

START

450

CASE

Witness Index.

	Direct	Cross	Redirect	Recross
Catherine Lynch	2	15		
May Rocheford	20	35	51	
Cornelius Egan	53	56	65	69
Henry Lower	70			

450

Witness Index.

	Direct	Cross	Redirect	Recross
Catherine Lynch	2	15		
May Rocheford	20	35	51	
Cornelius Egan	53	56	65	69
Henry Lower	70			

Witness Index.

	Direct	Cross	Redirect	Recross
Catherine Lynch	2	15		
May Rocheford	20	35	51	
Cornelius Egan	53	56	65	69
Henry Lower	70			

150

Witness Index.

	Direct	Cross	Redirect	Recross
Catherine Lynch	2	15		
May Rocheford	20	35	51	
Cornelius Egan	53	56	65	69
Henry Lower	70			

450

1

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

- - - - - X

THE PEOPLE

vs.

HENRY HOFMAN.

- - - - - X

Before Hon. Joseph E. Newberger, J., and a jury.

Tried New York, August 8th, etc., 1904.

Indicted for Rape in the first degree.

Indictment filed June 7th, 1904.

APPEARANCES:

ASSISTANT DISTRICT ATTORNEY CHARLES C. NOTT, for the People.

EDWARD F. HYMES, ESQ., for the Defense.

Frank S. Beard,
Official Stenographer.

50

THE PEOPLE'S TESTIMONY.

CATHERINE LYNCH, a witness called on behalf of the People, being duly sworn, testified as follows:

THE COURT: I want to say to you, gentlemen of the jury, that, under a ruling of the Appellate Division of this Department, the child is simply brought into court for the purpose of exhibiting her, so as to enable the jury to determine the age of the child. I will not permit the child to be interrogated by either side. She is too young.

MR. NOTT: Well, will your Honor have the mother sworn? And I would like to have the child kept here, for a moment, so as to identify her.

THE COURT: Yes.

MR. HYMES: If the Court please, if I may interrupt, for a moment, I take it that note has been made in the minutes that the child has been produced and exhibited to the jury, with your Honor's

450

qualification, namely, only for the purpose of exhibiting its age?

THE COURT: Yes. That was all.

DIRECT EXAMINATION BY MR. NOTT:

Q Mrs. Lynch, where do you live? A 2213 Belmont avenue.

Q In the Borough of the Bronx? A Yes, sir.

Q Are you married? A Yes, sir.

Q How long have you been married? A Six years in November; on the 9th of November.

Q And how long have you lived at the address given?

A On the 9th of November, six years.

Q And who are you married to? A Patrick Lynch.

Q Is he a member of the Police Force?

A Yes, sir.

Q How long has he been on the Force? A I think, 14 years.

Q Well, he has been on the Force all the time you have known him? A No, sir;

Q But, all the time you have been married to him?

A Yes, sir.

Q Now this child that has been referred to, by his Honor

450

4
on the bench, and exhibited to the jury, is that your child?

A Yes, sir.

Q And what is her name? A Juliet Lynch.

Q And how old is she? A Four years and seven months.

Q When was she four years old? A The 3rd of October last.

Q And she will be five on the 3rd of October 1904?

A Yes, sir.

Q And she is your child? A Yes, sir.

Q Was she living with you, in the Borough of The Bronx, at the address you have given, during the month of April 1904? A Yes, sir.

Q Is there anyone outside can take charge of her?

A Yes, sir; her father is outside there, but she is a nervous wreck, since this happened, and I can't do anything with her. She will not leave me for a moment.

THE COURT: Then let her stay here.

MR. HYMES: Your Honor will recall that the exhibition of such a child as this is, and has been held to be, in a well known case, reversible error, whether exhibited for an innocent or improper purpose.

THE COURT: I know of no such case. The child

450

5
may remain in court.

MR. HYMES: And I except. Especially when the District Attorney has already said that it is not for the purpose of interrogation, and for no purpose announced by the District Attorney.

MR. NOTT: Well, then, I think, if your Honor please, that it should be entered in the minutes that the child exhibits such a--

THE COURT: No. Stop, Mr. Nott. Proceed, Mr. Nott.

BY MR. NOTT:

Q Now, Mrs. Lynch, did you ever see the defendant before this? A Yes, sir.

Q When was the first occasion on which you ever saw him? A In court, in the Morrisania Court. I don't know the date.

Q Well, that was shortly after this occurrence?

A Three weeks afterwards.

Q Well, you had never known him before this occurrence?

A No, sir.

Q And had your husband ever known him, as far as you know? A No, sir.

450

Q You never had had any kind of acquaintance, of any sort, with the defendmt? A No, sir.

Q Now, do you recollect the 14th of April 1904, the day this thing happened? A Yes, sir.

Q And where were you, that day? A I was in my house.

Q And how far is your house from the woods?

A It is about 2 1/2 miles.

MR. HYMES: One moment. I object to that question.

THE COURT: Objection sustained, as to form.

MR. NOTT: Yes, sir. It is out of order.

BY MR. NOTT:

Q Now, what time did your little girl leave your house, that day? A At between half-past 12 and 1 o'clock.

Q In the daytime? A Yes, sir.

Q And who did she go with? A Her sister and two other little girls in the street.

Q And what is her sister's name? A Marguerite.

Q How old is she? A She will be four years, the 5th of January next.

Q Then she is younger than this child?

A Yes, sir.

Q And who were the other children? A They are the

450

neighbors' little girls. They were playing out in the sand, when the boy come along, and took her.

Q But what I want to get at is, did you know that they were going? A No, sir.

Q Did you send anybody with her? A No, sir.

Q You missed her when? A Between half-past 12 and 1 o'clock.

Q That afternoon? A Yes, sir.

Q And when did you next see her? A At 4 o'clock, that afternoon.

Q And where did you see her? A A little girl, that I never seen before, brought her home to me.

MR. HYMES: Objected to, as irresponsible.

"Where did you see her?" is the question.

BY THE COURT:

Q A little girl brought her home? A Yes, sir; a little girl, I never seen her before, took her home to my house.

BY MR. NOTT:

Q And were you at home, at the time? A Yes, sir. We were all on the front stoop, looking for the child, and the police, at the same time. And we were all upon the stoop, when this little girl brought her home to me.

Q And what is the little girl's name? A May
Rochford.

Q And had you known her before this time? A No, sir;
I had never heard of her before.

Q Now, when she was brought home by this little girl,
May Rochford, state what condition she was in?

MR. HYMES: Objected to, as calling for the con-
clusion of the witness.

BY MR. NOTT:

Q No. What was her condition, so far as you saw it?
A She was hysterical.

MR. HYMES: Objected to.

THE COURT: Objection sustained. Strike out
the answer.

BY MR. NOTT:

Q What did you do with the child? A I took her into
the house, and one neighbor suggested I should examine her.

MR. HYMES: I object to the latter part of the
answer.

THE COURT: Objection sustained. Strike out the
latter part of the answer.

NOTT:

No, don't say what anybody suggested. But describe—
condition of the child, what you saw and noticed,
her?

The child was cut, in her privates.

450

BY MR. NOTT:

Q No, don't say what anybody suggested. But describe the condition of the child, what you saw and noticed, about her?

A The child was out, in her privates.

450

MR. HYMES: Now, I ask that that answer be stricken out, as a conclusion.

THE COURT: Motion denied.

MR. HYMES: Exception.

BY MR. NOTT:

Q Now, when she was brought to your house, and when you took her into the house, did you notice anything about her? A Not until I brought her in my kitchen, and examined her.

