Which is correct? Did you work on the cement boat up to October, or did you work for Mr. Weiss? A I worked on the cement boats, and then for Mr. Weiss.

Q Now when was it that you actually worked for Weiss, what month? A I don't remember what month.

Q A year ago? A I worked for him about two months, but I can't tell when.

Q Well, it was last winter, wasn't it, that you worked for Weiss? A Yes.

Q And you worked on the cement boats up to last May? A (No answer).

BY THE COURT:

Q Don't you remember? A No, sir.

BY MR. SMITH:

Q You haven't done any work for a number of months before you were arrested, had you? A Certainly I was working.

Q Well, where were you working? A (No answer.)

BY THE COURT:

Q Well, that is what he wants you to tell him: Can't

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you remember where you were working in October? Did you have a job on the 34th of October? A What year?

Q Last year, the year just past. A October?

Q Yes. A No, I was out of work in October.

Q And how long had you been out of work, he asks you? Don't you remember? A No, sir; I don't remember.

BY MR. SMITH:

Q Well, you hadn't worked all summer, had you? Business was dull, and you didn't work? A Yes, I had worked.

Q Well, where did you work? A I worked over in the New York Piano Hardware Company, 136th Street and Southern Boulevard.

Q I mean this past summer, the summer of 1915, two months before you were arrested. A I wasn't working.

Q You were not working? A No, sir.

Q Now you said that the 34th of October was not a Saturday, but was a Sunday, and you said that on a Saturday before your arrest -- A I was arrested on a Wednesday.

Q I am speaking of the Saturday before the assault was committed, and you said that you were at home all day, and could prove it. You were not working on that day, were you? A No, sir.

Q And you stayed at home until eight o'clock that night? A Yes, sir.

Q What did you do in your house that day? A I washed

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two shirts and two collars, and waited until they were dry, and I was talking to my aunt besides.

Q Where did she live at that time? A She was living with us. She was on her vacation. She is a nurse.

Q And at eight o'clock in the evening you stated, you went out with your brother, who is your twin, you say? A My brother and my aunt.

Q Was he working at that time? A No, sir.

Q He had been out of work for some time? A He's got kidney trouble.

Q Nothing the matter with you? A No, sir.

Q And that you returned about nine or ten o'clock at night? A Yes, sir.

Q And that you didn't go out again, that night? A No, sir.

Q Now, did you see Hinchey, that night, or that day? A No, sir.

Q Did you see him that week? A No, sir.

Q Or after that did you see him? A When he got brought up in front of me, in the Harlem Court.

Q Well, did you see him before he had been arrested?

A No, sir.

Q Were you arrested about the same time? A I was arrested on November 3rd, 1915.

Q And when was Hinchey arrested, do you know? A I don't know when he was arrested.

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Q Well, you saw him in the Harlem Court, didn't you?

A Yes, sir.

Q And didn't you talk with him? A I didn't speak a word.

Q Didn't you see him when he was in the Courtroom? A Yes, sir.

Q But didn't talk to him? A No, sir.

Q And you saw him when he was in the jail? A He was in a different cell from where I was, and he was on the sixth tier in the Tombs, and I am on the fifth.

Q But I am talking of the time that he was in the jail attached to the Harlem Court. You were on the one tier then, were you not? A I don't know what his number was, but I was number two.

Q Well, you saw him there, didn't you? A Yes, sir.

Q And talked with him about this case? A No, sir; I never did.

Q Well, didn't you tell him what the charge was against you? A I don't remember telling him a thing like that.

Q Now from the 34th of October up until November 3rd, the day after Election, did you work anywhere? A I worked odd jobs.

Q I am speaking of from the 24th or 33rd of October, when you went out with your aunt, Rose Smith, up to the time of your arrest, you worked at odd jobs there. A L. E. Fisher.

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Q Where is that? A 2409 Second Avenue.

Q Between what streets is that? A 133rd and 134th Street.

Q What did you do there? A I worked down in the cellar, cleaning out stoves, and putting seats in the chairs.

Q And how long did you work there? A Odd jobs.

Q How long did you work there, how many days? A Well, we had a contract. It took about seven days.

Q Who had the contract? A My brother and I and two more fellows.

Q Who were the other two? A The other two?

Q Yes, what are their names? A Joe Pickesley.

Q And where does he live? A 2405 Second Avenue.

