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A Yes, sir.

MR. LYNN: It is objected to, further, on the ground that it is not within the issues here.

THE COURT: Objection overruled.

MR. LYNN: Exception.

A (Continued) Yes, sir; by using this motion (illustrating), it does dilate the neck of the womb.

BY MR. CLARKE:

Q What do you mean by that? A Open the womb.

Q What is the condition of the womb, in pregnancy?

MR. LYNN: Objected to.

THE COURT: Objection sustained.

BY MR. CLARKE:

Q Is the womb open or shut, in pregnancy?

MR. LYNN: Objected to.

THE COURT: Objection sustained.

BY MR. CLARKE:

Q Won't you describe to the jury the condition of the womb of a woman, who has been pregnant between four and five months?

MR. LYNN: Objected to.

THE COURT: Objection overruled.

MR. LYNN: Exception.

A A woman, who has been pregant for four or five months.

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has the womb enlarged. It begins to rise up in the pelvis, 208
the bony part of the body that protects it; and it becomes
softer, in consistence. In the normal state, it is a fairly
hard body, and it will give the sensation of hard rubber; but
then it becomes softer; and it becomes somewhat discolored;
but the neck of the womb does not open; it simply remains
closed, as it is always, until--

BY MR. CLARKE:

Q What forms inside the womb? A Inside the womb the
foetus is formed, with the placenta.

Q What is that? A That is the medium through which
the foetus gets blood from the mother. It is attached to the
inside of the womb, to the mother, and also attached to the
foetus, by what is called the umbilical cord, through which the
blood of the mother-- of the foetus-- is bathed in the blood
of the mother, and in that way gets its nourishment.

Q Well, is the foetus enclosed in a bag? A Yes, sir;
called the amnion, and this placenta is attached to the womb of
the mother.

Q And is the placenta a sort of fluid? A No; it is a
spongy body, full of blood vessels.

Q Well, there is a fluid inside of that bag? A Yes, sir.
The foetus floats in that bag, just like a cork, which has been
forced down into a bottle. It floats in that bag of water,
which is commonly called the bag of waters.

Q Now, if this cervical dilator is inserted in the womb, when it is in the condition that you have described, if inserted into the amnion, or bag in which the foetus is contained, what is the result?

MR. LYNN: Objected to.

THE COURT: Objection sustained.

BY MR. CLARKE:

Q Could a miscarriage be produced-- the placenta is drawn away, in miscarriage; is it not?

MR. LYNN: Objected to.

THE COURT: Objection sustained.

BY MR. CLARKE:

Q What is a miscarriage, Doctor?

MR. LYNN: Objected to, as not within the issues of the case.

THE COURT: Objection sustained.

BY MR. CLARKE:

Q Well, if the neck of the womb is dilated by this cervical dilator in that way, in the case of a woman, pregnant between four and five months, what would be the effect upon the woman?

MR. LYNN: Objected to.

THE COURT: Objection sustained.

BY MR. CLARKE:

Q Would it cause a miscarriage?

MR. LYNN: Objected to.

THE COURT: Objection sustained.

BY MR. CLARKE:

Q I suppose there are other surgical instruments used by surgeons upon the organs of women; are there not? A Yes, sir.

Q This is not a complete outfit, for all purposes; is it? A No.

Q Have you seen outfits similar to this before; somewhat? A Yes, sir.

Q Now, I ask you what the general purpose of such an outfit as this is, in the profession?

MR. LYNN: Objected to.

THE COURT: Objection sustained.

BY MR. CLARKE:

Q Do you know what instruments are used by surgeons, for the purpose of producing a miscarriage on a woman?

MR. LYNN: Objected to.

THE COURT: He may answer yes or no. I overrule the objection, for that purpose only.

A Yes, sir.

BY MR. CLARKE:

Q And I ask you if these instruments, which I have shown

you, or any of them, are such?

MR. LYNN: Objected to.

THE COURT: Objection sustained.

BY MR. CLARKE:

Q What instruments are used for the purpose of producing a miscarriage?

MR. LYNN: Objected to.

THE COURT: Objection sustained.

BY MR. CLARKE:

Q Does it require an instrument to produce a miscarriage?

MR. LYNN: Objected to.

THE COURT: Objection sustained.

BY MR. CLARKE:

Q Can the neck of the womb be dilated, and the bag, called the amnion, be punctured, without causing a miscarriage?

MR. LYNN: Objected to.

THE COURT: Objection sustained.

BY MR. CLARKE:

Q State whether or not the instruments that you have examined here are the proper instruments for dilating the neck of the womb, and puncturing the amnion, and thereby causing a miscarriage?

MR. LYNN: Objected to.

THE COURT: Objection sustained.

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BY MR. CLARKE:

Q State whether any of these instruments are suitable for that use?

MR. LYNN: Objected to.

THE COURT: Objection sustained.

BY MR. CLARKE:

Q Or, are commonly used for that purpose?

MR. LYNN: Objected to.

THE COURT: Objection sustained.

BY MR. CLARKE:

Q State whether or not any of them are exclusively used for that purpose?

MR. LYNN: Objected to.

THE COURT: Objection sustained.

BY MR. CLARKE:

Q State whether or not, in certain cases it is necessary for a surgeon to produce a miscarriage?

MR. LYNN: Objected to.

THE COURT: Objection overruled.

A Yes, sir; under some circumstances it is necessary.

BY MR. CLARKE:

Q Under what circumstances, generally?

MR. LYNN: Objected to.

THE COURT: I do not see that that is essential to this case. Objection sustained.

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BY MR. CLARKE:

Q Well, what instruments are used for that purpose?

MR. LYNN: Objected to.

THE COURT: Objection sustained.

BY MR. CLARKE:

Q Are any of these instruments shown you, used for that purpose?

MR. LYNN: Objected to.

THE COURT: Objection sustained.

BY MR. CLARKE:

Q Could any of these instruments, or could this dilator, specially-- well, any of the instruments-- be inserted into the womb of a pregnant woman, without causing a miscarriage?

MR. LYNN: Objected to.

THE COURT: Objection sustained.

BY MR. CLARKE:

Q Now, Doctor, if you were about to operate upon a woman, to cause a miscarriage, what would be the first thing that you would do?

MR. LYNN: Objected to.

THE COURT: Objection sustained.

BY MR. CLARKE:

Q What is the first thing usually done?

MR. LYNN: Objected to.

THE COURT: Objection sustained.

BY MR. CLARKE:

Q Is the speculum used?

MR. LYNN: Objected to.

THE COURT: Objection sustained.

BY MR. CLARKE:

Q Is it customary to syringe out the vaginal cavity?

MR. LYNN: Objected to.

THE COURT: Objection sustained.

BY MR. CLARKE:

Q Would you syringe out the vaginal cavity?

MR. LYNN: Objected to.

THE COURT: Objection sustained.

BY MR. CLARKE:

Q Is that one of the proper methods, preparatory to causing a miscarriage, to syringe out the vaginal cavity, or the neck of the uterus?

MR. LYNN: Objected to.

THE COURT: Objection sustained.

BY MR. CLARKE:

Q And is this speculum used to dilate the vaginal cavity, prior to causing a miscarriage?

MR. LYNN: Objected to.

THE COURT: Objection sustained.

BY MR. CLARKE:

Q Is that one of the uses of People's exhibit 3?

MR. LYNN: Objected to.

THE COURT: Objection sustained.

MR. CLARKE: Now, if your Honor please, under the indictment, it is necessary for the People to prove that this was done with the intent to commit a miscarriage; and, if we are not allowed to prove by an expert what a miscarriage is--

THE COURT: I can go no further than to rule on each question, Mr. Clarke.

BY MR. CLARKE:

Q Do you know what a miscarriage is, Doctor? A Yes, sir.

Q Will you state what it is?

MR. LYNN: Objected to, your Honor. It is a discussion that will open up very wide doors, as to what a miscarriage is, because miscarriage can occur until five months after conception.

THE COURT: I overrule the objection.

MR. LYNN: Exception.

A Yes, sir.

BY MR. CLARKE:

Q What is a miscarriage? Define it? A It is a premature discharge of the ovum, and this is arbitrarily spoken of as a

miscarriage, when it occurs at a certain time of gestation, at a certain time of the growth of the foetus in the womb. Before that time it is spoken of as abortion.

Q Yes? A And then, later on, it is called a premature delivery. But it all means the same thing. It means a premature discharge of the ovum, from its resting place in the womb.

Q And the first few months, it is called an abortion?

A Yes, sir; it is called an abortion. The authorities differ simply as to the time, but, up to four and a half or five months, I should say it was called an abortion.

Q And, after that, it is called a miscarriage? A Yes, sir.

Q And at what time is it called a premature delivery?

A Up to the sixth month; after the sixth month, when the foetus becomes viable, when it can possibly live after being discharged from the womb, it is called a premature delivery.

Q Now, what are some of the causes of abortion, as defined by you?

THE COURT: Wait a moment. May I ask a question here, which may possibly facilitate, and relieve the District Attorney and counsel for the defendant of the necessity of asking, subsequently, on the same point, and so that the jury may understand?

BY THE COURT:

Q When you say premature delivery, Doctor, does that phrase include the action of nature itself, or an action produced by some external agency? A Any of these terms used may be used in either way, either when produced by an external agency, or when coming on naturally.

In medicine, the term abortion, does not necessarily mean that it has been induced. It may come on perfectly naturally, from natural causes, and so on, all the way through the term.

BY MR. CLARKE:

Q But, in any case, it consists in the emptying of the uterus, before the regular nine months period? A Yes, sir.

Q That is to say, both an abortion, a miscarriage and a premature delivery may be caused in either of two ways: By some natural, internal cause, or some external agency? A Yes, sir. That is correct.

Q Now, I ask you whether the insertion of an instrument in the womb is one of those external agencies?

MR. LYNN: Objected to.

THE COURT: Objection overruled.

MR. LYNN: Exception.

A Yes, sir; it is one of the external agencies.

BY MR. CLARKE:

Q And, if an expulsion of the contents of the uterus is

caused by the insertion of an instrument into the womb, what would that be called?

MR. LYNN: Objected to.

THE COURT: Objection sustained.

BY MR. CLARKE:

Q Now, will you show me whether any of these instruments that you have identified here are such as, when inserted in the womb, would produce a miscarriage or abortion, such as you have defined it?

MR. LYNN: Objected to.

THE COURT: Objection sustained.

BY MR. CLARKE:

Q Well you say that one of the external means or agencies which would cause such a miscarriage is an instrument. You have already said that? A Yes, sir.

Q Now I ask you, in general, to state whether you mean a blunt or a sharp instrument.