Q Well, what caused you to examine her?

MR. HYMES: Objected to, as calling for the mental operation and conclusion of the witness.

THE COURT: Objection sustained.

BY MR. NOTT:

Q Did you have any talk with May Rocheford?

MR. HYMES: Objected to.

A I asked her --

THE COURT: Objection sustained.

BY THE COURT:

Q Now will you just tell the jury what you saw, when you examined your child? A Well, I found her cut in her private parts, and blood on her drawers and petticoats.

Q And where did you make the examination? A In my kitchen.

450

BY MR. NOTT:

Q And how long after she was brought home did you make it? A Right away, when I had her in my kitchen.

Q On the same day, the 14th of April? A Yes sir.

Q And you say you found a cut where? A In her little privates.

Q Her private parts? A Yes sir.

Q Well, describe the condition of the child to the jury, will you please? You have got to tell. They have got to know about this case. Well, now, tell us just what you found?

MR. HYMES: Well, there was a doctor examined her, that same day; was there not? That will save much time and labor.

THE COURT: Well, I understand that the doctor is to be here later.

BY MR. NOTT:

Q Now just tell the jury what her condition was?

THE COURT: She has already told the jury that she found that the private parts were cut, and blood upon her drawers.

A (Answer continued) -- yes sir; that's it. In her inside, in her private parts, she was tore a little, and the doctor explained what it was; and I found blood on her drawers and

450

on her petticoats.

BY MR. NOTT :

Q How long before she left the house had you seen her, that morning? A Why, right away. At half past twelve, I gave her her dinner.

Q And you dressed her, that morning? A Yes sir.

Q Was there any blood on her clothes, when you dressed her? A No sir.

Q Was her health good, when she left the house?

A Always.

Q Now, go on and tell the jury how you came to make this examination. I don't want what anyone said to you, but how did you come to do it?

MR. HYMES: Objected to.

THE COURT: Objection sustained.

A I couldn't understand --

THE COURT: No. Objection sustained.

BY MR. NOTT:

Q Did you have any talk with the child? A She wouldn't tell me anything, only the man took her away in the woods.

MR. HYMES: Now, I ask that the latter part of that answer be stricken out.

THE COURT: Strike that out.

MR. NOTT: We have to prove a complaint made by the female.

THE COURT: No. Proceed.

BY MR. NOTT:

Q Now, did you have a talk with May Rocheford, before or after this examination? A I never seen her again, until I seen her in court.

MR. HYMES: Objected to, as immaterial.

BY MR. NOTT:

Q (Question repeated)? A No I did not.

MR. HYMES: Objection withdrawn.

BY MR. NOTT:

Q Now, after you made this examination, what did you do? A I washed the little girl. And I first sent for the doctor, and the doctor wouldn't be home until six o'clock. And then I washed her, with some witchhazel and water, and then I took her, and she clung on to me until the afternoon. She was hysterical.

Q And what doctor did you send for? A Dr. Egan, my family doctor.

Q And did he come? A Yes sir.

Q When? A About six o'clock.

Q Well, did you keep the clothing of the child? A Yes

sir. But I never expected to see the boy again.

MR. HYMES: Objected to, and I move to strike out the latter part of the answer.

THE COURT: Motion granted.

BY MR. NOTT:

Q Did the doctor make an examination of the child?

A Yes sir.

Q That same day? A Yes sir.

Q In your presence? A Yes sir.

Q And did you show him the clothing that she wore, when she came back to your home? A Yes sir.

BY THE COURT:

Q Were they the same clothes that she wore, when she went out? A They were sir.

BY MR. NOTT:

Q And was there any change in their condition, after she came back, until you showed them to the doctor? A In the child's condition?

Q No. The clothes which you showed to the doctor, were they the same as they were when she came back? A Yes sir; just the same. I took them off, and folded them up until the doctor came.

Q And how long was it afterwards that you saw the defendant, in the Police Court? A Three weeks afterwards, I

450

met him in court.

Q Now what did you do with the child, after the examination of the doctor? Had she been home ever since? A No. I found her ruptured, when she brought her home.

MR. HYMES: Objected to. Objection withdrawn.

BY MR. NOTT:

Q Had you ever known her to be ruptured before? A No sir; I never knew her to be ruptured.

Q Well, where has the child been since the 14th of April? A She was in the hospital.

Q In what hospital? A The hospital for the ruptured and crippled. And she was never ruptured before. And she wasn't operated upon, because she had the measles, and isn't operated on yet.

CROSS EXAMINATION BY MR. HYMES:

Q You say that you found the child ruptured? When was it? A The doctor found it, the first time when he came and examined her, that evening, at six o'clock.

Q Did he tell you the name of what he found? Would you recognize the name, if I mentioned it to you? What was the disease that she was suffering from? A I don't know.

Q Was it hernia? A Yes sir; that's what he called

150

it.

Q And it is because of that that she is about to go to the hospital? A No. It is on account of the rupture.

Q Yes, that is the rupture? A Yes sir.

Q And, to get that rupture fixed and attended, she is going to the hospital? A Yes sir.

Q She hasn't been there yet? A No sir.

Q She had the measles right after this occurrence that you have spoken of? A Yes sir. She was in the hospital, but I had to take her home, on account of the measles.

Q And she was there to cure the hernia, in the hospital? A I don't know what he referred to, the doctor.

Q Well, you remember the name, don't you, hernia?

A I don't know that I do. I can't recall it.

THE COURT: Well, I think it is hardly fair to this witness, to ask her to remember the technical name given by a physician.

MR. HYMES: Well, but she said yes, before.

THE WITNESS: Well, I don't know the name. The doctor will tell you that.

THE COURT: The doctor will be here in a few minutes, I am informed.

THE WITNESS: Well, I heard the name, but I

150

don't know what it is. I don't know whether it was what the doctor said or not.

BY MR. HYMES:

Q The last time you saw the child, on this afternoon, in April, was about 12:30? A From 12:30 to 1 o'clock.

Q Until she came back with this strange girl? A Yes sir; between half past 3 and 4.

Q Or was it between four and half past four? A Well, it was between half past 3 and 4 she came back.

Q Are you sure of that? A No; between 4 and half past 4, because my husband came back.

50

Q Are you sure of that? A No, between 4 and half-past 4, because my husband came back.

Q Now, the last time that you saw her, that afternoon, was between 12.30 and 1? A Yes, sir.

Q Is that correct? A Yes, sir.

Q Well, are you quite sure of that? A Well, I'm pretty sure. I aint sure to the minute, because I didn't look at the clock.

Q But it was before 1? A Yes, sir.

Q And you are sure that you didn't see her after 1 o'clock, until she came back? A No, sir, because I went looking for her.

Q You are sure of that? A Yes, sir.

Q Do you remember seeing her play around the house, with these other children; don't you? A Yes, sir.

Q Do you remember testifying at the Magistrate's Court, as follows:

"Q That day, your little girl was at home?

A Yes, sir. Q What time did she go out? A I don't remember. She was playing around home.

Q About what time? A About half-past 1, or a quarter to 2."

Do you remember testifying that way, at the Magistrate's

b2

Court, namely, that you saw her playing around the house about half-past 1 or a quarter to 2? A Well, I do, but, since--

Q Well, which is the fact? That you saw her playing around the house, at half-past 1, or a quarter to 2, or--
A I couldn't tell you now which.

Q Or between half-past 1 and 2? A I couldn't tell you which, now.