Q Where does the other man live? A I don't know where he lives. In some hotel.

Q Now what time of the day was it that you were arrested?
A November 3rd, 1915.

Q What time of the day was it? A In the morning.

Q About what time? A It couldn't be no more than a quarter to ten.

Q Well, were you just coming from your home? A I was coming out of Heher's. He said he was going up for breakfast, and so me and my brother was talking, jolly, and everything, and I was caught by the officer.

Q And your brother ran away? A Yes, sir; my brother

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ran away.

Q And how long had you been living where you were living at the time of your arrest? A I couldn't say.

Q About how long? A I couldn't say.

Q Who lives in that apartment besides you and your brother? A My mother, my stepfather; that's all.

Q That's all? A Yes. You want neighbors?

Q No, in the house. A Rose Smith was on a vacation with us.

MR. SMITH: That is all.

MR. CUVILLIER: That is all. If your Honor please, I will have to ask for an adjournment until tomorrow morning.

THE COURT: Very well. If you have not any other witnesses here, and wish an adjournment for the purpose of producing them, I will give you an adjournment for that purpose.

MR. CUVILLIER: I do.

THE COURT: Very well, I will give you the adjournment.

(The Court admonished the jury in accordance with Section 415 of the Code of Criminal Procedure, and adjourned the further trial of the case to Friday morning, January 7th, 1916, at 11:30 o'clock.)

THE COURT: Now, Mr. Smith, I would like to have a

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memorandum on the question of corroboration. I think now that I will have to take the first count from the jury, on the ground of lack of corroboration. No corroboration is legally required under the second part of the indictment.

MR. SMITH: Very well, sir.

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New York, January 7th, 1915.

TRIAL RESUMED.

T H O M A S H U N T, of 168 East 138th Street, a witness called in behalf of the defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. CUMILLIER:

Q Mr. Hunt, what is your full name? A Thomas Hunt.

Q And how old are you? A Twenty years.

Q And is the defendant your brother? A Yes, sir; John Hunt.

Q Are you twins? A Yes, sir.

Q Who do you live with? A My mother and father -- he is the second father I have -- he is a stepfather.

Q And who else lives in the house? A In my house?

Q Yes. A My mother's sister, Rose Smith.

Q Anybody else? A No, sir.

Q Have you ever been convicted of any crime? A I was locked up on suspicion, but no conviction.

THE COURT: Well, that will do. There is nothing in that.

BY MR. CUMILLIER:

Q Now don't go into explanations at all, but just answer my questions.

THE COURT: He says he was never convicted of any crime. That ends that. And arrest means nothing.

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That is only a charge, not a conviction.

BY MR. CUVILLIER:

Q Now were you with your brother here, the defendant, on October 23rd, 1915? A Yes, sir; the three of us; Rose, my brother and I went shopping after my father come home, at eight o'clock.

My father sent us out, as my mother didn't feel good that night; and the three of us went out shopping, and the only delay we made was three places, the butcher, grocer and the market, and from half past nine we never left the house again.

Q And what day of the week was that? A On Saturday night.

Q How do you know it was Saturday night? A Sure I know it.

Q Well how do you know it was Saturday night? A How do I know?

Q Yes? A Well, I know every day of the week.

Q Are you and your brother together? A Always; never leave each other.

Q Do you sleep together in the house? A Yes, and go out together.

BY THE COURT:

Q Do you work together? A Yes, every place he works I work, and at school we were in the same class.

Q Well what do you work at? A For Newman and Fisher we worked eighteen months. It's a second hand store.

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Q Have you any trade? A Yes, sir; lithographer.
I worked for thirteen months, and Johnnie worked for two years.

Q You didn't work with him all that time? A No, sir;
not all.

BY MR. CUVILLIER:

Q Now was your brother out of the house on the night of
October 23rd? A Never left the house only -- from the time
we come in until we went to bed together.

Q And you stayed in bed all night? A Yes, sir.

Q Until the next morning? A Yes, sir; until about half
past eight. We went down Second Avenue until the officer
caught him and locked him up.

Q I am speaking of October 23rd. You were with him that
night, weren't you? A Yes, sir.

Q And you say you went to Market? A Yes, sir; and from
that time until we come in, we never left the house until we
went to bed.

Q And what did you do on Sunday? A We never left the house
at all on Sunday.