MR. LYNN: Objected to.

THE COURT: The form of the question is objectionable.

BY MR. CLARKE:

Q Well, what form of instrument do you mean?

MR. LYNN: Objected to.

BY THE COURT:

Q Generally state what form of instrument would be capable of producing such a miscarriage or abortion or premature delivery?

THE COURT: Is that your question?

MR. CLARKE: Yes, sir.

MR. LYNN: And we object to it.

THE COURT: That is the District Attorney's question, and not mine. I overrule your objection.

MR. LYNN: Exception.

A I want to understand my position, in regard to this matter. Am I to describe how a man might produce an abortion, under proper circumstances?

BY THE COURT:

Q No. Confine yourself to what instrument would be capable of producing, or would be adequate to produce it? A Well, any instrument that is introduced into the womb, to stretch the neck of it, or to puncture those membranes, may produce an abortion, and very probably would do it. It would start up the expulsive powers of the womb, and start the abortion coming. It wouldn't scrape and clean it all out. So that, possibly, nature might do the rest, and no other instrument would be required.

BY MR. CLARKE:

Q Now, I show you the cervical dilator, People's Exhibit 8.

and I ask you if such an instrument as that would produce such a result?

MR. LYNN: Objected to.

THE COURT: Objection sustained.

BY MR. CLARKE:

Q And I show you People's Exhibit--

THE COURT: There is no necessity, Mr. District Attorney. I have ruled upon all these matters before, adversely to you, and there is no use of taking up the further time of the Court.

MR. CLARKE: Very well, sir. That is all.

CROSS EXAMINATION BY MR. LYNN:

Q Doctor, you have instruments of similar make and nature, such as you have described here, and have used them as a student? Have you a surgeon's kit as we call it? A Yes, sir.

Q So that you are familiar with these instruments that you see before you? A Yes, sir; I am familiar with them.

Q Now, Doctor, take the speculum, this instrument called the speculum. I didn't quite catch what you gave. gynecologists generally use that, don't they? A It is used for separating the walls of the vagina, for examinations.

Q Is it generally used by gynecologists, in their professional work, I ask you? Yes or no? A No. Other speculums

are used.

Q Is that one of them?

A Yes, sir, that is one of them.

Q Yes. That is an answer. Exhibit No. 9, which you have described as a placental forceps, aren't those ordinary dressing forceps? A Well, I wouldn't call those ordinary dressing forceps. They might be used for ordinary dressing purposes, but--

Q Well, that is what I want to get at.

MR. CLARKE: He hasn't quite finished his answer.

Finish your answer.

MR. LYNN: I am quite willing that he should finish his answer.

A (Continued) But they appear to me more like forceps to take hold of something in the uterus, more like placental forceps.

Q But they might be used as dressing forceps? A Yes, sir; they might be.

Q No. 11 there, that you called uterine forceps. Might they be used for any other purpose than dressing the womb?

A They might be used for many purposes, but that is what they are made for.

Q But they can be used for many other purposes? A Any of these instruments are used for any purpose.

Q But the dressing of the womb is a common, ordinary treatment; is it not? A No, sir.

Q You have stated that about the dressing of the womb; haven't you? A No, sir; it is not a common treatment. It is rather unusual.

Q Doctors all have those; don't they? A Yes, sir.

Q Of course, you know the difference between bougies and catheters? A Yes, sir.

Q No. 15, you have described as what? A Well, I do know the difference, yes.

Q Well, weren't you a little in error, Doctor? A I didn't examine the ends of these. They are bougies, instead of catheters. The difference is that the catheter looks exactly like that, except that it has a little opening there, to draw off fluid with (indicating). I didn't turn around these to see that there was no opening. But they are made like these, of rubber, with a canal running through them.

Q And then these are bougies, instead of catheters?

A Yes, sir; that is the proper name for them.

Q Now, Doctor, have you ever used the strap that we have referred to here in any of your practice, what has been called the leg strap? A I have used it for-- not that strap.

Q Well, a strap similar to that? A Yes, sir; for similar purposes.

Q Now, the patient is on his back, isn't he? A Yes, sir.

Q On her or his back? A Yes, sir.

Q And this binds the legs, the knees, up towards the front of the body, so that the physician can have a composed state, or a quiet state of the patient, without any muscular contractions?

A Let me see that strap one moment again, please.

BY MR. CLARKE:

Q Can you fasten those hooks, and show us how they do it? Don't they hook those through the loops? A Excuse me. I will answer his question, first, and then I will answer yours.

BY MR. LYNN:

Q It is to keep the patient in a fixed position, so that you may examine or dress or cleanse? A Well, I don't believe that those straps are used for examinations. I have never seen it done.

MR. LYNN: I move to strike that out. He says that he doesn't believe it is done.

THE COURT: Motion denied.

MR. LYNN: Exception.

BY MR. LYNN:

Q Would they hold the patient for an examination?

MR. CLARKE: Objected to.

BY MR. LYNN:

Q You buy those in the regular stores, where physicians procure their supplies, surgical supplies? A Some form of leg holder, you get; yes.

Q What is that called, when you put the patient in that position? The dorsal position? A Lithotomy is the correct name for it.

Q You have read Dr. Thomas, on abortion, Dr. Gaillard Thomas? A No, sir; I have never read that book.

Q You have never read this? A No, sir.

Q Well is he recognized, Doctor, in the professional world, as an expert, as an expert gynecologist? A He would hardly be today, sir. In his day, he was.

Q But you consider his views fairly sound on the subject that he treated? A Not today, sir.

Q You set up your own views as better? A No sir; the views of more modern men.

Q Let me read a short paragraph from Dr. Thomas, his publication of 1898, page 8: "In abortion, we have the expulsion of the product of conception before the end of the fourth month; in miscarriage, between the end of the fourth month and the end of the sixth month; and, in premature labor, between the end of the sixth and ninth months." Would you agree with the Doctor on that? A In explaining that, I said that these divisions of time were arbitrary.

Q Well, that only calls for the answer, whether your

opinion differs from that which I have read? A Well, I would neither agree, nor disagree with him on that, because it is an arbitrary thing, the time set.

Q You have those instruments in your kit, did I understand you to say? A Most of them, yes, sir.

REDIRECT EXAMINATION BY MR. CLARKE:

Q You said that you had some of these instruments, or similar instruments to some of these instruments--

MR. LYNN: He said, most of them.

BY MR. CLARKE:

Q But what ones haven't you got, Doctor?

MR. LYNN: Objected to.

THE COURT: Allowed.

MR. LYNN: Exception.

A I haven't any of the bougies.

BY MR. CLARKE:

Q What are they used for?

MR. LYNN: Objected to.

THE COURT: That has all been testified to.

MR. CLARKE: No, sir. When he thought they were catheters, he testified to them.

BY MR. CLARKE:

Q What are they generally used for?

MR. LYNN: Objected to.

THE COURT: Allowed.

MR. LYNN: Exception.

A Well, these are instruments which are frequently used in inducing abortions.

MR. LYNN: I object to that, and move to strike

it out, as irresponsible.

THE COURT: Motion granted.

A (Answer continued:) They are, also, used for passing into the urethra, to aid in dilating it. They are used for various purposes.

BY MR. CLARKE:

Q Well is one of those purposes for insertion into the womb, to cause a miscarriage?

MR. LYNN: Objected to.

THE COURT: Objection sustained.

BY MR. CLARKE:

Q Those are the only ones that you haven't got in your possession; are they? A I have no instrument of that kind (indicating).

Q What is that exhibit? A No. 16, a rubber applicator. It doesn't concern--

Q It doesn't concern what? A Well, it just happens that I haven't such an instrument as that. I don't keep that kind.

Q Have you any such instrument as this, No. 10?

A Yes, sir.

Q What is that for, generally? A That is to place inside of a bougie or catheter, to give it stiffness, so that it may be inserted through some resistant surface.

Q Well, about these chemicals. Now, Exhibit 19. They are tablets of hydro chloride of mercury; did you say?

A Bi chloride of mercury. That's what it appears to be, but I wouldn't go any further than that.

Q That is an antiseptic used by surgeons in gynecology?

A Yes, sir.

Q And, prior to an operation, would you use that?

MR. LYNN: Objected to.

THE COURT: Objection sustained.

BY MR. CLARKE:

Q Is it used in the course of operations, for antiseptic purposes? A Yes, sir.

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

DIRECT EXAMINATION BY MR. CLARKE:

Q Where do you live, Mr. Reardon? A 227 East 87th street, New York County.

Q And what is your business? A County Detective officer, in the office of the District Attorney of New York County.

Q Now do you know Detective Sergeants O'Connell and

McNaught? A I do, sir.

Q And Mr. Andrews? A Champ S. Andrews?

Q Yes. A Yes, sir.

Q Now, were you at the flat No. 14 West 65th street, on the 12th of February? A Yes, sir.

Q Now, Detective Sergeant O'Connell has told what took place there, in detail. Now, just tell us, briefly, what occurred there. What was the first day you went there? A On the 9th day of February, of this year, in company with Detective Sergeants Robert McNaught and Thomas J. O'Connell.

Q And did you see these ladies there, Mrs. Levine and Mrs. Blocher? A Yes, sir.

Q And what days did you go there? A The 9th, 10th and 11th, and the 12th, the day of the arrest.

Q On the day of the arrest, when did you go there?

A Some time about 9 o'clock.

Q And were you there when the woman called? A Yes, sir.

Q Do you recognize that woman in court? A Yes, sir.

Q Sitting in the back of the room there (indicating)?

A Yes, sir; with the white waist.

Q What time did she come there? A About 11.10 in the morning.

Q How did she see you and O'Connell? A Not at that time.

Q Where were you? A At that time I was under the bed, in one of the bedrooms.

Q No. I mean, when the woman first came.

A When she first came, it was just about the time we got under the bed.

Q Now did you see this defendant there? A I did.

Q How long after the woman came? A About an hour and ten or fifteen minutes.

Q And you were under the bed all that time? A No. Yes.

Q Well which is it? A I was under the bed.

Q Who was with you? A O'Connell, the detective sergeant.

Q Now when did you come out from under the bed?

A After the doctor, after the defendant, Dr. Conrad, come into the--

Q Now, don't give us any conclusions. Just what you saw? A After we had heard a man's voice in the hallway, and heard the walk, as though a person were washing the hands, and the rattle of bottles, and smelt a strong smell of iodoform or some sterilizer, and the closing of the bedroom door--

Q The bedroom or dining room door? A Well, I heard what, to my mind, was the dining room door closed.

Q Your bedroom door was open? A Yes, sir.

Q And then did you come out from under the bed?