Q You don't know which is the truth? Now, Mrs Lynch, just answer my questions, and we will get along all right.
A Well, I know it is between half-past 12 and half-past 1; around that time.

Q Well, you remember that you told me a minute ago-- it is a small matter, and I only want to find out about your memory-- you swore that it was before 1 o'clock that she departed from your sight? A Well, I can't tell you whether it was 1 or half-past 1, but it was around that time; because I didn't look at the clock any more, and I can't be sure of the time.

Q And when did she have her dinner? A Between 12 and half-past 12; and then she went on the street.

450

MAY ROCHFORD, a witness called on behalf of the People, being duly sworn, testified as follows:

BY THE COURT:

Q How old are you? A Thirteen.

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

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

Q Do you go to Sunday School? A Yes, sir.

Q Now, what will happen to you, if you tell a lie?

A I won't go to Heaven.

THE COURT: Swear the witness.

(The witness is sworn.)

DIRECT EXAMINATION BY MR. NOTT:

Q Now, May, you have got to speak up, so that all of these gentlemen can hear you. Where do you live?

A 20 Boston Road.

Q 20 Boston Road? A Yes, sir.

Q And you live there with your parents?

A Yes, sir.

Q And how old are you, May? A Thirteen.

Q And how long have you lived at 20 Boston Road?

450

A Almost three years.

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

Q Now do you remember-- are there some woods near your house? A Yes, sir.

Q How far ~~away~~ from your house are they? A They are across the road.

Q What? A Right across, the other side of the road.

Q Now do you remember seeing that little girl, who just went out with her mother, Juliet Lynch, in those woods, last April? A Yes, sir.

Q Did you see her on more than one day, or only once? A Only once.

Q And do you remember the date you saw her? A Yes, sir.

Q What was it? A The 14th of April.

Q Last? A Yes, sir.

Q And when did you see her? A It was about five minutes to three.

Q In the afternoon? A Yes, sir.

Q And you were in the woods? A Yes, sir.

Q And how far in the woods were you, how far from the road? A Well, now, if I hollered, you could hear me on

the road.

Q Not very far away, then? A No, sir.

Q Now was anybody with this little child?

A Yes, sir.

Q Who? A A young boy.

Q Now, do you see him here? A Yes, sir.

Q What? A Yes, sir.

Q Just point him out? A That boy (indicating the defendant).

Q This boy here, the defendant (indicating)?

A Yes, sir.

Q Had you ever seen him before?

A No, sir.

Q Had you ever seen the little child before?

A No, sir.

Q Did you know the child's parents? Who she was, at that time? A No, sir.

Q Now was anybody with you? A No, sir.

Q Well, what were you doing in the woods? A I was getting a few forget-me-nots, on the hill.

Q You were picking flowers? A Yes, sir.

Q And what did you see the defendant and the little

150

child doing, in the woods? A I saw them walking over towards the rocks.

Q How were they walking? A Well, slow.

Q Was the little child walking alone? A No, sir; he had her by the hand.

Q This defendant did? A Yes, sir.

Q Holding her? A Yes, sir.

Q And leading her along? A Yes, sir.

Q And are there some rocks there? A Yes, sir.

Q Big or small? A Well, they go up, and then they come down; some big and some small.

Q And how far away from the road are those rocks?

A They are about 10 feet away-- now, 10 feet away from where I was standing.

Q Near where you were? A Yes, sir.

Q Did you see any other people in the woods, at that time, except the little child and the defendant?

A No, sir.

Q What did you do, then, after you saw him leading her along? A Well, he watched me so strangely, that I got afraid.

MR. HYMES: No. I ask that the answer, the entire answer, be stricken out.

450

THE COURT: Yes Strike it out.

BY MR. NOTT:

Q Did you watch him? A Yes, sir.

Q You were looking at him? A Yes, sir. And he turned around, and looked at me, and I got so afraid that I walked up near the house.

MR. HYMES: I move that that be stricken out, that she got afraid.

THE COURT: Yes. Strike that out.

BY MR..NOTT:

Q Well, you say that you walked towards your house?

A Yes, sir.

Q And, when you walked towards your own house, what way was he going?

A He went right towards the rocks.

Q With the child? A Yes, sir.

Q Now, when you got to your house, what did you do?

A I stood by the stone wall, there, and, I couldn't see him any more; and so I thought maybe he had gone to--

THE COURT: No. Do not tell us what you thought.

BY MR. NOTT:

Q And what did you do then? A Well, I walked over

home, then.

Q Across the road? A Yes, sir.

Q And what did you do, when you got home?

A My sister told me to be home in five minutes, and so I went home, to tell her I was all right, and I said I wanted to go back.

Q No. Don't say what you told your sister. How long did you stay at the house?

A About 10 minutes.

Q And then what did you do? A I went back to get some flowers, on the other side of the hill.

Q Well, did you go into the woods again?

A Yes, sir.

Q And you say you were away about 10 minutes?

A Yes, sir.

Q Well, how near those rocks did you go?

A There is a swamp, like that, (illustrating), and the rocks is on that side of the swamp, and I stood on the other side (illustrating).

Q Well, how wide is this swamp?

A It is about from here to there (illustrating).

Q It is a narrow place? A Yes, sir.

450

Q And how far did that make you away from the rocks?

A It made me about 8 feet away.

MR. HYMES: Just indicate that , please.

BY MR. NOTT:

Q Well, just point out some place in the room that is as far away from you as the rocks were far away from you?

A About to where you are standing, from where I am sitting.

MR. HYMES: Indicating about 8 or 10 feet?

MR. NOTT: I should think that was a little more. About 10 or 12 feet.

BY MR. NOTT:

Q Well, did you see anybody there then?

A No, sir; but I could hear the faint cry of a child.

Q What did you hear the child say?

A I thought I heard her crying. I heard her crying, coming over from that direction. That was down back of the rocks.

450

A I thought I heard her crying. I heard her crying, coming over from that direction. That was down back of the rocks.

Q Back of the rocks? A Yes sir. And then I listened and I said, "I guess it ain't crying. It's laughing."

MR. HYMES: I object to that, what she guesses or thought.

THE COURT: Yes. Strike out what she guessed.

BY MR. NOTT:

Q Well, what did you see and hear? A And I listened, and I said, "Yes, it is somebody crying." And I looked over towards the rocks, and the girl come walking up, and I seen that she was crying. And I saw the boy, too.

Q Well, what boy and what girl? A The little girl and that boy (indicating the defendant).

Q The same little girl? A Yes sir.

Q And what boy? A And the sameboy.

Q This defendant? A Yes sir. And there was two trees that went up like that (illustrating), grew together; and the little girl was standing behind them, and I couldn't see her, and the boy was looking over toward me.

Q What is that? A The boy was looking over toward me, through the two trees.

Q Yes. A And then I moved backwards.

Q Well, before that, did you hear the little girl say

anything? A No sir; not before that.

Q Well, then, you saw this defendant between two trees? A Yes sir.

Q Well, go on? A And I seen him walking away from her, and then she says, "Oh, don't, don't."

Q Well, could you see her, at that time? A Yes sir.

Q Where did you see her? A She walked over with him, followed him, and he walked away from her.

Q Well, where was she when she said, "Don't"? A She was standing right over by the rocks.

Q You saw her then? A Yes sir.

Q And what did he do then? A And he walked away, and, when he got near the swamp, he went and he, now, was buttoning his pants; and then, when he seen me, when I seen he was coming towards me, I run up the hill, and stood on the top. And there is a path that goes that way (illustrating), and brings you out on the Boston Road, near the trestle and I thought he was coming up on that path, and I went up on the Boston Road, near our house, and I run away, and so I says to my sister --

MR. HYMES: Objected to.