Q Do you know the complaining witness in this case? A
Mrs. Kern?

Q Yes? A We never seen her until right after he was
locked up. I seen her the day that the policeman came and
took him from me, -- but I recognized her.

Q Why did you run away when your brother was arrested?

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A Because the same officer that caught him was the same officer that chased us at the fire in 124th Street, between First and Second Avenues, on Election Night, and I thought it was the same thing.

Q Were there two officers there? A Only one.

Q Well, how could he have chased you and arrested your brother? A I say he chased us on Election Night.

Q That is why you ran? A Yes, sir.

Q And where did you go? A I went straight to the house.

Q Did you ever see the complaining witness, Mrs. Kern, before that day? A Never seen the woman in my life.

Q Did you hear what she said when she arrested your brother? A When he was arrested?

Q Did you hear what she said when your brother was arrested? A No, sir.

Q Have you had a talk with her since? A Yes, a couple of times, and she admitted that only if some officer had come to her assistance, in time, she would have had the right man, "Cap". He has left the town. He has blond hair and resembles Johnnie, and he wore a brown suit.

Q Did you ever see "Cap"? A No, sir; never seen any of the men, Cliff or any of the men.

Q How did you have any conversation with the complaining witness in regard to your brother? A Yes, sir.

Q What did she say about your brother? A She admitted

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that --

BY THE COURT:

Q What did she say? A She said that, if she got this other fellow, she wouldn't have come down.

BY MR. CUVILLIER:

Q When did she say that? A And she told my mother and my aunt and me, on the Thursday night after he got locked up, and her husband said --

MR. SMITH: Objected to.

THE COURT: Sustained.

CROSS EXAMINATION BY MR. SMITH:

Q Are you working? A No, sir; I have kidney trouble.

Q You haven't worked for some time, have you? A No, sir; I have not, not for the whole year 1915.

Q How long have you known "Gap"? A I never seen him in my life.

Q You said he looked like your brother. A I got told that by Hinchey's cousins, two little girls.

Q And they said "Gap" was there, that night? A No, sir; but they could tell me that my brother was taken for this man "Gap".

Q Your brother isn't blond; is he? A No, sir; he has black hair.

Q And "Gap" is a blond? A Yes.

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Q Did you work last summer anywhere? A Last summer?

Q Yes. Don't you remember? A No, sir.

Q Did your brother Johnnie work last summer? A I think he was working in Newman's, last summer.

Q What? You only think? Don't you know? A Well, this is 1916, isn't it?

Q And he hasn't worked in about a year, has he? A No, sir; in about a year.

Q And he has been around the house every day with you?
A Yes, sir; he never leaves me.

Q You and he are together every day for the last year, and you were together at home? A Yes, sir.

Q And do you remember on the 23rd day of October of this year, what time you got up in the morning? It was on a Saturday morning. A Eight o'clock.

Q Did your brother, the defendant, get up at the same time?
A Yes, sir.

Q Now, when you got up and had your breakfast, where did you go? A I never left the house until Saturday night.

Q You never left all that day? A No, sir.

Q What did you do that day? A Eh?

Q What did you do on that day in the house? A We only sat there, or played cards.

Q How many rooms have you got in that apartment? A Two, it's a furnished room.

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Q A furnished room? A Yes, sir.

Q You and your brother occupy that furnished room?

A No, my mother and father. He is a stepfather. We all live together.

Q How many rooms are there in the apartment where you and your mother and your brother and stepfather live? A Just two furnished rooms.

Q Well, is one a bedroom and the other where you eat?

A Yes, sir.

Q How many beds are there? A There is a bed that my father and mother sleep in, and a divan for Johnnie and I.

Q And on the 23rd day of October you remained in this room all day? A Yes, sir.

Q You said your aunt, Rose Smith, was living with you at that time? A Yes, sir; ahead of that.

Q And where did she sleep? A She slept for three nights in the same bed with my mother.

Q But on this particular day, or the night before? A She slept with my mother.

Q And your father slept in the bed with you and Johnnie?

A No, sir; the three. My mother and my father and her.

Q Your father slept with the two women? A Yes.

Q Your Aunt Rose isn't living with you, at your home, now, is she? A Yes, she is.

Q Now you remember the 23rd of October very well, don't

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you? A Yes, sir.

Q Was it raining on that night? A When we went to the market?