A Yes, sir, and stood behind the door.

Q With O'Connell? A Yes, sir.

Q And where was Mrs. Blocher, at the time? A Part of the time, she was in the hallway, between the dining room and the bedroom, where we were stationed.

Q Yes. A And between the bedroom where we were stationed, and the first bedroom, at times; and she was walking to and fro.

Q Well now what happened, briefly? A About 12.20, on February 12th of this year, I heard a woman's voice, calling for her baby, "I want my baby."

O'Connell and myself entered the room, from which we heard the voice--

Q What room? A That was the dining room.

Q Who went in first? A I think O'Connell; although both of us at the same time.

Q And what did you find? A I found a woman on the table, with a rubber pan under her, and her legs elevated, and private parts exposed, and different parts of the body strapped, so that she couldn't get her legs down.

MR. LYNN: I ask that that be stricken out, your Honor.

THE COURT: Which part?

MR. LYNN: So that she couldn't get her legs down.

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THE COURT: Strike out those words.

BY MR. CLARKE:

Q Well, she was strapped in some way? A Yes, sir.

Q

Did you see the defendant there? A Yes, sir; I did.

The defendant was in his shirt sleeves, no hat. He had a metal instrument in his hand. He was standing very close to the person of this woman on the table.

Q Can you pick out the instrument, from those instruments there? A Yes, sir, I can.

Q People's Exhibit 3? A Yes, sir. I placed my initials on it, at the time, for identification.

Q Where are they? A Here they are (indicating).

Q Are those letters on there, "E. J. R.", the letters which were placed on there by you, on the 12th of February last? A Yes, sir. And the other initials were placed there by Detective Sergeant O'Connell.

THE COURT: Gentlemen of the jury,

You will remember my admonition to you, not to talk about the case among yourselves, or with any one else; and not to form or express any opinion concerning the guilt or innocence of the defendant, until the case be finally submitted to you.

The court will take an adjournment until

tomorrow morning, at half-past ten o'clock.

(The trial was then adjourned until
Wednesday morning, March 30th, 1904, at 10.30.)

TRIAL RESUMED:

New York, March 30th, 1904.

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

DIRECT EXAMINATION BY MR. CLARKE:

Q Now, you are a detective sergeant of police?

A Yes, sir.

Q And you are attached to the District Attorney's office, I believe? A Yes, sir.

Q How long have you been on the Force, McNaught?

A 28 years.

Q Now were you at the flat, 14 West 65th street, in New York County, on or about the 12th of February, 1904? A Yes, sir.

Q Had you been there prior to that time? A Yes, sir.

Q Did you have anything to do with fitting it up, or securing the flat? A No, sir.

Q Did you see Mr. Andrews there? A Yes, sir.

Q And did you see these two ladies who have testified, Mrs. Blocher and Mrs. Levine? A Yes, sir.

Q Now, on the 12th, prior to the coming there of this woman who has been described as a nurse, where were you?

A On the outside, on the sidewalk.

Q On the sidewalk? A Yes, sir.

Q With whom? A Mr. Andrews.

Q Did you see the woman come there? A Yes, sir.

Q And enter the flat? A Yes, sir.

Q That is the lady in the back of the room, or that was there, yesterday, at least? A Yes, sir.

Q And did you see the defendant there, that day?

A Yes, sir.

Q At what time did you see him? A At about a quarter past 12, on the 12th.

Q Where did he come from? A He came from towards Columbus-- from Columbus avenue towards the house, and went into the house.

Q Did he have anything with him? A Yes, sir; a satchel.

Q Is it the satchel that is in evidence? State whether it was similar to that (indicating the satchel in evidence)?

A Yes, sir; that is the satchel.

Q I refer to Exhibit 20. A Yes, sir.

Q Now did you see Mrs. Blocher, after that?

A Yes, sir.

Q How long after? A About 20 minutes, I imagine.

Q Where did you see her? A She came down to the door, and called us, called Mr. Andrews and myself.

Q Did she make any signal? A Yes, sir.

Q What? A Just called us. She had a shawl, or something on her head, and just called us over (illustrating). We were on the other side of the street, a little way down from the house.

Q And that had been arranged before; had it?

A Yes, sir.

Q And you went up stairs then to the second floor, east flat? A Yes, sir.

Q And what did you see there? A Well, I went into the dining room of that flat, and, on the table, we saw the complaining witness, triced up with a strap, and her parts exposed; and Dr. Conrad standing at the foot of the table, and Detective Sergeant O'Connell on one side, and Detective Reardon right alongside of him, and Dr. Conrad standing there, with his sleeves rolled up.

Q Was the woman there, the so-called nurse?

A Yes, sir.

Q And did you see any instruments? A Yes, sir.

Q Where were they? A They were on a chair.

Q Well, in what way were they arranged? A Spread out, arranged on the chair.

Q On a towel, do you remember? A Yes, sir; on towels.

Q Do you remember whether they were wet or not, as though they had been soaked? A I noticed the rubber things were wet, because I picked them up, but I didn't handle the others, at the time.

Q You mean the bougies? A Yes, sir.

Q Now did y the defendant make any statement, in your hearing? A No, sir; none at all.

Q Did you have anything to do with the money? A Yes, sir; I took the money. I asked where the money was, and the doctor took it out of his pocket.

Q The defendant? A Yes, sir; and handed it over; and I counted it out, in the presence of the other witnesses, and put it in my pocket.

Q How much was there? A \$125.

Q State whether or not you recognize the bills as having been seen by you before?

THE COURT: There is no question about that.

There is no use wasting time about that.

BY MR. CLARKE:

Q Well, now were you there when a photograph was taken of the room? A No, sir, I was not.

(CROSS EXAMINATION, NONE)

MR. CLARKE: Mr. Reardon is not here, your Honor. These County Detectives appear to be above the law of subpoenas. I have never been able to have him here when I wanted him. I understand that he has a prisoner.

THE COURT: Possibly that is not an isolated case, where they are above the law.

MR. CLARKE: He has some prisoner to arrest, this morning, I am informed. With the exception of the photographs, which I wish to offer, that is the People's case, and he might be cross examined, later.

THE COURT: Oh, no. Let the People's case be completed.

EDWARD J. REARDON, his direct examination being continued, testified as follows:
DIRECT EXAMINATION CONTINUED BY MR. CLARKE:

EDWARD J. REARDON, his direct examination being continued, testified as follows:

DIRECT EXAMINATION CONTINUED BY MR. CLARKE:

Q Were you present, on the 12th of February, 1904, in this dining room on the first floor east, at 14 West 65th street, when Mr. Cole, the photographer, took a photograph there? A Yes, sir; the two Mr. Coles.

Q There were two of them? A Yes sir.

Q And what was the condition of the room, as regards the condition it was in when you and Detective Sergeant O'Connell broke in, as you have described? A The room was the same, with the exception that the bag and the instruments and the defendant and his subject, on the table, were absent.

Q How about the dining room table? A It was the same as it was left by the defendant.

Q And the chairs? A The same.

Q How long after the time that you and the detective went into the room, as described by you, was this photograph taken by Cole? A When we brought the prisoner to Headquarters, I telephoned Cole, and met him, and immediately went up town with him.

Q Within a few hours? A Yes, sir.

Q The same afternoon? A Yes, sir.

Q I ask you to look at People's Exhibit 2 for identifica-

tion, this photograph, and I ask you if that correctly shows the dining room table and the chairs and utensils that were there? A Yes, sir.

MR. CLARKE: I offer it in evidence.

MR. LYNN: Your Honor, we don't see any objection, further than the fact that it was in a different condition, on the day following, perhaps.

MR. CLARKE: No; it was on the afternoon of the same day.

MR. LYNN: However, I don't see the purpose of it, but, if there is any light or intelligence to be drawn from it, it may go in.

MR. OLCOTT: We withdraw the objection.

(It is admitted, and marked People's Exhibit 2 in evidence.)

BY MR. CLARKE:

Q Now, you had got as far in your testimony as this speculum, which you said was in the hands of the defendant.

A Yes, sir.

Q Had you not? A Yes, sir.

Q Did you have anything in your hand? A At the time I entered the room?

Q Yes. A I had a pistol.

Q And, when you first came in, what did you say to the

doctor, or what did he say to you? A I think O'Connell said, "You are under arrest, Doctor," and he handed over the speculum, and said, "All right;" and we told him--

Q The defendant said that? A Yes, sir. Then I said to him, "I guess we have got you all right, Doctor; we've got you in the act," and he said, "No. I think you will find you haven't;" and I said, "Well, you have run a long time, but we've got you this trip."

Q Did he make any reply to that? A No, sir.

Q Did you see these instruments that have been mentioned? A Yes, sir.

Q Have you seen them here? A I have seen some of them, on the Stenographer's Table. I saw some here, yesterday.

Q Did you have any conversation with the defendant about his instruments, or were you present when the defendant spoke of them? A I was present when the defendant gave the name of each instrument, when they were taken from the chair, and put into the bag.

Q Who put them into the bag? A Detective Sergeant O'Connell.

Q And who asked the defendant what each instrument was? A O'Connell, according to my best recollection.

Q Do you remember any of the names? A Yes, sir. He called three rubber catheters, a probe, a speculum, a dilator,

a tenectum; and there were some other instruments; and there were bottles, containing some fluids.

Q I ask you to look at these instruments, which have been marked in evidence here, and say generally whether you recognize them as the instruments that were there upon that occasion?

A These are the three rubber catheters (indicating).

Q Well, just look them over, and say whether they are the instruments? A I believe they are. I know for a fact that the speculum is.

Q You marked that? A Yes, sir.

CROSS EXAMINATION BY MR. LYNN:

Q Mr. Reardon, you are an employee of the District Attorney, are you not? A Yes, sir.

Q In what capacity are you employed? A County Detective.

Q How long have you been so employed? A Since the 2nd day of January, 1902.

Q Is that a title that is under the law, or is it the creation of the office, County Detective? A I think it is the creation of the office; as to that, I don't know.

Q You serve subpoenas; don't you? A No, I don't.

Q What was your business before you entered the District Attorney's office? A I was Superintendent for the Anti Policy Society of the City of New York.

Q How long had you been Superintendent of the Anti Policy Society? A About 18 months.

Q What were you engaged at, prior to that time? A I was engaged as an agent for the Assembly Investigating Committee.

Q National? A No, sir; the State Assembly; the state Assembly Investigating Committee.

Q Was that the committee known as the Maset Committee?

A Yes, sir; commonly known.

Q As what were you employed there? A As an agent.

Q As an agent? A Yes, sir.

Q Doing what? A Serving subpoenas for the Committee; doing general detective work.