THE COURT: Objection sustained.

A (Answer continued) And so I waited a while, and then I

went back, to see where the little girl was, and I found her coming up towards the house, through the woods, and I asked her, where did she live.

Q Well, was the defendant there, then? A No sir.

Q Well, now, did you see the defendant in behind the rocks? A No; I didn't see him in behind the rocks.

Q What? A No sir.

Q Where was he when you saw him the second time?

A I didn't see him at all. He wasn't in the woods.

Q Well, you said you saw him in the woods, looking between two trees? A Yes sir. Well, when he came towards me, I ran towards the street, and he took a different path, that brought him away down there (illustrating).

Q But, before you went away, what did you see him do with the little girl? A I seen him walking away.

Q Well, when you got back, the second time, you say you came to this swamp? A Yes sir.

Q And was the child crying then? A Yes sir.

Q Now what was the first thing that you saw, then?

A I saw him walking up to those two trees.

Q Was that the time that he was buttoning his pants?

A No sir; when he was running away, he was buttoning his pants.

Q Well, what was he doing when he was walking up to

450

the trees? A He just had her hand, and, when he got up to the trees, he let her hand go.

Q And when did you hear her say "Don't, don't"? A When he was running away from her.

Q Well, now, we will come back to that again, in a minute. Now, you say you met the little girl in the woods, later? A Yes sir.

Q Where did you take her? A I asked her where she lived, and all she could say was, "Belmont".

MR. HYMES: I object to what she said, and move that it be stricken out.

THE COURT: Strike it out.

BY MR. NOTT:

Q Well, where did you first take her? A I took her over to my house.

Q And did you notice anything about her, at the time? A Yes sir.

Q What did you notice? A I noticed that her drawers were hanging down.

Q When you first saw her, in the woods, were they hanging down? A No sir.

Q Well, when did you first notice them hanging down? A When I was going to take her over to my house. And I noticed some of the button holes were broke, and so I asked

450

her --

MR. HYMES: Objected to.

THE COURT: Objection sustained.

BY MR. NOTT:

Q Did you make any examination of her person, after you got home? A No sir.

Q Did you see anything on the drawers? A No sir; I didn't notice it.

Q Did you button them up? A Yes sir.

Q You say you didn't notice anything about them?

A No sir.

Q You say you didn't see any blood? A No sir.

Q Well, now, what did you do with the child, after that? A So I says --

MR. HYMES: Objected to.

BY MR. NOTT:

Q No. Don't say what was said between you? A "If I brought you to Belmont school, would you know where you lived?" And she said, "Yes". And so I was walking over, and, as I reached the school, I said, "Where is your house now?" And she said, "Go on."

MR. HYMES: I object to what was said between the witness and the child, and ask to have it

450

stricken out.

THE COURT: Yes. Do not say what you said, or what she said to you. Strike that out.

A (Answer continued.) Well, I took her down the road, and then I went up to the corner, like that (illustrating), and she said, "There's my house."

MR. HYMES: I object to what was said.

THE COURT: Yes. Strike out what she said.

BY THE COURT:

Q You took her to her house? A Yes sir.

BY MR. NOTT:

Q That same afternoon? A Yes sir.

Q Did you see her mother, Mrs. Lynch, then? A Yes sir.

Q That same afternoon? A Yes sir.

Q And how long did you stay? A I give her the child, and I said, "I found her --"

MR. HYMES: Objected to.

THE COURT: Objection sustained.

BY MR. NOTT:

Q No. Nevermind what you said. How long did you stay there? A Well, about five minutes or ten.

Q And had you ever known the Lynch family before?

A No sir.

Q Now when did you next see this defendant? A In the court room.

Q And when was that? How long after? A About three weeks.

Q Yes. And what occurred then? A In Morrisania Court.

Q And who sent for you, to go to court?

MR. HYMES: Oh, I object to that, as immaterial.

THE COURT: Objection sustained.

BY MR. NOTT:

Q Well, who was in court, when you saw him? A Mr. Lynch.

Q Yes? A Mrs. Lynch, and a couple of other children.

Q Were the other childrens' mothers there? A No sir.

Q Who had the other two children there?

MR. HYMES: Now, I object to all that.

THE COURT: Objection sustained.

BY MR. NOTT:

Q Well, did you know the other children? A No sir.

Q What? A No sir.

Q And when did you see him there, in court? Did you recognize him when you saw him in court there? A Yes

450

34
sir.

Q Now, I want you to think carefully, and tell us whether you have told us everything that you saw there, in the woods, everything that you saw happen by the rocks there?

A Yes sir.

Q What? A Yes sir.

Q Now, when the defendant left the child, did he go fast or slow? A He walked, first, and then he commenced to run.

450

Q And then, you say, he was buttoning his trousers?

A Yes, sir.

Q And was there any one else with the child, except the defendant? A No, sir.

Q He was the only person with her?

A Yes, sir.

Q Was the child crying when you got to her?

A Yes, sir.

CROSS EXAMINATION BY MR. HYMES:

Q Do you know Mr. Barclay? A No, sir.

Q Do you know the gentleman that had charge of this case, up at the Morrisania Court? I mean, had charge for Mr. Lynch?

THE COURT: Why do you not ask her if she knows the man connected with the Society?

BY MR. HYMES:

Q Well, do you know the man connected with the Society?

A No, sir.

Q Well, do you know the gentleman that you spoke to, before you made your affidavit, up in the Morrisania Court?

A Yes, sir.

450

Q You remember that gentleman? His name is Barclay.
Do you remember him now? A Yes, sir.

THE COURT: If he is in court, identify him.
That is the best way.

BY MR. HYMES:

Q That is the gentleman? (indicating)

A Yes, sir.

Q It was in May, some time, in the early part of May,
that you first saw this defendant in court; was it not?

A Yes, sir.

Q And do you remember the day or date in May?

A (No answer.)

Q Well you don't remember; do you?

A No, sir.

Q Have you any idea what part of the month of May it was?
Or, perhaps, you don't remember it was May?

A I remember it was May, but I don't remember what part of
the month.

Q You don't remember what part of the month it was?

A No, sir.

Q Whether it was early or late?

A No, sir.

Q But it was May? A Yes, sir.

50

b3

Q You remember signing an affidavit, up there, don't you? Signing a paper? A Yes sir.

Q In which you spoke of this boy? A Yes, sir.

Q Before you signed that affidavit, did you talk with Mr. Barclay about what you had seen, and what you knew?

A No, sir.

Q Not a word about it? A No, sir.

Q Hadn't he asked you any questions?

A No, sir.

Q Do you remember Mr. Krotel, of the District Attorney's office, the gentleman who first examined you about this case, in court? His name is Krotel, the gentleman with a blonde moustache. Do you remember him?

A Yes, sir.

Q Well, before he examined you in court, do you remember whether he spoke to you about this case?

A No, sir.

Q Well you remember that you did testify, in answer to Mr. Krotel's questions, up there? A Yes, sir.

Q Don't you? A Yes, sir.

Q And you remember that, afterwards-- oh, I think it was a week afterwards-- you testified in answer to my questions? Do you remember that? A Yes, sir.

450

Q Is your memory perfectly clear about that?

A Yes, sir.

Q Now, since the time that you testified, in answer to my questions, have you seen Mr. Moore, or talked with Mr. Moore? Do you know Mr. Moore, when you see him?