Q Yes? A No, sir.

Q Are you sure about that? A Yes, sir.

Q Didn't you carry an umbrella? A No, sir; I haven't the like.

Q You haven't an umbrella? A No, sir.

Q Now, who had the money to purchase the goods, that night?
A Rose; but I done the shopping, and Johnnie, he stood outside listening to a Salvation Army band.

Q Now do you remember where you were on the day of your brother's arrest? A I was with him, sir.

Q What time did you leave the house, that morning?

A Eight o'clock, and about twenty minutes to nine he was taken from me.

Q Now you were not working anywhere at that time? A We were just going down to get a contract job with Mr. Fisher.

Q And you hadn't done any work for about a year before that, neither you or Johnnie had worked for a year, had you?

A No, sir; about that.

Q How long have you been living at the address where you are now living? A From three and a half to four months.

Q Now when you ran away, at the time your brother was arrested, when did you next your brother? A When did I next

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see him?

Q Yes? A It was a long time.

Q Why did you go to visit Mrs. Kern at her home? Why did you go up to see Mrs. Kern, the complainant, at her home?

A Because I seen it in the Harlem Home News, why he was arrested. His name was in there. And so we went to visit Mrs. Kern, and was also to the laundry, to find out, and the laundryman named the four, and he told me any time I needed him, he would come down, but he changed his mind afterwards. And he said he would lose his life if he can't name the four, and he will pay one hundred dollars to get the fellow. He told Mrs. Kern that.

Q Now you haven't done any work since your brother was arrested, have you? A No, sir.

R O S E S M I T H, a witness called in behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. GUCILLIER:

Q Are you Miss or Mrs? A Miss.

Q How old are you? A Twenty-two.

Q And is the defendant your nephew? A My nephew, yes.

Q Who do you live with? A With my sister.

Q Who is your sister? A Mrs. Mary Hunt.

Q The defendant's mother? A Yes, sir; her mother, these two boys' mother. John Hunt's mother.

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Q Now how long have you been living there with them?

A Five months.

Q What is your business? A Because she isn't feeling good.

Q I say, what is your occupation? A Nurse.

Q And where did you work last? A At the East Side Home and Day Nursery.

Q (Question repeated)? A I lived there from about some time -- well, it's five months since I lived there.

Q And since that time you have been living with them there?

A Yes, sir.

Q Did you live there during the month of October, 1915?

A Yes, sir.

Q Were you there on the night of October 23rd, 1915?

A I was there every night. I don't go out nights. I am with my sister for the last five months.

Q Do you recall the night of October 23rd, 1915? A I was there, yes, sir; and the two boys and I did the marketing.

Q Which boys? A Johnnie and Tommy; they are twins.

Q Do you mean this boy here (indicating the defendant)?

A Yes, sir; and his brother, Tom Hunt.

And we went out and did the mother's marketing, and we come home, and they helped me cook their supper, and even helped me wash the dishes, because my sister wasn't feeling good.

Then we talked a little while, and they went in bed, at about ten minutes of eleven, or around eleven o'clock.

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And then their father and another gentleman was playing cards, and they got through around twelve o'clock, and the Hunts went to bed.

Q And where did you sleep? A Right with my sister, because she was sick, that night.

Q And where did her husband sleep? A Her husband was right inside of the bed. He was up and down all night, in fact. And I never slept, that night, because my sister was very sick.

BY THE COURT:

Q You were not asked that. You were asked where the husband slept. A He was with his wife, sir. He lay down.

BY MR. SUVILLIER:

Q And you were in the bed? A Up and down. I wasn't asleep much.

Q How many rooms have you there? A Two.

Q What are they? Furnished rooms? A Yes, sir. Because, on account of her illness she had to break up.

Q And how do you know this was October 23rd? A Because I was there, sir.

Q Do you know what day of the week it was? A It was of a Saturday night that this happened.

Q What happened? A I mean this whole thing happened.

Q What? A (No answer.)

BY THE COURT:

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Q What thing? A I mean the disturbance occurred on Saturday night, because we were out marketing, and I remember it, because we get the paper every day, and we always know the dates.

BY MR. CUVILLIER:

Q What paper? A We get two or three kinds of papers, every day.

Q Well, which one? A It was in the World.