Q How long were you employed at that work? A From April, 1899 to October or November of that year-- November of that year.

Q What had you been doing, prior to that occupation?

A Employed as a law clerk.

Q Law clerk? A Yes, sir.

Q In whose office? A The Legal Aid Society, 239 Broadway.

Q How old a man are you? A Twenty-five, going on twenty-six.

Q Did you help fit up this flat, in 65th Street? A I did not.

Q Do you know who did? A Of my own knowledge, I do not.

Q Did you have any conversations with Mr. Andrews, at any time, concerning this case? A Yes, sir.

Q When did you first see him about it? A I think I first saw Mr. Andrews, on or about the 9th day of February, of this year, sir.

Q Was that the same day that you entered into this flat, on 65th Street? A Yes, sir.

Q You had known nothing of it before that? A I had received some information from District Attorney Jerome.

Q And, through that information, you were put into communication with Mr. Andrews? A No, sir; I was not put in communication with Mr. Andrews.

Q After receiving instructions from the District Attorney what did you next proceed to do? A I had a conversation with Detective Sergeants McNaught and O'Connell, and the result of that conversation was that I went to the flat in 65th Street.

Q How long had you been at the flat in 65th Street? A Well, any particular day?

Q No. A continuous time? How many days? A I was there several days. On the day of the 9th, an hour or two; and I was there on the 10th; and I was there on the 11th; and I was there on the 12th, from about nine o'clock in the morning, until the time that the defendant arrived, and was placed under arrest.

Q Who were you taking your instructions from, if you

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received any, while you were in the flat? A I wasn't tal
any instructions from any one.

Q Who was guiding you as to what you should do? A There
was no one guiding me. Connelly and McNaught and myself were
acting according to our best judgment.

Q Your best judgment? A Yes, sir.

Q Had you had conversations with any of the women who
have appeared in this case? A Yes, sir; we talked with them.

Q Had you met Dr. Conrad? A Never, until the day of the
arrest.

Q That was the first time you ever saw him? A To the
best of my knowledge and belief, sir.

Q You hadn't known him a long time, then; had you?
A No, I hadn't; but I had heard about him.

Q I asked you, if you had known him a long time? A No;
I hadn't known him, except from information.

Q That is all. That is an answer. You were armed in
that flat; weren't you? A Yes, sir.

Q A revolver? A Yes, sir.

Q Have you it with you now? A Yes, sir; not the same
revolver. I have another revolver now.

Q Loaded? A Yes, sir.

Q What occasioned you to pull that pistol, that day, if
anything? A Well, as a matter of precaution, more than any-

thing else.

Q Did you strike the Doctor, that day? A I shoved the Doctor.

Q Shoved him with your shoulder or your hands? A With my hand.

Q When you entered that room, two detective officers were there, alongside of you? A Connolly and myself entered the room. There were two persons there, the defendant and his co-defendant, the woman, Jennie Brown, who ran from the room.

Q I haven't asked you about the co-defendant. Detective Sergeant Connolly was with you in the room? A Yes, sir; part of the time.

Q Had the Doctor made any attempt to strike you, or the other detective? A In my opinion, he went for the instruments.

MR. LYNN: That is objected to, and I ask that it be stricken out.

THE COURT: No. Strike that out.

BY MR. LYNN:

Q (Question repeated.) A I couldn't say that he did.

Q You testified before the Grand Jury; didn't you?

A Wop not on this indictment; no.

Q I haven't asked you about any indictment, sir.

THE COURT: Well, you must define the question.

We may have testified before the Grand Jury on some

other matter.

BY MR. LYNN:

Q I will qualify that. Did you testify before the Grand Jury as to the matter now before the court? A I was called as a witness, but I didn't testify.

Q Did you give testimony before the Grand Jury? A No; I did not.

Q Is your name Edward J. Reardon? A Yes, sir.

Q Are there any other Edward J. Reardons, in the District Attorney's office, if you know? A Now, Judge, by testifying in this case, I mean testifying on this particular indictment.

BY MR. CLARKE:

Q Well, you testified before the Grand Jury; didn't you? A Not on this particular indictment, I didn't.

BY MR. LYNN:

Q On the matter that is before the court, I ask you, and you said no.

THE COURT: The matter that is before the court is the indictment.

MR. LYNN: Yes, sir. I know of no other matter.

THE COURT: And the witness testifies that he did not testify, on the finding of this indictment.

BY MR. LYNN:

Q Wasn't the subject matter that you testified to before the Grand Jury, wasn't that the same subject matter here?

A On a matter pertaining to this case, I did.

Q Was there any other indictment found, that you know of, Mr. Reardon, except the one before his Honor? A No; but--

MR. CLARKE: One moment. That is all you know about it.

BY MR. LYNN:

Q Whatever the proceeding was that you testified to in relation, in relation to this matter, was referring to the same state of facts that you are now relating to the Court and jury?

A I so believe.

Q But don't you know that, Mr. Reardon? A I can't tell what was in the minds of the Grand Jury. I was called upon a matter pertaining to this indictment; but on this particular matter, I didn't testify.

Q What followed your testimony before the Grand Jury, if you know, as a physical fact?

MR. CLARKE: Objected to, as immaterial, irrelevant and incompetent.

THE COURT: Objection sustained.

BY MR. LYNN:

Q Your memory is very good, I suppose? A Quite good, sir.

Q Have you conferred with any one about this matter, since the day of the 12th of February? A Yes, sir. I spoke to Mr. Perkins, who is in charge of the Grand Jury work; I spoke to Mr. Clarke, who is conducting the prosecution; and I spoke to persons in charge of the house run by the defendant.

Q Any one else? A No; not that I can recall.

Q Have you disbursed any money in connection with this case? A Why, I spoke about the case to some detectives, in a general way.

Q No. The question was, Mr. Reardon, have you disbursed or paid out or expending any money, in connection with this case? A No, I have not.

Q What is that? A No; I have not.

Q Have you had any expenses, in connection with this case, that you intend charging for? A I might charge for suppers for the nights, which I was detained.

Q Suppers of the nights that you were there? A Yes, sir; that I missed my supper home.

Q Did you remain in the flat evenings, too? A Oh, what would be from my usual supper time.

Q What hour is that? A Generally, six.

Q What days did you remain after your supper hour?

A I think I was a little over, on the 9th, on the 11th and

possibly on the 10th.

Q The 9th and 11th? A And possibly the 10th.

Q You were waiting for Dr. Conrad to come; were you?

A Waiting for some person, who I was led to believe was Dr. Conrad.

Q Hadn't you heard the name, Dr. Conrad, discussed by any one? A Yes, sir.

Q Then why do you answer, that you were waiting for some one that you believed was Dr. Conrad? A Well, not knowing him.

Q Is there any doubt in your mind that any other person was expected? A There is none now whatsoever, sir.

Q Then you mean to say that you were waiting for Dr. Conrad; weren't you? A Yes.

Q Were you present at the flat, on Tuesday the 9th, when any conversation was had between any persons, touching sending for Dr. Conrad, telephoning or telegraphing, to get him there? A There was some talk. I don't recall just what it was, sir. I don't know whether it was on the 9th or 10th. I couldn't say.

Q Who was that talk between? A I think the conversation was between Mrs. Flocner and O'Connell, McNaught and myself. That is my best recollection. I wouldn't say positively, though.

Q But you had talked with these women in the flat?

A Oh, yes.

Q You knew who they were? A I knew that they were there at the-- that one woman was to be operated upon, at the hands of some physician.

Q Yes? A And the other woman, I understood, was a detective.

Q Did you instruct the detective woman, Mrs. Blocher, on any matters, while there? A Yes, sir.

Q Did she act upon them? A I think she tried to act upon them. Her efforts were blocked.

Q Did you give the Levine woman any instructions, while you were there? A I think I did.

Q Did she act upon them? A I think she did. And it resulted in this defendant's arrest.

Q Just answer the questions, and we will get along nicely? A Yes, sir.

Q Now, had you ever met either of the woman, before seeing them in the flat, on 65th Street? A Never.

Q Had you been informed by any one of their presence, or expected presence, there, prior to your entering the 65th Street flat? A I was told that there were some women there, but who they were, I wasn't informed.

Q Who informed you that there were women there? A I think McNaught, going up in the elevator to the house.

Q Did you receive any information from Mr. Andrews about any women figuring in the case? A None whatsoever. I hadn't seen Mr. Andrews until the time I got to the flat.

Q You saw him there, then? A He came there, after we got there.

Q What day was that? A On the 9th.

Q Did he give any instructions on that day? A He gave me none.

Q Were you present while he gave instructions to any one else? A Why, he had conversations with--

Q I don't want the conversations? A Well, I don't know that you could call them directions.

Q Other than "Good morning", or "Good day", or "How do you do?" I mean some talk touching matters concerning this case? A Oh, the case was spoken of.

Q Mr. Andrews spoke of the case; did he? A Yes, sir; he asked whether the Doctor had arrived, or not.

Q I haven't ask you what he asked. I have asked you whether he spoke of the case? A In a general way.

Q How many times have you been a witness in court, Mr. Reardon? A A number of times.

Q Less or more than fifty times? A I should say more.

Q And you know the difference between a question put by me as to whether you had a conversation, and a question as to what that conversation was? A Well, you are so skillful, Judge, that it is pretty hard to say.

MR. LYNN: I don't wish any compliments from you, sir, and I ask his Honor to strike it out.

THE COURT: Strike it out.

MR. LYNN: If that came from his Honor, I should appreciate it.

BY MR. LYNN:

Q Mr. McNaught or Mr. Connolly was there, at the time that you were there, at the time that the Doctor was talking, one or the other of them? A Yes, sir.

Q Who was in the room at the time you addressed yourself to Dr. Conrad? A The woman who was strapped on the table.

Q Yes. Who else? A That is all. Connolly went to the room in front, after the woman that ran out of the room, the co-defendant.

Q And who else? A That is all. Mrs. Blocher ran down for McNaught.

Q Who unstrapped the woman from the table? A The defendant.

Q How long was Connolly absent from the room, going from

the dining room back to the front of the house, or about to the front of the house? A Oh, a minute or a minute and a half.

Q How long did you have your pistol out? A Ten or fifteen seconds.

Q Officer Connelly requested you to put it away; didn't he? A I think he did.

Q Did you act on that request? A Yes, sir.

Q You did? A Yes, sir.

Q So that your statement you made before the Grand Jury, at the time you have referred to, in connection with this indictment, or any other indictment, touching the subject matter before the court here-- was that a statement that was the truth, in connection with your knowledge of this case?