A No, sir.

MR. HYMES: Is Mr. Moore in court?

BY MR. HYMES:

Q That is the gentleman that is wearing a gray suit, and a little moustache, and gray hair.

THE COURT: There he is.

BY MR. HYMES:

Q Do you know that gentleman there (indicating)?

A Yes, sir.

Q But you haven't talked with him at all, about this case? A No, sir.

Q You haven't said a word to him?

A No, sir.

Q Have you talked with any one about the case, at all, since that time? A No, sir.

Q Do you know, May, that, both times-- first, when Mr. Krotel was examining you, and, secondly, when I was examining

450

b5-

you-- you didn't say one word about buttoning the pants?

Do you know that?

MR. NOTT: Now, I object to that.

THE COURT: Allowed.

A. Yes, sir.

BY MR. HYMES:

Q. You remember that you didn't say it?

A. Yes, sir.

BY THE COURT:

Q. Well, why did you not say it? A. Because I was
ashamed.

Q. You were ashamed? A. Yes, sir.

BY MR. HYMES:

Q. Well, do you know that, at both those hearings,
you didn't say one word about seeing the little girl's drawers
down; do you remember that?

A. No, sir. I think I said about that.

MR. HYMES: Perhaps, Mr. Nott, you will
concede that she did not say it, by examining the
transcript?

MR. NOTT: I will not concede that she did
not say it, even if it is not in the trans-
cript, because, in those Police Courts, they don't

450

b6

get half that occurs, down.

MR. HYMES: Well, I think that is rather a slur on the stenographers in the Police Courts. I have found them very diligent and accurate.

THE COURT: Well, the child says she did say it.

BY MR. HYMES:

Q Now, May, think, if you said one word about the little girl's drawers, at that time. Now, think hard. Perhaps you were ashamed to say that, too, May. Eh? What is it?

A I think I said it.

Q Are you sure that you said that, in answer to me?

A I said I didn't know whether I did, or not.

Q But were you ashamed to say that?

A Yes, sir.

Q Were you ashamed to say that, at the Police Court?

A Yes, sir.

Q Now, how was it that you were not ashamed to tell us, to-day, about the drawers and the pants, and were not-- and were ashamed, at the Police Court?

150

41
A Because I told my mother, the first day, and she said I wouldn't see them any more.

BY THE COURT:

Q What was that? Repeat that.

A "That I wouldn't see them any more.

THE COURT: She says she told her mother that she did not tell it, the first time she was in court, and her mother said that she would not see the men any more. I suppose she meant the men that examined her, the first day.

BY MR HYMES:

Q Did you go to school-- A Yes, sir.

Q In April of this year? A No, sir; I didn't go, that day.

Q No. But, during April, you went to school?

A Yes, sir.

Q And, between the 14th of April and the day you saw this boy, in the woods, and the time that you afterwards saw him, the next time that you afterwards saw him, did you go to school, at all?

A No, sir. My brother took sick with the measles.

Q No. Just answer my question. You didn't go to

051

school, during those times? A No, sir.

Q Between those times, I mean? A No, sir.

Q Were you in and out of the house, during those times?

A Yes, sir.

Q How far is your house from the house where the little girl lives? How long does it take to walk it?

A About 15 or 20 minutes.

Q At 5 minutes to 3, on the 14th of April, precisely 5 minutes to 3, you saw this boy, for the first time; is that right? A Yes, sir.

Q Were you in the woods, at that time?

A Yes, sir.

Q And I think you said that you were near the rocks, gathering forget-me-nots? A Yes, sir.

Q You had gone out for the purpose of gathering forget-me-nots; hadn't you? A Yes, sir.

Q And at that time, I think you said that you didn't know the little girl, whose name is Lynch, or any of her family? A No, sir.

Q You had been left at home, in charge of the two younger children? A Yes, sir.

Q Younger than yourself? A Yes, sir.

Q Your mother being away, that day? A Yes, sir.

Q What time was it you got back to the house, after you first saw the boy? A About five minutes after 3-- no, about a quarter after 3.

Q You got back to the house about a quarter after 3? A Yes, sir.

Q That was after you saw the boy first?
A Yes, sir.

Q Now what time was it that you saw the boy, for the second time? A Well, about ten minutes after 3.

Q That was the second time you saw the boy?
A Yes, sir.

Q Now, May, I want you to explain that. I don't want to be unfair to you, at all. You told Mr. Nott that the first time that you saw the boy was at five minutes to 3, and now you tell me that the second time that you saw the boy it was only ten minutes after 3?

A I said that it was five minutes to 3, when I went into the woods, first, and it was 15 minutes after 3 when I went into the woods, the second time.

Q You were gone from the house about 20 or 25 minutes?
A Yes, sir.

Q Something like that? A Yes, sir.

Q Well, was the boy in the woods, before you, the first time? A No, sir.

Q While you were gathering forget-me-nots, did he go past you, with the little girl? A Yes, sir.

Q You were about 8 or 10 feet away from the rock, on which those two sat? A Yes, sir.

Q And they were in plain view of you, all the time? A Yes, sir.

Q And you heard nothing said by either of them? A No, sir.

Q And you saw nothing done, by either of them? A No, sir.

Q That's correct, is it not? A Yes, sir.

Q And I think that you said the boy looked at you, then? A Yes, sir.

Q Was that the first, or second time? A That was the first.

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

Q Now this rock, which you have just described, was how far from the road, from where you are? From where to where? Come.

A About as far as--

Q No. Pick out the place. A About as far as them seats there, them first seats (indicating).

Q Where that gentleman is sitting there (indicating)? A Yes, sir.

Q That is about how far the rock was from the road?
A Yes, sir.

MR. HYMES: Indicating about 20 feet, Mr. Nott?

MR. NOTT: Well, the jury had better designate the distance.

THE FOREMAN: About 30 feet.

MR. HYMES: Indicating about 30 feet?

MR. NOTT: Yes.

BY MR. HYMES:

Q You gathered forget-me-nots in that place, for some little while; did you? A Yes, sir.

Q For about 10 minutes? A Yes, sir.

Q And always keeping them in sight, and keeping near them? A Yes, sir.

Q And, having gathered the forget-me-nots, you went right across the street, to your home?

A Yes, sir.

Q And left the flowers there? A Yes, sir.

450

Q You had nothing to do there? A No, sir.

Q You simply went to report to your sister, and came right back? A Yes, sir.

Q And how wide is the road? Is it a wide or narrow road? A It's quite a narrow road.

Q As wide as the distance you have just shown us?

A No, sir; not quite so far.

Q And were you directly opposite to your house, when you were gathering the forget-me-nots?

A Yes, sir.

Q And did you deliver the flowers to your sister, and tell your sister that you were going back, to get some more? A Yes, sir.

Q And did you also tell her that you would be right back? A Yes, sir.

Q And, when you got back to the woods, to gether more forgetme-nots, did you go near the rock where they had been sitting? A Yes, sir.

Q Did you see them then? A No, sir.

Q That was the time when they had gotten away from your view? A Yes, sir.

Q At least, they were no longer in view there?

A Yes, sir.

450

Q Did you gather forget-me-nots for any length of time before you saw the boy again? A No, sir; not very long.

Q And was the girl with the boy? A Yes, sir.

Q He had her by the hand? A Yes, sir.

Q How near were you to the boy and girl, when you saw him holding her by the hand? A Well, about--

Q Now, judging from where you are, just pick out a spot, May. Never mind the number of feet. From where you are, to me, or further?