Q Is that your only reason or conclusion that you know of that it was October 33rd, Saturday night, the fact that you saw it in the paper? A Well, I was there, sir, and I know the boys never leaves the house.

Q Do they ever leave the house at night? A Yes, sir.

Q And when do they get in? A Half past ten, they have to be indoors, or the father won't let them in.

Q How long have you known this boy? A Well, I am in this country ten years, but I didn't know where they were, because I always worked with my lady, off and on in the country.

Q (Question repeated)? A About seven months.

Q And since you have been home, you have met him, the defendant, regularly in the house? A Yes, sir; and I never left them.

Q Do you drink beer in that house? A No, sir; nor smoke.

Q Did you ever see this defendant drink beer? A No, sir.

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- Q Positive of that? A Positively.
- Q Did you ever see him smoke? A No, sir.
- Q Does the brother smoke? A No, sir.
- Q Does he drink? A No, sir.

CROSS EXAMINATION BY MR. SMITH:

- Q Does the stepfather drink? A Yes, plenty of beer, every night.
- Q In the house? A In the house. A couple of pints of beer in the house.
- Q Was he drunk on the night of the 23rd of October? A Well, to say drunk, I never saw Mr. Hunt drunk, but I know he drinks beer.
- Q Well, he was playing cards on this night with his friend, and they had a can of beer there, did they not? A Yes, sir.
- Q And they were drinking? A Yes, sir; they had two or three pints of beer, and especially on a Saturday night, they stay up later than any other night, because any other night he's tired and goes to bed.
- Q Now you don't remember whether this was on the 23rd of October or the 15th of October, do you? A Yes, I do.
- Q Where was the defendant on the Saturday night before, the 16th of October? A Right in the house with me, except we go out marketing.
- Q On the 16th of October, the Saturday night before this

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occurrence, where was the defendant? A The Saturday night before?

Q Yes? A We always go out --

Q (Question repeated)? A Well, he was where I was, except to go out marketing, and help carry parcels.

Q And on October 30th, Saturday night, where was the defendant? A Well, I can swear that they never left my side any night.

Q Well, did they leave you in the day time? A Yes, when they were working.

Q Now who was working? A Johnny Hunt used to do odd jobs around Fisher's store.

Q You haven't worked for five months, have you? A No, sir; I didn't.

Q Now where were they on the 23rd day of October? What time did you get up that morning? A In the morning?

Q Yes? A Well, I generally get up about seven o'clock, around seven.

Q And were the boys up at that time? A Around eight or half past eight.

Q They got up? A Yes, sir.

Q Well, did you see them when they went out, that day?
A Yes, sir.

Q What time did they go out, that day? A About half past eight in the morning, Johnny did.

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Q Johnny did? A Yes, sir.

Q Now this was on the 23rd of October? A Yes, sir.

Q That's the day I mean. A Yes, the day he was arrested?

Q No, no. I mean the 23rd of October. Now where was he on the 23rd day of October? A Well, I'll tell you. They go in and out, and sometimes they don't tell me where, but I know that they go down on the avenue, to Mr. Rasquin and Mr. Fisher.

Q Now you remember the 23rd of October very well, don't you? A Yes, sir.

Q You remember everything that took place on that day? A Yes, sir; because my sister was so sick. That's how I remember it.

Q And she was in bed all that day? A Yes, sir; and that night.

Q Now the boys, the defendant and his brother got up about half past eight in the morning? A Yes, sir. Generally about that.

Q And they had their breakfast in the house, didn't they? A Sometimes they went out without eating anything.

Q Well, on this morning what did they do? A They had some rolls, and they didn't drink tea or coffee.

Q And when did they come back? A In about an hour and a half.

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Q And then did they have something to eat? A Yes, sir; and I got it ready for them.

Q And then they went out again? A Yes, sir.

Q And then they went out about twelve or one o'clock?

A Yes, sir.

Q What time did the defendant and his brother come back?

A They come back then about half past five.

Q And then you had something else for them? A Well, they had nothing else then, only bread, perhaps, until supper time.

Q And what time did you have supper? A It's according to the time her husband comes home; sometimes it's eight o'clock and sometimes nine o'clock.

Q On the night of the 23rd you went out with the boys, marketing? A Yes, sir; and when we came back, they made me cook a supper for their mother, and they even helped me wash the dishes, and we talked a little while together, and the boys went to bed.