MR. CLARKE: One moment. I object to that.

THE COURT: I sustain the objection.

MR. LYNN: Perhaps that is rather objectionable.

I withdraw it, with the permission of the Court.

BY MR. LYNN:

Q Did you testify before the Grand Jury, at any time, that the words such as you have used, today, were these: "'Dr. Conrad', I said to him, 'I have got you right, this time. I have been after you a long time'"? Did you testify before the Grand Jury in words or substance, such as you have testified

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here, today? A I don't recall whether that was asked me or not. I hardly think it was.

Q "Q. What did they say, when you arrested them? A. Well, the defendant Brown, Jennie Brown, she became quite hysterical. Dr. Conrad was quite cool?" A Yes.

Q Is that all you answered, on that occasion, to that question, "What did they say, when you arrested them?" A To the best of my recollection that is the answer.

Q Why did you say, just now, that that question was not asked in the Grand Jury Room, as to what the defendant Conrad said, when you arrested him? A That was my recollection of it, sir.

Q Now your recollection is better; isn't it?

MR. CLARKE: This is what he said to them.

MR. LYNN: The question was, "What did they say", meaning this man and Jennie Brown.

BY MR. LYNN:

Q "What did they say, when you arrested them?" A Well, the defendant, Brown, Jennie Brown, she became quite hysterical. Dr. Conrad was quite cool?" A He was quite cool.

Q Did you make answer to the question, when the Grand Jury foreman asked you what this defendant said, as well as Jennie Brown, the words that you have used here today, "I have got you

right, this time. You have been a long time. We have got you right now?"

MR. CLARKE: I object to that. Of course, in answer to a question as to what the defendant said, he wouldn't say what he said.

BY MR. LYNN:

Q Didn't the question as to what the defendant said recall to your memory as to what the defendant said? A The questions are put so rapidly in the Grand Jury room, that it is pretty hard to get everything down, Judge.

Q That is the best explanation you can give? A Yes, sir.

RE-DIRECT EXAMINATION BY MR. CLARKE:

Q Well, I will ask you this. Haven't you repeatedly told different persons, before this trial, that that took place?

MR. LYNN: That is objected to.

MR. CLARKE: Question withdrawn.

BY MR. CLARKE:

Q How long were you under the bed, Reardon? A On the 12th?

Q Yes. A Oh, over twenty minutes.

Q And was Connolly there with you? A Yes, sir. And we

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came out from under the bed, and went behind the door.

Q You were both under the same bed? A Yes, sir.

Q It was pretty uncomfortable; wasn't it? A It was very uncomfortable.

Q What kind of a bed was it? A An old fashioned bed, with a wire spring.

Q Was it a full bed or a three-quarter bed? A I think it was a three quarter-bed.

Q And you got under that until the Doctor had got into the dining room? A Yes, sir.

Q And did you wait until he had shut the door, before you came out? A No, sir. About the time that he shut the door, we came from under the bed, and stood behind the door, of the bedroom in which the bed was.

Q I want to ask you one other question. Did you notice the condition of the instruments, as to whether they were dry or wet? A Wet.

Q Well, could you give the jury some idea of how they were arranged? Suppose that this is the chair (indicating the table). Just show the jury how they were arranged; will you? A The instruments were laid out across the chair, on a towel, laid across the chair.

Q Just step down here, and arrange the instruments as they were, on this table, and on this towel. How near the patient were they? A About two or two and a half feet.

Q Were they where the patient could see them?

A Yes, sir.

Q Now take the instruments and show us, in a general way, how they were arranged? A In this way (illustrating). This strap was around the patient.

Q Now, you say that they were wet? A Yes, sir.

Q What was there to indicate that they were wet?

A Drops of some fluid on them.

Q How about the towel? Do you remember whether that was wet or not? A I don't recall. I think it was dry. It was on the chair.

Q Did you see any fluid there? A Yes, sir; there was a bottle of cynol soap.

Q No. A bottle open, with a fluid, the odor of which was susceptible? A Yes, sir; and there was a pan, with fluid in it.

Q What was in it, in the pan? A Well, there was a white fluid, with a strong odor.

THE COURT: Witness, you were under examination, last evening, when the court closed, and you were instructed to be here, this morning, at the opening of court; and the court was adjourned until half-past ten o'clock, this morning. You kept the court waiting half an hour. You came in at 11 o'clock.

While this case is on trial, I do not mean to say anything to you, further than to say that, at the close of this case, you must hold yourself in readiness to respond, to show cause why you should not be punished for your negligence and delay. That will do.

THE WITNESS: All right, sir.

MR. CLARKE: The People rest, if your Honor please.

THE COURT: The case is with you, gentlemen of the defense.

MR. MC MANUS: We move to dismiss, or take the case away from the jury, upon the ground that the evidence does not show that an attempt to commit the crime charged in the indictment is made out.

That is, the evidence doesn't show, as is charged in the indictment, that the defendant attempted to commit the crime of abortion, or attempted to thrust and insert into the womb or private parts of the woman any instrument, for the purpose of procuring an abortion.

We, also, move to dismiss, upon the ground that the People have failed to sustain the burden of proof, as to its not being necessary-- as to an operation or abortion not being necessary for preserving the life of the complainant.

THE COURT: Of the woman, Mr. McManus?

MR. MC MANUS: Yes, sir; of the woman, Minnie Levine.

And we, also, move to dismiss, and to take the case away from the jury, upon the ground that the evidence further discloses that every step taken towards the consummation of the crime was instituted and instigated by the Prosecution; and that the initial step was taken by the complainant herself.

THE COURT: I deny the motion.

MR. MC MANUS: And we take an exception to your Honor's denial of our motions.

THE COURT:

Gentlemen of the jury,

Of course, this discussion between counsel, on either side, with the Court or with each other, has no interest for you, because you are not to determine the question raised here. These are matters of law, which are addressed to the Court, and as to which the burden rests upon the Court. You are the judges of the facts, and any questions that are submitted to you, as judges of the facts, you will determine, without any regard to this discussion whatever; and you will dismiss it entirely from your minds.

You will remember my admonition to you, not to talk about the case, and not to form or express any opinion concerning the guilt or innocence of the defendant, until the case be finally submitted to you.

The court will take a recess until a quarter past two o'clock.

THE DEFENDANT'S TESTIMONY.

EDWARD E. CONRAD, the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. LYNN:

Q Where do you live, Doctor? A 127 West 47th Street.

Q How long have you resided in this city? A Since the spring of '89, fifteen years.

Q You are a practising physician? A Yes, sir.

Q How long have you been such, Doctor? A Fifteen years.

Q And where are you a graduate of? A The Schaghticoke School of Medicine.

Q Where is that located, Doctor? A In Illinois.

Q Doctor, you remember the last day of February, February last, the 12th of February, the 8th of February?
A Yes, sir.

Q When did you see Mrs. Levine that you recall, first?
A It was on one of the very first days of February.

Q And about what time of the day was it? A In the middle of the afternoon.

Q Did you receive her, when she came in first, or did

any one else? A She was ushered into my office.

Q And where is your office? A In the front part of the building, on what is commonly known as the parlor floor.

Q On the parlor floor? A Yes, sir.

Q And what did she say to you, Doctor, when she entered, for the first time, and talked with you? A She told me that she had been suffered from a train of symptoms that directed my attention to her pelvis; and that she had been suffering--

MR. CLARK: I object to that. I want the language of the lady.

BY THE COURT:

Q That is your own language, is it not, witness, that you are giving now, your own words? A Yes, sir.

BY MR. LYNN:

Q Use your own words, Doctor, and her own words, as far as you can? A She said, "Doctor, for some time, I have been suffering from pain in my womb; also, I have noticed that there has been considerable discharge, and, latterly, I have noticed a swelling on my outside privates."

I said, "How long a time have you been suffering?" She said, "For at least two months".

I said, "You don't look very strong. You probably do require some treatment to improve your general health, and, evidently, some local attention, but I fear, by your appear-

ance, that my fees will be beyond your reach and I would advise you to see my assistant, state your case to him, and see if he can't arrange to help you". I didn't wait for her answer.

Q What did she say to that? A I didn't wait for her answer. She seemed rather diffident.

Q And what next took place? A I left the room, called in my assistant, who was sitting in the adjoining room, reading, and asked him to come in and see this woman.

Q Who was your assistant, Doctor? A Dr. Weil. And I asked him to see this woman, and get her history, and take charge of the case.

Q That was said in her presence? A No, no. These were my instructions to him.

Q No. Never mind what your instructions were to him, unless given in the presence of the complainant.

THE COURT: Strike out that observation of the witness. Confine yourself to what occurred in the hearing and presence of this woman.

BY MR. LYNN:

Q Well, what next took place? A In a very few minutes, my assistant came to me and said, "that woman"--

MR. CLARKE: Objected to.

THE COURT: Strike that out, what the assistant

said.

BY MR. LYNN:

Q Was the woman there then? A No, sir.

Q What followed your interview with your assistant, and this statement by him? A I returned to see the woman, who was still in my office, seated.

Q Now, had the assistant been together in the office with the woman in the meantime? A Yes, sir.

Q And how long had they been together? A Four or five minutes.

Q And, when you got back to the Levine woman, what did you say, or what did she say? A I said, "Why did you not arrange with my assistant?" She said, "Doctor, I have heard of your skill, and I would prefer, if you can make your charges reasonable enough, that you treat me personally."

Q And then what did you say? A I said, "I will do my best, but I would advise you to come into the sanitarium, because, evidently, there are some operative procedures necessary."

Q You said that to her? A Yes, sir.

Q Now what did she say then? A She said, "I will see my husband, and do the best I can, and return, in a few days."

Q Did that close the interview? A I dismissed her.

Q Now, did she return, in a few days? A Yes, sir; in

company with another woman.

Q Well, at that time, at the first interview, Doctor, was there any intimation as to any sum of money, or was any sum of money fixed by you or her that you would accept, on that first day? A I told her that the very lowest fee that I could accept to cover my services, and the charge for room and nursing in the sanitarium would be \$150.

Q Now, then get to the next time when she came. She came a second time; did she? A Yes, sir; in company with this other woman.

Q Now, tell us what took place. Do you remember what date that was? Was it the next day or some days after?

A It was at least three or four days after.

Q And she came with another woman? A Yes, sir.

Q Well what was said, when they entered, about the other woman? Did you know the other woman? A No. On this occasion, the occasion of the second visit, the woman who accompanied her acted as spokeswoman.

Q That is, she done the talking? A Yes, sir. She said, "Doctor, I am the sister in law of this lady, who was in to see you, a few days ago." I said, "Yes, I recall the case."