A Yes, sir; about where I am, to you.

Q About the distance of where you are, to me?

A Yes, sir.

Q That's about how far they were from you?

A Yes, sir.

Q And were they walking? A Yes, sir.

Q Walking in your direction? A Yes, sir.

Q He was holding her by the hand; was he?

A Yes, sir.

Q At that time? A Yes, sir.

Q That was the time that he was walking with her, holding her by the hand? A Yes, sir.

Q And when she was saying, "Don't, don't," and crying?

A Yes, sir.

450

Q And for how long a time, in your hearing, was she saying, "Don't, don't," and crying?

A She only said it three times.

Q She only said it three times?

A Yes, sir.

Q Have you a good memory as to what you testified to, at the Morrisania Court, about that? Do you remember that?

A I told them that she was crying, and said, "Don't, don't."

Q Do you remember testifying as follows to me:

"Q How long did you watch them? A About ten minutes. Q Was she crying more than ten minutes? A Yes, sir. Q Saying, "Don't, don't"? A Yes, sir."

Now is that the fact, that you were watching them for ten minutes, and that she was crying, and saying, "Don't, don't," for those ten minutes?

A She was crying all the while.

Q No. For the ten minutes, and saying, "Don't, don't"?

A She wasn't saying, "Don't, don't," all the time. She said, "Don't, don't," only three times.

Q You counted them, the three times; did you?

A Yes, sir.

Q It wasn't four? A No, sir.

Q And it wasn't two? A No, sir.

Q You are quite sure of that? A Yes, sir.

Q When you first saw them, on your second trip back there, they were walking towards you?

A Yes, sir.

Q And that's the first time that she was crying, because she wasn't crying, the first time, when you saw them?

A No, sir.

Q And they were walking towards you, and they passed you by?

A No, sir; they stopped up by the rocks.

Q Yes. They stopped by the rocks? A They stopped by the trees there.

Q By the rocks? A Yes, sir. And the little girl, I couldn't see her. I saw the boy, standing up.

Q This is the second time, remember?

A Yes, sir.

Q And the boy was standing up? A Yes, sir.

Q And was that the time that you watched them for ten minutes, or was it less than that?

450

A Well it might have been ten minutes, or less.

Q Well, it was quite a little while; was it not?

A Yes, sir.

Q And was she saying, "Don't, don't," all the time?

A No, sir; but she was crying.

Q Did you hear him say a word to her? A No, sir; but I heard her crying.

Q Were you near enough to hear him, if he said anything?

A I don't think so.

Q When you saw them there, was the rock between you and them? A No, sir; but the trees was, not the rock.

Q And how far away were you then, when he was standing up, and she was crying? A Well, from the table to here (indicating).

Q Yes. And so, when they at down on the rock, they were nearer to you? A Yes, sir.

Q About the distance from you to that table (indicating)? A That table over there (indicating).

Q The table at which I am standing?

A Yes, sir.

MR. HYMES: Indicating about 10 or 12 feet, Mr. Nott?

MR. NOTT: Yes.

BY MR. HYMES:

Q Did you take her to your house, first, before you took her home? A Yes, sir. I asked her, was she hungry, and I would give her something, to eat, and she said she hadn't her dinner.

Q But you took her home? A Yes, sir.

Q After you took her to your house--

A Yes, sir.

Q Did you fix her drawers for her?

A Yes, sir.

Q Button them up? A Yes, sir.

Q And did you look at them, while doing so?

A No, sir.

Q Did you have to lift up her clothes?

A Yes, sir.

REDIRECT EXAMINATION BY MR. NOTT:

Q Just one moment. During the time that they were behind this rock, and you couldn't see the little girl, you say you saw the defendant? A Yes, sir.

Q What was he doing? A Looking between the two trees,

450

at me.

Q And was he perfectly still all that while?

A Yes, sir.

Q Now, I want you to tell the jury, are you sure that this boy here is the same boy that you saw in the woods?

A Yes, sir.

Q Have you any doubt about it, at all?

A No, sir.

Q And you were sure, when you saw him in the Police Court?

A Yes, sir.

THE TWELFTH JUROR: Did I understand that girl, Mr. District Attorney, to say she lived at 20 Boston Road?

MR. NOTT: Yes.

BY THE TWELFTH JUROR:

Q Between what streets is 20 Boston Road? A Between Pelham and Westchester avenue.

Q Don't the numbers run up the road? A Well I don't know; but the house next to me is 19.

Q Well, that must be an odd number?

A Yes, sir.

450

CORNELIUS J. EGAN, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. NOTT:

Q What is your profession, sir? A I am a physician.

Q How long have you been practicing medicine?

A Since 1898.

Q And you are duly licensed to practice in this State?

A Yes, sir.

Q And where is your office? A 881 East 182nd street.

Q In this city? A Yes, sir.

Q Did you, on the 14th of April, make an examination of the child, Juliet Lynch? A I did.

Q At what hour? A About 6 o'clock.

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

Q And where? A At the child's home.

Q Where was that? A It is in Belmont avenue. I forget the number. 2209 or 2211, I think it is. I forget it.

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

Q And state what you found upon such examination?

450

A Well, I found the vagina was slightly lacerated, and there was blood all over the vulva, external and internal.

And there was blood, a little, on the perineum. Some of it had been washed off, but there was some that was left.

THE COURT: You must speak louder, Doctor. The jury cannot hear you. They are leaning forward, and straining their ears, to hear you.

A (Answer continued:) Well, I say, I found some blood in the vagina, I say, and some on the external and internal vulva.

BY MR. NOTT:

Q That is, the genitals?

A Yes, sir. And some laceration.

And there was some traumatism, or evidence of force applied to the vagina.

Q What do you mean by that? A Some force must have caused that.

And, on the perineum there was some blood. The child would hardly allow me to examine her, because she was apparently under a high tension. And her little drawers--

450

Q Who showed you them? A They were on her, when I examined her. And, at the fork of the drawers, there was blood.

Q How much blood? A I should judge there might have been a teaspoonful, that had soaked into it, into the drawers. It was still wet, when I examined her.

Q Well, did you find any other injuries at that time? A No. I didn't find any other injuries, at that time, but just this condition.

Q Apart from the blood, what was the condition of the vulva, and the vagina?

A It was slightly swollen, not very much, but it was swollen, and a little bloody, at that part.

Q And you say that there was evidence of traumatism, or violence, in those parts?

A Yes, sir.

Q Did you, subsequently, make an examination of the child?

A No, sir. About a week, after that, the child was sick, and the father called me in, and she had a little fever at the time, but she was breeding the measles at that time. About ten days after, I guess it was.

Q Did you find any rupture?

450

A I examined the hymen, and she must have been a baby born with a very small hymen, because there was a slight laceration there. I have examined her, about two weeks ago, and the hymen is almost missing. There is very slight traces of it.

Q Well do you mean missing originally, or was ruptured?

A Well, I come to the conclusion that it must have been ruptured by this traumatism.

Q Of which you found traces in the vagina and vulva?

A Yes, sir.

Q On the first examination? A Yes, sir.

Q The hymen is what is known as the maiden-head, is it not?

A Yes, sir; the maiden-head.

CROSS EXAMINATION BY MR. HYMES:

Q All that you mean by a traumatism is an injury?

A Yes; an injury.

Q An injury of any kind, external or internal?

A Yes, sir; external, as a rule.

Q External, as a rule? A Yes, sir.

450

Q Do you know whether this girl was about to have an operation performed, for a hernia? A Yes, sir; I sent her to 42nd street.