Q And you remained up? A Yes, sir. I didn't go to bed until the father's friend went home, at twelve o'clock.

Q And you recollect that the next day was Sunday, don't you? A Yes, sir.

Q And what time did you get up? A Johnny got up at about seven o'clock that morning, and went to church, and I went to church.

Q When did you get back? A About a quarter of eight.

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he got back about the same time, and we had in the paper, and read the paper, after breakfast.

Q What did you read about in the paper? A We always get the Sunday paper.

Q And what did you read? About this trouble in 135th Street; is that right? A Yes, sir.

Q And you read about a woman being assaulted there, didn't you? A Yes, sir.

Q Now, ^{that} from/time on did this defendant leave that house? A No, sir; not at night. He was home every night for five months.

Q And every day he remained at home? I am speaking of after you read the account of the assault on this woman in the laundry in 135th Street. Did he leave the house after you read that? A Yes, a couple of days he was with Mr. Fisher, and the rest of the time until he was arrested, he was in the house with me.

MR. CUVILLIER: We rest. That is the defense.

MR. SMITH: We rest.

MR. CUVILLIER: And I respectfully renew my motion, and ask your Honor to take from the consideration of the jury the first count in the indictment, first, on the ground --

THE COURT: Well, it is not necessary to argue that. What have the People to say?

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MR. SMITH: If your Honor please, I have examined the authorities and the decisions, and I think, under the decisions of the Courts in this case, that there is not sufficient corroboration to submit this case to the jury on the first count in the indictment. We will go to the jury on the question of assault in the second degree.

THE COURT: Then I will grant the motion to take the first count from the jury. Have you any other motions?

MR. CUVILLIER: Oh, yes. Then I move the Court, respectfully, that on the evidence in the entire case that the indictment be dismissed and the defendant discharged, on the ground that the People have failed to prove a case against the defendant.

THE COURT: Denied.

MR. CUVILLIER: Exception.

THE COURT: That is a question of fact for the jury. The law does not require any corroboration of a complaining witness on a charge of assault. It is a question for the jury to determine the matter of the credibility of the witnesses. Is that all?

MR. CUVILLIER: Yes, sir.

THE COURT: Then you will be ready to sum up after recess?

MR. CUVILLIER: Yes, sir.

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

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AFTER RECESS:

THE COURT'S CHARGE:

Mulqueen, J.

Gentlemen of the Jury:

The defendant is charged with the crime of assault in the second degree. It is alleged that, in the County of New York, on the 34th day of October, 1916, with force and arms, in and upon a certain female, not his wife, to wit, one Katherine Kern, he feloniously did make an assault, with intent an act of sexual intercourse with her, the said Katherine Kern, then and there feloniously to perpetrate, against the will of the said Katherine Kern, and without her consent, against the form of the Statute in such case made and provided, and against the peace of the People of the State of New York, and their dignity.

You understand that this is an action brought by the People of the State of New York against John Hunt. It is not brought by Katherine Kern.

The term "People of the State of New York" embraces all the people living in this State, and in order to protect themselves in the enjoyment of their lives, their persons and their property from unjust attack, they have made certain laws, and they charge that the defendant, on

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the 24th of October, 1915, in this County, violated one of those laws.

The Statute in question is a very plain one. Section 242 defines assault in the second degree as follows:

"A person who, under circumstances not amounting to the crime specified in Section 240" -- which defines assault in the first degree -- "assaults another with intent to commit a felony, or to prevent or resist the execution of any lawful process or mandate of any Court or officer, or the lawful apprehension of detention of himself, or of any other person, is guilty of assault in the second degree."

It is charged that the defendant, with intent to commit a felony, to wit, the crime of rape, violated that section, that is, that he assaulted Katherine Kern.

Now, there is no doubt in anyone's mind that rape in the first degree is a felony. Section 2010 of the Penal Law provides:

"A person who perpetrates an act of sexual intercourse with a female, not his wife, against her will or without her consent, when her resistance is forcibly overcome; or, when her resistance is prevented by fear of immediate and great bodily harm, which she has reasonable cause to believe will be inflicted on her, is guilty of rape in the first degree."

That is the felony that the People charge that the

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defendant intended to commit. If he put his hands on that woman, with the intention of committing rape in the first degree, he was guilty of assault in the second degree whether he accomplished the rape or not.