She said, "It will not be possible for her to come to the sanitarium, but I have arranged to have her with me,

at my apartment, on 65th street, and will keep her there as long as you think it necessary for her to be under your care."

I said, "It will be very difficult for me to accommodate myself. I am very busy, but I will do the best I can, and let you know when I will come, if you will leave me your address."

Q Well, did she give you a name or address? A She did.

Q Do you recall what the name was? A I don't recall the name of the second woman. The name--

Q The woman that is known here as Blocher? A Yes; exactly.

Q She gave a name other than Blocher; did she?
A She did.

Q Well, then, did they leave? Did the Levine woman do any talking that day? A Nothing.

Q Was anything said by the Blocher woman, or the Levine woman, at that time, in reference to any trouble that they had, the Levine woman had, before? A The Blocher woman stated that the Levine woman had been suffering, for some time, from the effects of an abortion, which she had had performed by some midwife.

Q Yes. A And I said, "Well, that is one of the two or three usual causes that give rise to the train of symptoms

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from which this woman is suffering."

Q Meaning the discharges, abscesses--

MR. CLARKE: I object.

THE COURT: No. Objection sustained.

BY MR. LYNN:

Q State whether anything was said, at that conversation, Doctor, in reference to the condition of the Levine woman, outside of what the Blocher woman said? A I don't understand.

Q (Question repeated) A I don't recall that the Levine woman said anything, on the second visit.

Q What was discussed as to your pay, if anything?

A By pleading with me, they succeeded--

MR. CLARKE: I object.

BY MR. LYNN:

Q No. Just state what they said, Doctor. I know your mind is not as clear as it would be ordinarily. A Well, the Blocher woman said, "Doctor, you agreed to treat this case for \$150, in the sanitarium. Now, in view of the fact that you are to take charge at my house, couldn't you still further reduce your fee?" I finally agreed to accept \$100 for myself--

THE COURT: No. State what was said.

THE WITNESS: Beg pardon.

BY MR. LYNN:

Q What did you say? A I said, "I will accept \$100 for myself, and \$25 for the nurse, because it will probably be necessary for you to have the nurse for a week or ten days, if the treatment that I contemplate is necessary in your case is carried out."

Q Well, did that terminate it? A Yes, sir.

Q That was the second visit? A Yes, sir.

Q Did you see the Levine woman, after that, previous to seeing her in 65th street? A I did not.

Q Now you fix this about the 4th, 5th or 6th of February?

A Approximately.

Q How many days elapsed between the time that you last saw the women, and the next time you saw them, in 65th street, Doctor? A The last visit of the women to my office was, I am quite sure, on a Monday; and, on the Friday of that week, I visited the 65th street house.

Q I see. Now, then, on Friday, you went to the 65th street house? A I did.

Q And what did you find there? Who did you find there, Doctor? A The Blocher woman admitted me to the apartment, and directed me to the dining room.

Q Well, just before that, had you received any message, by phone or telegraph or letter, from the Blocher woman, before

you went to the 65th street flat, a day or two before that?

A I received, between Monday and Friday, not less than three, possibly four, communications from her, urging me to come to see her sister.

MR. CLARKE: I object to that, unless he states what he means by communications.

THE COURT: I sustain the objection.

A (Answer continued:) Three visits, in person, to my office, and one telephone communication.

BY MR. LYNN:

Q Now, go back. During three visits at your office, and one by telephone--

MR. LYNN: What do you object to, Mr. Clarke?

MR. CLARKE: I objected to the last question, and the objection was sustained.

THE COURT: Proceed. There is no question pending before the Court. The Court has ruled.

BY MR. LYNN:

Q Now, you reached the 65th street house, and who did you find there? A The Blocher woman, who admitted me to the apartment, and directed me to the dining room, where I found Mrs. Levine, in company with my nurse.

Q Yes. Well, what did you say to any of them, if you said anything? Did you speak to any of the persons there?

A I spoke to the patient.

Q What did you say to her? A I said, "Good morning, how do you feel?" She said, "Quite well," and I said, "How is your baby?"

Q You said, "How is your baby?" A Yes. And she said, "The baby has a cold, Doctor." I said, "That's too bad. Are you prepared for the examination?" She said, "Yes." I then instructed my nurse--

Q Yes? A To get me some water, which she had boiled; and, separating the instruments that I had brought on a chair beside me, I placed the woman upon the table.

Q Did you put her in any position? A I put her in the regular position that is necessary for examinations.

MR. CLARKE: I object to that.

THE COURT: I sustain the objection.

BY MR. LYNN:

Q Well just tell us what the position was? A I put her on her back, and flexed the thighs of the woman on her abdomen, by means of a strap that I always carry for that purpose.

Q Meaning this white bandage (indicating), with buckles on it? A Yes, sir.

Q Now, having placed her on the table in the position described, what next did you proceed to do, Doctor? A After

I put her in position, I went to prepare my hands, in the regular way.

Q Now, tell us what that was? A I washed my hands, and sterilized them.

Q Now will you tell me what sterilizing is? A Treating the hands with some germicide, to free them as much as possible from anything of an infectious character.

Q And, after washing them and sterilizing your hands, what next did you do, Doctor? A I instructed the nurse to fill the douche bag, which I had brought with me for that purpose, with the solution that had been prepared; and I prepared the vagina and external privates for examination.

Q Well, what did you do with the douche bag? A I sterilized the parts of the woman.

Q Well tell us what you mean by that? A That means freeing the external privates and the vagina, which is the canal leading to the uterus or womb of any infectious material.

Q By washing it out? A Yes, sir; by washing it out with a germicidal solution.

Q And that was inserted with the syringe? A With the ordinary hard rubber nozzle, that is attached to the regular douche bag.

Q And that falls from a bag that hangs upon the wall? A Yes, sir; three or four feet higher than the patient.

Q Now, look at that bag (indicating), that is the
douche bag or syringe? A Yes, sir.

Q Is the nozzle there now? A Well, in this case, I
suppose the nozzle was not present. It is not essential.

BY MR. CLARKE:

Q Well, is there any nozzle on it (indicating)? A Well,
there is a regular vaginal nozzle that comes with such an
affair, such a douche bag.

BY MR. LYNN:

Q Now, after ~~2-4-18~~ douching the vagina and external
genitals of the woman, did you make an examination?

A A very superficial examination.

MR. CLARKE: That is objected to.

THE COURT: Objection sustained.

BY MR. LYNN:

Q What did you notice, Doctor, during your examination?

A I noticed that, on inserting my finger into the vagina,
and examining the external parts, that there was an enlargement
in the uterus.

Q Now, will you tell me what that enlargement of the
uterus was, or is? A It might have been a number of things.

Q Well, give us the usual term that we understand,
so that we will understand it, by some plain description?

A An enlargement in the uterus--

MR. CLARKE: I object, unless he describes what²⁸³
he saw, and then he can tell, in his own way, what²⁸⁶
caused it.

BY MR. LYNN:

Q Yes. Just describe the enlargement of the uterus that you saw? A I simply noted that the organ was enlarged. My examination was not thorough enough, or extended enough, to admit of my forming of any conclusion as to the nature of the enlargement.

Q Or about the causes of it? A Or, as to the causes of it.

Q Now, then, we will come to the next thing. What next did you find on that woman, Doctor? A I found, immediately on inspecting the external parts, an enlargement or swelling of the gland in the left large lip of the external parts, on the external privates.

Q Well, was that of the same formation or character of the first one that you described? A No, sir. The first one was external, and the next one was the enlargement of the uterus.

Q Now, what part is the uterus, as you call it?

A The womb.

Q Now, what next did you find, Doctor, on such an examination? A I noted, before I douched, that there was con-

siderable discharge from the privates.

Q How can you describe that discharge? What is the name or character of that discharge? A The general term is leucorrhea, a leucorrheal discharge.

Q Was there an odor from it ? A Considerable.

Q Well, is that from a healthy condition? A It indicates, as a rule, a very catarrhal condition of those organs.

Q Now, Doctor, after observing and seeing what you have described, what next did you do? A I had just reached for the speculum, for the purpose of--

MR. CLARKE: I object.

THE COURT: Do not state the purpose. State what was done.

A (Answer continued:) I had just reached for my speculum, and had just picked it up, when the officers ran into the room, and notified me to put up my hands.

BY MR. LYNN:

Q The external swelling that you have mentioned here, is that the abscess-- that which Dr. Palmer characterizes as an abscess?

MR. CLARKE: Objected to.

THE COURT: Objection sustained.

BY MR. LYNN:

Q Well, was that what we call an abscess, the external swelling?

MR. CLARKE: Objected to.

THE COURT: Objection sustained.

BY MR. LYNN:

Q Well, what was it, Doctor?

A It was an abscess.

Q The officers entered and you were arrested?

A Yes, sir.

Q Well what next took place, Doctor? Who spoke to you?

A One or both of the officers.

Q What did they say? It isn't very material, but we might as well have it, we might as well hear it. A Reardon cried, "Don't touch that woman." I said, "I'm not very likely to, under the circumstances, with two guns pointed at my head." He said, "Unstrap the woman." I assisted the woman from the table.

They then asked me the names of the different instruments. I told them; and, putting them back into the bag, they took us down town.

Q Now, this bag-- what did Reardon do? Did he strike you, Doctor?

THE COURT: No. What did he do?

BY MR. LYNN:

Q What did he do? A While Connolly took the nurse into the front part of the apartment, Reardon, while covering me with a revolver, held in his left hand, struck me a blow in the face.

Q Now, these instruments that are here, Doctor, were brought there by you?

A Yes, sir.

Q And in the bag that is here in evidence?

A Yes, sir.

Q What did that bag consist of? What do these instruments consist of, Doctor?

MR. CLARKE: That I object to. It is too indefinite.

THE COURT: I think so.

BY MR. LYNN:

Q Well, will you go over, Doctor, and give me, describing each one in turn, its name and its general uses, its utilities, and why it was there; tell us all about it?

MR. CLARKE: Did you ask what it was there for?

MR. LYNN: No; I didn't ask that.

BY MR. LYNN:

Q Take up the speculum, Doctor. What is, that,

Doctor? Take up the first one, the speculum.

A The exhibit No. 3 is what is known as a duck-bill, bivalve vaginal speculum.

It is used for expanding the vagina, and exposing the mouth or neck of the womb. It is an instrument intended and suitable for--

THE COURT: No, no.

MR. CLARKE: I object to that.

MR. LYNN: No. Strike that out. I didn't ask for that.

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BY MR. LYNN:

Q Tell us what it is used for? A It is used for examining the mouth--

MR. CLARKE: I object. You said it was used for distending the vagina.