Q Well, hernia is a rupture; is it not?

A Yes, sir.

Q And hernia may be caused by any external violence, a fall, or anything of the kind? That is correct; is it not? A Yes, sir.

Q And tell me what are some of the symptoms that attend upon hernia, produced by an external traumatism?

A Well, there would be a bulging of the external parts, the ring where the gut would come through, and constriction and pain.

And it might cause vomiting or nausea.

But I did not figure that this traumatism would cause this rupture, because the mother had told me that, previous to this, the child had had a slight swelling there.

And I examined her, there, and found this rupture there, at the time of my first examination.

She told me that the lump had been there, but I thought that this thing might have aggravated it.

Q Wouldn't the rupture produce bleeding? A Not in

150

the vagina.

Q In the region of the genitals? A No; not in the region of the genitals.

Q What anatomical reason is there against that, Doctor? Come.

MR. NOTT: Objected to.

THE COURT: Allowed.

BY MR. HYMES:

Q Why do you say that?

A Well, for the simple reason that the rupture, the intestine is internal, that is, in the canal; and it could only bring on bleeding by the muscle being driven clean through by the rupture, and it wasn't so in this case.

If it were, there would be a great deal of shock there.

Q And it might result in the flow of blood?

A No, sir.

Q A rupture of any muscle or tissue will produce a bleeding, will it not? A rupture means a breaking, does it not? A Well, a rupture, in this case, means that the ring that the little cord come through, is fastened by a small amount of tissue, and that is internal to the surface, and a rupture is caused by the intestine coming down,

450

and breaking this little tissue.

And it would be shown by a swelling, by a little lump, that you would have to reduce by shoving back.

But that force that I speak of here could not produce that result.

Q Well, suppose that a rupture were caused by a fall, for instance, and a breaking of tissue were caused by the breaking through of this bowel or intestine through the membrane.

A Well, in all the cases that I have seen, where a man or woman would fall, on the back of a chair, for instance, there would be much more oedema, and much more pain and swelling.

Q But, if there were such a fall or rupture, and the bowel broke through the membrane, followed by some breaking of the tissue, there would be a bloody condition, and an oedematous condition; would there not?

A Yes, sir, an oedematous condition, but not the bleeding that I saw.

Q Well, by oedematous, what do you mean?

A A swelling.

Q And wouldn't there be some discharge of blood, or suffusion of blood?

A Yes, sir. And, in this case, there was an oedematous condition, slight swelling, and blood.

Q You saw some traces of blood? A Yes, sir.

Q And when is this little girl to be operated on for hernia? A Well, the father thought that he would wait for the fall, until she got stronger.

Q But her condition requires attention?

A Undoubtedly.

Q Now, state, Doctor, what are some of the causes of hernia?

A Well, it might be congenital, in some children, so that the canal would be slightly open, and the intestine may come through, in some children.

Q Well, tell me some of the traumatic or external causes?

A Well, it may come through a man lifting a heavy weight, or having a violent fall, or a severe blow. It generally comes from those causes.

Q And a jump would cause it? A Yes; a high jump.

Q That is what produces rupture, in the young, generally; too violent exercise; is it not? A Yes, sir; too violent exercise.

61-62

Q On the 14th of April, you saw this little girl--

A Yes, sir.

Q About-- A About 6 o'clock in the evening.

Q About 6 o'clock in the evening?

A Yes, sir.

Q And I think you made a certificate of some kind?

A Yes, I did.

Q But you didn't make it, at that time? You didn't make any certificate at that time; did you? A I think they asked me for it. I have forgotten the case. I made an ordinary call, and went away again, and I didn't pay much attention to it.

Q You didn't pay much attention to it? A No, sir.

Q And you heard no more about it, until the 9th of May?

A I forget the date they came to me.

Q Well, that was some weeks afterwards? A Yes, sir.

Q And it was then that you embodied in the certificate what you remembered of the case? A Yes, sir.

Q You hadn't thought of it between those two times?

A No, sir.

Q It had passed out of your recollection? A Yes, sir.

Q And, from the time you gave this certificate, on the 9th of May, until the present time, it hasn't given you any discomfort, by way of thinking of it? A No, sir; I was too busy.

450

Q You were too busy? A Yes sir.

Q Have you examined the certificate, this morning, before testifying? A No sir.

Q Do you know, doctor, that, in the certificate which you made on the 9th of May, in which you embody your recollection of what happened on the 14th of May, you said that you discovered slight traces of blood. Now where did you discover the slight traces of blood?

MR. NOTT: Now, I object to your assuming that.

MR. HYMES: Well, he said that he said it.

MR. NOTT: Well, I haven't heard him say it.

A Well, I said that, when I examined the child, the first time, she had been washed by somebody.

BY MR. HYMES:

Q Now did you find any traces of blood, at that time?

A Yes sir.

Q On the 14th of April? A On the 14th of April.

Q That's what I say? A Yes sir; I did.

Q At that time, the only opinion of any kind that you could form was that some sort of injury was responsible for the condition that you saw? A Yes sir.

Q You didn't attempt, and you don't now attempt, to state what kind of injury it was? A Well, I told you that

450

I thought it might have been through the entrance of somebody into that little girl.

Q You thought so? A Yes sir.

Q But it might have been something else? A Yes sir. But, when I come to figure out that, if the child had gotten a fall, that there would be much more swelling than there was --

Q Now one moment doctor. Since the 9th of May, up to the present time, you haven't devoted any time to the case?

A Well, I have seen the little girl home, sick, about ten days after.

Q But you have not considered, I mean, the question of her condition, on the 14th of April, since then?

A Well, I have met her father and mother, in the street, frequently, and have asked them how she was.

Q But you have not considered the matter more carefully than you did on the 9th of May, when you made out your certificate? A No sir.

Q You considered the case most carefully, when you made the certificate? A Yes sir.

Q In your certificate, doctor, which was made on the 9th of May, which was three months ago, you said, "From the appearance of the part, I came to the conclusion that some traumatism had caused the blood, etc., or that she had been

tampered with by some one." Those were the two theories or hypotheses upon which you might explain the condition?

A Yes sir; that's about the size of it.

Q Yes. And that's about the size of it now? A Yes sir.

RE DIRECT EXAMINATION BY MR. NOTT:

Q Now you say, at that time, you found blood? A Yes sir.

Q In the vagina and on the vulva? A Yes sir.

Q And on the perineum? A Yes sir.

Q And found the hymen ruptured? A Yes sir.

Q And could those conditions have been produced by a hernia of the intestines? A No sir; I don't think so.

Q You don't think so? A Yes sir.

Q And the hernia might have been produced by the same violence, might it not, the same violence that ruptured the hymen? A The mother told me --

THE COURT: Do not tell us what the mother told you.

A Well, yes, is my answer.

THE SEVENTH JUROR:

Q Don't you think it more advisable, your Honor, before

we go any further, that it would be more just to the defendant and to the little girl, if these Latin phrases would be more -- made more explicit? We don't understand what they are.

THE COURT: Yes.

MR. NOTT: I will have the doctor explain them.

BY MR. NOTT:

Q Well, doctor, tell us what the vagina is? A The vagina is a mucous slit in the abdomen, and it is between the bones of the pelvis, the bones around here, you see (illustrating). And it is the organs of generation of the woman, and it consists of various parts. The two folds on the outside, and the clytris, and the --

Q Now, what are the external folds? A The labia majora. And the labia minora are the internal folds. And then there is the hymen, or maidhead. That is in the vagina between the inner folds.