I have taken the question of the rape from you, and it is for you to say whether, on that night, he placed a hand on Mrs. Kern, and, secondly, whether when he did that he intended to use force, so that he or others might have sexual intercourse with her, against her will, and by means of force or violence, or by instilling fear into her mind that, if she made any resistance, she would be injured.

That is a very simple issue, and the charge, therefore, is plain, and the law is clear.

At the trial, as the defendant's counsel says, you must not assume that, because the defendant has been arrested and indicted, that he is guilty. Those are only steps that we take in the prosecution of criminals. When a man is brought to the Bar to be tried, the rule of law is that he is presumed to be innocent; he is not presumed to be guilty; and the People, represented by the District Attorney, have the burden of proving his guilt beyond a reasonable doubt; otherwise, he must go free.

That is all that the presumption of innocence means; that, unless all the evidence viewed calmly and impartially

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by the jury, convinces them that the charge has been proven beyond a reasonable doubt, then the defendant must go free.

Now what is meant by a reasonable doubt? It means the doubt which an honest man would be justified in entertaining under all the facts and circumstances of the case. It is a doubt which is based on the evidence, is connected with the evidence, and arises out of the evidence in the case. It is not a doubt that a dishonest juror will imagine or conjure up from his imagination, in order to render a verdict of not guilty. It is not based on prejudice or sympathy, or on caprice or whim, or any desire to avoid doing your duty, if it is disagreeable. But it is the state of an honest man's mind where, after carefully and conscientiously weighing all the evidence, he is unable to say to a moral certainty that the defendant is guilty.

There are some cases in which a prejudice might be aroused simply by the nature of the charge. You understand that, on a trial, the jury must not be swayed by prejudice against a defendant, or by sympathy for him. They must absolutely banish every thought from their minds but the desire to do their duty. You must make an effort not to be carried away by the nature of the charge or the evidence, but to weigh it coldly, calmly and neutrally.

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That is your sworn obligation.

The Court is the Judge of the law. The law is plain, there is no doubt about the law. No question has been made as to the Judge's rulings upon the law. You are the sole judges of the facts, and of the credibility of the witnesses. Facts are proved by witnesses, not by imagination, but by witnesses, and it is your duty to calmly weigh each of the witnesses, as the saying is, and to pass upon their credibility. The word "credibility" means worthiness of belief.

What witnesses that have appeared before you here on both sides were worthy of belief, in your opinion?

There is not any infallible or rigid test to apply in determining that question. You must use the common sense that you have, and that you employ in your own important business affairs. You must be honest, that is the first thing; and then you must honestly weigh the testimony of the witnesses. Which of them do you believe? It has been said that sometimes the manner of a witness may help you in determining his credibility. You can consider the interest, if any, that the witness has in the controversy, the opportunity that the witness has of knowing whereof he or she speaks, and the motive that the witness may have for testifying falsely.

You saw this woman on the stand. Did she impress

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you as an intelligent, decent woman, or not? Was there anything in her story of what she says happened there to make you believe it was incredible or impossible? Did her manner impress you as that of a woman who was honestly telling the truth, or that she was deliberately plotting to ruin someone who had never done her any wrong, or that she was honest in her statements?

What motive could this woman have to testify falsely against a man who had done her no wrong? We can imagine that a woman who had been treated as she claims to have been treated had a strong incentive and desire to punish the person or persons who wronged her in that manner. But why should she testify against anyone whom she did not believe to be one of the men who wronged her, as she described?

Even if a witness, in your opinion, has a motive to testify falsely, that would be no reason for rejecting the testimony. The witness who has such a motive, the defendant, for instance, may be telling the truth. It is only one of the elements that you must consider in determining the credibility of the witnesses.

It is, therefore, your province to decide the question of the credibility of witnesses, to determine whether any witness has told the truth, or has deliberately falsified in any particular, or whether any witness has made a mistake

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and has told what was not true by accident.

The defendant has sought to prove that he was not at this laundry where the crime is alleged to have been committed, but that he was at home at that time; and that is what is known as an alibi, namely, proof that he was elsewhere. Of course, if he was elsewhere at the time, he could not be guilty; and if the evidence that he has submitted to you on that score satisfies you as being truthful, and entitled to credence, if it proves to your satisfaction that he was at home at that time, of course, you must acquit him; or, if it raises a reasonable doubt in your mind as to whether he was or was not present at the time, you must also acquit him.