THE COURT: Yes. I sustain the objection.

MR. LYNN: Exception.

BY MR. LYNN:

Q What was its general uses?

MR. CLARKE: I object. He has stated already, distending the vagina.

MR. LYNN: Well, perhaps he has, your Honor.

BY MR. LYNN:

Q Well, now, then, answer this question. Extending the vagina for what purpose? A Distending the vagina for the purpose of bringing into view the neck of the uterus.

Q So that you could see it? A The vagina is a collapsible organ and--

THE COURT: No. Let the witness answer.

A (Continued) So that you can examine the mouth or neck of the womb, as to its character or diseased condition that may exist in those tissues.

BY MR. LYNN:

Q Now take up the next exhibit that is nighest to that.

Is that the instrument that you had in your hand, the last exhibit, a speculum? A Yes, sir.

Q At the time that the officers came in? A Yes, sir.

Q Now, proceed to the next? A Exhibit No. 11 is what is known as a uterine dressing forceps.

This is used for the purpose of carrying dressings, either plain dressings, for the purpose of drainage, or dressings soaked in medications, into the uterus, up into the womb.

Q Well, what is the next exhibit? A This is not tagged. It is known as a penaculum.

The penaculum is used for the purpose of steadying the uterus, during the making of an application.

MR. CLARKE: That is Exhibit 13.

A (Continued) This small point is hooked into the mouth of the womb, and the organ is steadied in that way, while any application that is desired is carried up into the womb; because the womb is a moveable organ, and is very likely to get out of line, if not steadied in that way.

BY MR. LYNN:

Q Now, the next one? A This is what is known as a small uterine dilator.

It is used for dilating or expanding the neck of the womb.

The neck of the womb, or the womb, rather, being a closed organ, it often becomes necessary, before it is possible--

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MR. CLARKE: Objected to.

A (Continued) Well, it is used for distending and expanding the neck of the womb.

BY MR. LYNN:

Q Now, the next one? A This is a uterine sound. With this we measure and determine the depth and direction of the womb.

This is an ordinary vaginal-- ticketed here, "Dressing forceps"-- I might say vaginal, as differing from the uterine dressing forceps.

With this, we pick up small pieces of cotton, and wipe out the vagina, at the mouth of the uterus, so that we can properly inspect and treat.

BY MR. CLARKE: "

Q What is the number of that exhibit? A No. 9. These are soft rubber bougies. These bougies are--

BY THE COURT:

Q How many in number, Doctor? A Three bougies, sir.

BY MR. CLARKE:

Q What is the number of the exhibit? A No. 15. These soft rubber bougies are prepared for the use of drainage, or, drainage tubes are prepared from these bougies. A small opening is cut here (indicating), or the bougie is left at its regular length, or cut off at the depth of the abscess cavity.

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BY MR. LYNN:

Q As they now exist, Doctor, they are of no use, until altered?

MR. CLARKE: Objected to.

THE COURT: No. That is improper. You are stating a fact, and that is not testimony.

BY MR. LYNN:

Q In what way must the change be made, before the last exhibit that you had in your hand can be made of use, Doctor?

MR. CLARKE: Objected to.

THE COURT: Objection sustained.

BY MR. LYNN:

Q Can they be of any use, now? A Not in my department of practice.

Q They must be altered? A They must.

Q In what respect, Doctor? A They are used quite frequently, not so much latterly, by workers in the department of distinctly male surgery, that is, as it applied to the male genital organs, for the distension of strictures in the urethra.

Q In the state that they are in now? A Yes, sir.

This is an ordinary wire, which I use either for--

MR. CLARKE: I object. What is it used for, is the question.

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BY MR. LYNN:

Q If it has a general use, describe it? A It is used for introduction here, into one of the small openings at this point (indicating), and the carrying, by means of this wire, into the abscess cavities either behind or at the sides of the uterus. The openings that would have to be made.

BY THE COURT:

Q The openings in what? A The openings that would have to be made in this drainage tube, at this point (illustrating).

Q In what you have described as a bougie? A Yes, sir. The wire is Exhibit 10.

BY MR. LYNN:

Q Now, proceed, Doctor, to the next? A This is an ordinary dressing scissors, with which we cut gauze and dressings. That is No. 12.

Q Now, the next one, Doctor? A I think that covers the lot, sir.

Q The large rubber-- have you covered what they call the placenta forceps? A That is a mistake. This is an ordinary dressing forceps. A placental forceps is an entirely different thing.

Q Now, there is a big rubber bag here. What is that?

A That is a modification of the Kelly Pad.

That is inflated, and placed under the hips of the

patient, and the fluid that is used for irrigation is carried down that into the receptacle placed at the foot of the table.

Q Now, some vials have been offered in evidence, and Mr. Clarke has them there? A This is the regulation iodoform gauze, used for dressings and surgery.

Q And the tablets? A This is carbolized glycerine. And these are bichloride of mercury tablets. And this is a germicide, known as cresol.

Q Now, have we covered now, all the contents of the bag?

A I think so.

Q As far as we know? A Yes, sir.

Q Now, Doctor, are all the exhibits referred to by you such as are in ordinary use by physicians? A Yes, sir.

MR. CLARKE: I object. Well, he has answered it.

Let it go.

MR. LYNN: And it was answered, yesterday, Mr.

Clarke, by your own witness.

BY MR. LYNN:

Q Now, Doctor, did you agree to perform a criminal operation upon Minnie Levine, for the sum of \$125? A I certainly did not.

Q Did she ask you to perform a criminal operation upon her, for the sum of \$125? A She did not.

Q Did she ask you to perform a criminal operation upon

her body, for any sum whatever? A She did not.

Q Did you agree to perform a criminal operation upon the Levine woman for or with consideration, or without consideration? A I did not.

Q Did you agree to perform a criminal operation upon Winnie Levine with the Blocher woman? A No, sir.

Q Did you purpose or did you intend to perform a criminal operation on Minnie Levine? A I did not.

Q Was the purpose of your visit there examination and treatment of the diseases that you found on this woman?

A For the purpose of what?

Q Was the purpose of your visit to the 65th Street house to examine and treat the patient for the diseases which you may have found on her person? A Yes, sir.

Q If you hadn't been interrupted, and had been allowed to convince yourself that the woman was pregnant, what would have been your conduct then, Doctor, or your treatment of her?

MR. CLARKE: I object to that.

THE COURT: I do not think that the question is material or relevant.

BY MR. LYNN:

Q Well, did you learn by the cursory examination that you made of the woman, while you had her on the table there, Doctor, sufficient to warrant you in any conclusion regarding her preg-

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nancy? A I did not.

Q When they asked for the money that you had received from the Blocher woman, you handed it over to the officers?

A Yes, sir.

Q Did you make demand for any money upon these people, the day you visited this house? A I did not.

Q Who tendered the money to you, when you went there?

A The Blocher woman.

Q And tell us the circumstances under which she tendered it to you. What was the conversation? A She said, "Doctor, I suppose you want to see the color of some money?" I said, "Yes, if it is perfectly convenient," and I received the money.

Q You didn't give her any intimation, prior to that, that you wanted any money? A No, sir.

Q The sum of \$125 had been fixed as your fee? A Yes, sir.

Q How long, Doctor, with the cursory examination that you had made of the Levine woman, at that time, and with good, careful, skillful treatment, how many visits would it require, operations or examinations or treatment of her, to have brought her about to a normal state? A If her condition was found to be such as I assumed it to be from her history, it would have required--

THE COURT: Is this proper?

MR. LYNN: I want to show-- he is an expert, Judge. He has seen the patient, and knew better than any one else.

THE COURT: Well, as a question to an expert, it is wholly improper and inartificial. However, if the District Attorney has no objection, I will allow him to proceed.

MR. LYNN: He is stating, your Honor, about the condition--

THE COURT: I understand the position now; I understand the position.

BY MR. LYNN:

Q What were you to do for her for the charge of \$125, Doctor, that you made? That is what I want to get at? A I was to curet her.

BY MR. CLARKE:

Q To do what? A I was to curet her, if I found that the conditions required it, which I told her would¹ probably be the case, and open and drain this abscess, which I found externally.

BY MR. LYNN:

Q What does curet mean, Doctor? A It means a scraping of the womb, which is done to correct just these diseased and catarrhal conditions that this woman was supposedly suffering from, so far as I could judge from her relation of the symptoms.

Q There was nothing about her appearance, when she first entered your office, that indicated to you she was pregnant? A Nothing at all.

Q Had she, at any of the conversations, made allusion, in any wise, that would lead you to know that she was a pregnant woman, at the time she visited you, Doctor?

A She did not.

Q Did you attempt, Doctor, at any time, to commit a criminal operation upon the woman named here as Minnie Levine?

A I did not.

Q Did you attempt to force any instrument into her body or person, with a view of committing a criminal operation upon her body? A Certainly not.

Q Were any of the instruments that are here marked as exhibits, outside of the douche bag, used upon the body of Minnie Levine? A They were not.

Q Had you started or attempted to use any of the instruments, marked as exhibits here, upon the body of Minnie Levine, with a view of attempting to commit a criminal operation? A I did not; further than I picked up the instrument.

Q Was that with a view of committing a criminal operation?

A Oh, no, sir.

Q And that was picked up for what? A For the purpose

of exposing the uterus to view.

Q And that was the speculum? A Yes, sir.

Q Did you attempt to use any other instrument, in any manner, upon her? A No, sir.

CROSS EXAMINATION BY MR. CLARKE:

Q Could an abortion be performed on a woman, without first distending the vagina, with the speculum? A Yes, sir.

Q Would that be a proper way? A No.

Q So that, if you were about to produce a lawful miscarriage on a woman, wouldn't you first wash out the vagina, and then insert the speculum? A Anything of an operative procedure would require the washing out of the vagina.

Q Yes. That is the first step; is it not?

A Yes, sir.

Q And wouldn't the second step be the insertion of a speculum? A Not that sort of speculum.

Q Any speculum? A No, sir.

Q What would you insert first? A A depressor.

Q Are you positive about that? A Absolutely.

Q Have you any depressors? A Yes, sir.

Q Well, after you got the depressor in, and got the vagina distended, what would be the next instrument used? A Forceps, a double tenaculum.

Q What would you do with that? A With that, I would have to grasp the neck of the uterus, and draw it down.

Q Yes. And then what would be the next step?

A A large dilator would have to be used.

Q Well, similar to the one here? A No, sir.

Q Larger than that? A Very much.

Q Referring to Exhibit 8. But similar in construction?

A No, sir.

Q Well, it would be a dilator; wouldn't it? A No, sir.