Q And the perioneum; what is that? A That is the muscle, composed of several muscles running from the side of the bones, between the legs, around from here (illustrating), the bones of the pelvis. And the perioneum is the constriction of muscles there, and they hold up the abdom-

inal contents.

Q And that is the part between the genitals and the anus? A Yes sir; that is the muscle between the vagina, in the front, and the anus, in the back.

BY THE FOREMAN:

Q Is that the part that was ruptured? A No. It was the hymen. This hymen is the little bit of a fine membrane that is inside of the labia minora; and that is supposed to be broken, sometimes, in operations, or it might be broken in coition with a man, and it may be absent from birth, in some cases.

Q When you say coition, you mean sexual intercourse with a male? A Yes sir.

BY THE FOREMAN:

Q Well you found it there? A Yes sir.

Q And you found it broken? A Yes sir.

Q And, therefore, it was not absent from birth? A No sir.

MR. NOTT: In this case, you found traces of it there? A Yes sir.

Q And found it broken? A Yes sir.

Q Now is there any latin phrase that you have used, that you have not explained? A No.

BY THE FOREMAN:

Q Well, hernia, is what? A Rupture.

Q Rupture of what? A That means a canal coming along down the side here (illustrating), where the cord comes down, at the base of the bladder, and, in a woman, gets in the external vulva; and it is the round ligament that rounds around, and holds up the womb, and the act of coughing, or any violence, causes a lump or swelling or hernia.

But, in the girl's case, the rupture was on the side here, and not in the vagina.

BY MR. NOTT:

Q And you have already stated that, in your opinion, the hernia that you found here (indicating), could not have caused the rupture of the hymen, or the blood in the vagina or on the perineum? A Decidedly not.

RE CROSS EXAMINATION BY MR. HYMES:

Q Then, doctor, what I want to know is this: In your certificate, you said that one of two causes, in all probability, had resulted in the condition that you found; either that the girl had been tampered with, meaning thereby that some male had tampered with her -- A Yes sir.

450

Q Or that some tramatism had caused the result which you observed. Now what do you mean by the last part of it? A Well it may be -- that some children indulge in masturbation, but it is very rare, in children of this age.

Q Well, isn't that tampering with? What do you mean by traumatism? A Well, a fall, like coming down astraddle a chair, or the bough of a tree would cause that injury. I said that it was caused by one of these two things.

In this case, I looked for spermatozoa, but I didn't find any, because --

Q Well, nevermind the because. You didn't find any?

A No sir.

H E N R Y L O W E R, a witness called on behalf of the People, being duly sworn, testified as follows,

DIRECT EXAMINATION BY MR. NOTT:

Q Are you a member of the Municipal Police Force?

A Yes sir.

Q What position do you hold in the force? A I am detailed in citizens clothes.

Q And what precinct are you attached to? A 37th Precinct.

Q Does that take in the Boston Road, and around there?

450

A Yes sir.

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

Q Did you arrest this defendant? A No sir; I did not.

Q Where did you first see him? A He was brought into the station-house, about 10 o'clock on the morning of the 4th of May.

Q 1904? A 1904.

Q And who brought him in? A Some young man living up there. I don't know his name.

Q And on whose complaint was he brought in?

MR. HYMES: Objected to, as immaterial.

A On the complaint of--

THE COURT: Objection overruled.

MR. HYMES: Exception.

BY THE COURT:

Q If you know. No, no, do not refer to any papers. Was any complaint made to you?

A No, sir; not to me.

THE COURT: Very well, then. Objection sustained.

BY MR. NOTT:

Q He was brought into the station house, or police court, where you saw him first? A In the station house. I saw him at the desk.

Q And who else was there? A There was a woman, by the name of Mrs. Fineberg, and her seven-year-old girl.

Q And was the Lynch woman there then?

A No, sir.

Q Or the Lynch family? A No, sir.

Q And did you hear what occurred, then? A Yes, sir.

b2

73

Q What was it?

MR. HYMES: Objected to.

THE COURT: Objection sustained.

MR. NOTT: It was in the presence of the defendant, if your Honor please.

THE COURT: That makes no difference.

BY MR. NOTT:

Q And did you see anybody else there, besides Mrs. Fineberg and her 7-year-old daughter?

A Her sister-in-law was there.

Q Well, what occurred? A Well, Mrs. Fineberg said--

by THE COURT:

Q Well what was done with the defendant? A Well he was held on the complaint of--

BY MR. NOTT:

Q You say he was held on a complaint?

A Yes, sir.

Q And when next did you see him? A And from there I took him down to court.

Q Yes? A Down to the Sixth District Court.

Q Yes. A And he was arraigned there, before Magistrate Hogan.

Q Yes.

150

A And from there the Magistrate sent him to Bellevue Hospital.

Q Yes.

A And the hospital authorities--

Q Well, never mind that. Now when did you see him in court again? A I think it was the 7th day of May.

Q And when did you first see any of the Lynch family, in court? A On that date, I think it was.

Q The 7th? A Yes, sir.

Q Did you see the girl, May Rocheford, there?

A Yes, sir.

Q On the same day that you saw the Lynch family?

A Yes, sir; the same day.

Q Now, tell what happened, that day, in relation to this case?

MR. HYMES: I trust that your Honor will caution the witness?

THE COURT: Yes. Only speak of the Lynch case; not about any other case.

MR. HYMES: And any statement that was made, incompetent testimony, in the nature of hearsay, I trust your Honor will exclude that?

THE COURT: Only refer to the Lynch case.

and do not say anything about any other case.

A Well, in reference to the Lynch case, the defendant was arraigned, with three other boys, about his own age, and he was then identified by seven different little girls.

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

THE COURT: Yes. I told you to refer only to the Lynch case, and nothing else. Strike that out.

THE WITNESS: That is in reference to the Lynch case.

THE COURT: No; it is not. Strike that out. And the jury are instructed to disregard any statement made by the officer.

BY MR. NOTT:

Q Well, was May Rocheford there, at the time?

A Yes, sir.

Q Was she there at the time the other boys were arraigned with the defendant? A Yes, sir.

Q And what did she do? A Well, she, for certain, identified this boy, as the one that she had seen.

MR. HYMES: Objected to, as a conclusion of the witness, and I move to strike it out.

THE COURT: Motion denied.

450

b5

MR. HYNES: Exception.

BY THE COURT:

Q She identified this boy as-- A As being the one that she had saw, up at the Bston Road, up opposite her house, in company with the Lynch girl.

MR. HYNES: I ask that that answer be stricken out, as incompetent, and as calling for the conclusion of the witness, and as being in the nature of hearsay testimony.

THE COURT: Motion denied.

MR. HYNES: Exception.

BY MR. NOTT:

Q The defendant was present, of course, when she identified him? A Yes, sir.

Q And the other three boys? A Yes, sir.

CROSS EXAMINATION: NONE.

MR. NOTT: The People rest.

THE COURT: We will take the adjournment, now, until tomorrow morning, for the defense to open.

Now, gentlemen of the jury, before permitting you to separate, it is my duty to caution you. Do not discuss among yourselves any subject con-

150

b6

77

nexted with the trial of this case, or form or
express any opinion thereon, until the case is
finally submitted to you; and permit no one to
speak of this case in your presence, and, if any
attempt is made to do so, kindly inform the
Court.

The court will take an adjournment until
10 o'clock tomorrow morning.

(The trial was then adjourned until Tuesday
morning, August 9th, 1904, at 10 o'clock.)

150