Now, on the question of the identity of the defendant, you recall that the complaining witness said that she had seen him at least twice before the night in question on 135th Street, and that she was there for four hours with these men, and had a good opportunity to see him, and that she is certain that this is the man who opened the door of the laundry when she was caught on the street, and dragged in, and she described with great minuteness what he did; and said that it was some ten days later when she saw him on the street, and got a policeman, and had him arrested.

Is she mistaken? Is she or is she not telling the

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truth? That you must determine by using your own good sense and judgment, as you do in the important affairs of your daily life; and, if you are firmly convinced to a moral certainty that this woman told the truth, and that this is the man who treated her as she says she was treated, then you must find him guilty of assault in the second degree, and you have no power to do otherwise.

On the other hand, if the evidence does not satisfy you, if you think that she has made a mistake, or is testifying falsely, if on the whole case you have a reasonable doubt of his guilt, you must say no by a verdict of not guilty.

All that the law asks you to do is to be honest men, and to weigh this testimony calmly and quietly, and to pronounce an honest verdict.

All good citizens wish to enforce respect for the law. We wish to make our streets safe for honest, decent people at all times of the day or night, and to make our County the home of honest, respectable people, and to drive everyone else from it. But on the trial of an indictment there must be evidence to satisfy you of guilt beyond a reasonable doubt before you can convict. If that is your state of mind, pronounce the defendant guilty of assault in the second degree; but, if you have a reasonable doubt as to his guilt, pronounce him not guilty.

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Your verdict, therefore, should be either guilty of assault in the second degree or not guilty.

Any requests to charge?

MR. CUVILLIER: None whatever, sir.

MR. SMITH: None, sir.

THE COURT: If there is any conflict as to what the testimony is, you must be guided by your own recollection of it, and, if you still differ or are in doubt as to what the testimony is, you may return to Court, and request the Court to have the stenographer read the testimony about which you are uncertain to you.

You may retire, gentlemen.

(The jury returned to the Courtroom at 3:55 P. M.)

THE COURT: Gentlemen of the Jury, I have sent for the jury because I received this notification:

"Hon. Judge Mulqueen,

"If permissible, we, the jury, in this case against John Hunt, desire information as to the complaining witness's identification of the other alleged assailants; this to help establish the reliability of her identification of the defendant."

I wish to say to you, gentlemen, in answer to that, that her identification of other persons has no bearing on this case at all. It is not legal evidence, and has not

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anything to do with this case. She might have been right in identifying this man. We cannot reason that way. You saw the witness, and heard her story. She said she saw this man twice before, and that he is the man. You have to determine from that, and from her conduct when she saw him on the street when he was arrested, as to whether he is the man or not. She said that he was in the room with her for four hours, and you can look at that man, and say whether he has the kind of a face that you would remember or not.

Take into account all the circumstances of the case, and determine whether she is telling the truth, or whether she is honestly mistaken, or whether she has deliberately testified falsely. You have to pass on that question, without in any way considering the question which you have put to me. That is the law as I understand it. This man is on trial now. What was done as to others is not an issue before you. You understand that now.

Weigh all the testimony carefully, and pronounce an honest verdict.

Have you anything further to ask, counsellor?

MR. CUVILLIER: No, sir.

MR. SMITH: No, sir.

THE COURT: If there is any other help that you want, any testimony read to you, let us know, and we will have

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it read to you, and we will be at your service for any information that you desire.

The jury can retire.

(The jury returned to the Courtroom at 4:30 P. M., finding the defendant guilty of assault in the second degree.)

MR. CUVILLIER: I move, very respectfully, may it please the Court, to set aside the verdict: First, on the ground that the verdict is against the law and against the evidence.

Second, that it is contrary to law and contrary to the evidence.

Third, that your Honor admitted immaterial and incompetent evidence, prejudicial to the defendant, and excluded competent and material evidence in favor of the defendant.

And I move for a new trial on all the grounds specified in the Section of the Code of Criminal Procedure, and Section 999 of the Code of Civil Procedure.

THE COURT: The motion is denied, and on the day of sentence, I will give you permission to renew that motion, or make such other motions as you may deem advisable. I will impose sentence on the 14th.

MR. CUVILLIER: May I have an exception noted as to your Honor's denial of my present motions?

THE COURT: Yes.

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