Q And it would have two arms? A No, sir.

Q How many? A Three or four.

Q To dilate the neck of the womb? A Yes, sir.

Q On a pinch, couldn't you get along with this one?

A No, sir.

Q Well, then, when you got the neck of the womb dilated, what would be the next step? A You would have to reach in, with a placental forceps, and a placental forceps of considerable size, to be of service in this case, and, with it, grasp the contents of the uterus, and extract what you could in that way.

Q Well, you didn't have that with you there; did you?

A No, sir.

Q And so, then, you were not equipped for a first-class abortion; were you?

MR. LYNN: Objected to, as not only improper, but offensive and insulting.

THE COURT: Objection sustained.

BY MR. CLARKE:

Q You had no outfit for committing an abortion?

A No, sir.

Q If you had found it necessary to save this woman's life, you wouldn't have been able to produce a miscarriage?

A No, sir.

Q None of these instruments that you had there would possibly be effectual to produce a miscarriage? A I wouldn't say that.

Q Well, would they? A In a crude way, yes.

Q Which ones? A This one, Exhibit 2.

Q By distending the womb, with those scissors? A No, sir; by plunging this into the neck of the womb, and rupturing the foetal sac.

Q Well, if you used the dilator, this crude dilator of yours, and dilated the neck of the womb with it, and then put a wire inside of one of these rubber bougies, and inserted that into the womb, wouldn't it cause a miscarriage?

A No, sir.

Q wouldn't it start it? A It might start it. But that is not the accepted, scientific way of performing the

operation.

Q Well, a miscarriage doesn't occur on the same day as the operation; does it? A Immediately. You extract everything. That is the only proper way.

Q At any stage? A Yes, sir.

Q Well what is it that comes away later? A Nothing.

Q Well, then, why did you need a nurse? A Why, you need a nurse to take care of the woman, afterwards.

Q How many visits do you have to make, as a physician?

A Well, what sort of a case?

Q In a case where an abortion has been performed?

A Well, it depends entirely upon how the woman gets along.

Q Well, you have to make several visits; don't you?

A Any conscientious physician would make a number of visits.

Q Now, didn't you tell these ladies that you would have to have a nurse for a week? A If the treatment which I supposed was necessary--

Q Did you tell them that? A Yes, sir.

Q And you expected to be engaged on this case for a week; didn't you? A A week or longer.

Q Yes. You expected to make several visits?

A Yes, sir.

Q Now, you didn't examine the lady, at all, when she called at your office; did you? A No, sir.

Q Did you examine her through her clothes (illustrating)?

A No, sir.

Q Then you had no knowledge of her symptoms, except what she told you? A Just only by her history of the case, because I was very busy, on both occasions.

Q And you decided, that, without having & seen the woman, or without having examining her, it would require a week's time to treat her? A That it would probably require operative procedures that would extend over a period of a week, or more.

Q Well, what did you think was the matter with her? A I thought she was suffering from the effects of this neglected abortion, which she told me she was suffering from, and which manifested itself in the form of these catarrhal discharges, pains in the uterus, and, perhaps, around the uterus, and probably inflammatory conditions that might develop around the uterus.

Q Well, that would be a matter of several weeks, to get her back in shape; wouldn't it? A No, sir.

Q And you assumed that that was the trouble; didn't you? A I judged from the symptoms that that was the trouble. That class of cases are usually very distinct.

Q And you agreed to do it for \$125; didn't you? A Yes, sir.

Q \$100 for yourself, and \$25 for the nurse? A Yes, sir.

Q And, if you had found out, afterwards, that she had something worse the matter with her than you understood, were you going to change your price? A No, sir; because she gave me to understand that that was all she had to give me for my services.

Q Well, then, if there had been a tumor to take out, you would have charged the same price? A Well, I didn't believe she was suffering in such a way as to require a capital operation; and that couldn't have been done in the flat, anyway.

Q Now did you ascertain whether this woman was pregnant or not? A Well, I intended to do that, before I proceeded with the operation.

Q You didn't think of asking her whether she was pregnant? A She didn't say anything that would direct my attention to a possible pregnancy.

Q Well didn't you ask her? A Women, when they--

Q Did you ask her, Doctor? A I didn't ask her.

Q How long before did she say she had had a miscarriage?

A That I don't remember.

Q Well, you said, a little while ago, two months; didn't you? A I said that she said she had been suffering with these symptoms for two months.

Q Now, don't you remember Mrs. Blocher saying to you that the reason they wanted you to come down to the house was family reasons? A I don't remember any such thing.

Q Well, do you usually go to the patient's house?

A Quite frequently.

Q I thought you kept a sanitarium? A I do.

Q Have you got a license for keeping a sanitarium?

A It doesn't require any license.

Q Why, weren't you convicted for illegally keeping some sort of a house? A A Maternity.

Q A Maternity? A Yes, sir.

Q A lying-in hospital? A Yes, sir.

Q Without a license? A Yes, sir.

Q Weren't you? A Yes, sir.

Q And do you keep that kind, now? A No, sir.

Q What kind do you keep now? A A sanitarium, for the housing of gynecological cases.

Q You are a gynecologist; aren't you? A Yes, sir.

Q You are an expert and a specialist on women's diseases? A Yes, sir.

Q And you prefer to perform your operations in your own sanitarium? A Yes, sir.

Q And you perform 99 per cent of them there; don't you?

A No; I wouldn't say that.

Q Well, a large percentage? A Yes, sir; a large percentage.

Q Now, here was a woman who was paying you a very small price, wasn't she, comparatively? A Well, a fair price.

Q Oh, was that a fair price? A Yes, sir.

Q I thought you said that was the lowest price that you could make? A It was the lowest price that I could make for the services that were indicated.

Q Well, how was it you were willing to make an exception to your rule, and go to her house, when she was paying you the lowest possible price for your services? A Physicians have often to do things--

Q Well, what induced you to do it, Doctor? A I felt sorry for the woman.

Q What reason did she give that induced you to do it? A She said that it wouldn't be possible for her to come to the sanitarium.

Q Why? A I don't remember the reason that she assigned. She said that she felt nervous and anxious, and afraid to go into an institution, as I remember.

Q Well did she say why she was not having it done at her own house? A I think she said-- I asked her about her own house, and I judged from her statement that the equipment--

THE COURT: No, no.

BY MR. CLARKE:

Q What did she say about it? A She said, "We haven't very many rooms. We live in a small apartment, and it can't be done there. It wouldn't be convenient."

Q Well, what reason did she give for having it done at her sister in law's? A Because her sister in law brought her there for the purpose of assisting in her care.

Q The sister in law was going to help nurse? A I suppose so.

Q Was that the reason? A That I don't know.

Q Well, but you had your own nurses; didn't you?

A Yes, sir.

Q Now why did you go to the sister in law's house, to perform this operation for this poor woman, that you were going to treat for the lowest price compatible with the services?

A Well, one of the reasons, and perhaps the chief reason, was that this apartment was situated on 65th street, and this woman lived away up on 133rd street and 3rd avenue, or somewhere in that neighborhood.

Q And you preferred to go to 65th street? A Because it was nearer to my house.

Q And you, also, preferred to have it in your own house?

A I would have preferred to have it in my own house.

Q And you can't give the jury any reason why you didn't

have it in your own house? A Because the woman practically refused to come to my own house.

Q And she didn't give you any reason? A She said her fear of going into an institution. Many women of this class have that aversion to going into an institution.

Q Don't you remember Mrs. Blocher saying that her parents lived near her, and that, if they got on to anything of this kind, they certainly would not allow it? A I don't remember any such statement.

Q And you said, "Do her parents live with her?" And Mrs. Blocher said, "No, sir, but very near; and, if they should miss her from her home, they would want to know where she was, and if they found out that she was at your house, they certainly would know what had been done?" A I don't remember any such speech.

Q And then Mrs. Blocher said there was something said about some one doing it for \$75, and you said that your assistant did that? A I don't remember anything of the kind.

Q Did that take place? A I don't remember any such thing.

Q Well, doesn't your assistant do that sort of thing?

A What?

Q Does he do it for \$75? A Do what?

Q What you did for \$125? A I don't remember any such arrangement.

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Q Now, do you remember saying that your assistant would do it for \$75? A I don't remember making any such speech.

Q And then Mrs. Levine saying, "Doctor, I would rather have you, knowing you to be more skillful"? A I don't remember anything of that kind at all. On the occasion of the first visit, when I returned to her, after she had seen my assistant, she said she would rather have me treat her than the assistant.

Q Now you say that you were under the impression that the woman was suffering from the effects of an abortion? A No; I didn't say that.

Q Well, what was it? A I said that the symptoms of which she complained were often due to the-- to a neglected abortion.

Q Well, she told you that she had had one; didn't she? A There was something said by the Blocher woman, on the occasion of the second visit.

Q And you were going to treat her for these effects of that supposed abortion? A I was going to treat her for what I found she suffered from, if it was perfectly legitimate.

Q But you took no means, at either of those first interviews, to determine what she was suffering from? A A physician often puts off examination--

Q Well, did you? A I did not; except by questioning her.

Q But you didn't ask her whether she had had an abortion performed upon her; did you? A She--

Q Did you or not? A Did I ask her if she had an abortion performed upon her?

Q Yes. A I don't remember doing so.

Q You took the casual remark of a friend of hers, that she had had something of that kind, you took that for--

A I didn't attach any importance to it. That wasn't in my mind.

Q Are you in the habit of diagnosing cases in this way, without making an examination? A I didn't consider it a complete diagnoses.

Q But you made a complete agreement for compensation; didn't you? A If I found that the woman was suffering from the condition which I assumed she was suffering from.

Q Did you tell her that it would be more, if you found that she was suffering from something else? A No, sir.

Q Then that was a final agreement; was it not? A Yes, sir; a final agreement.

Q But, at that time, you didn't know what she was suffering from? A I had a pretty clear idea of what I would find.

Q But you didn't know positively? A I couldn't have stated positively, no.

Q Well, you didn't know that she was pregnant, did you?

A I did not.

Q And you never found that out; did you? A Not positively.

Q Well, did you find it out, in any way? A No; I can't say, now, that the woman was pregnant.

THE 11TH JUROR: I would like to ask the witness a question.

THE COURT: You had better wait until counsel gets through, Mr. juror. Reserve your question.

BY MR. CLARKE:

Q Now, Doctor, do you remember Mr. Levine coming to see you? A No, sir.

Q You don't? A No, sir.

Q Stand up, will you? Do you remember that man coming to see you (indicating a young man in the audience)? A I don't remember ever seeing him.

Q Well, you had a call from a gentleman, just the day before Mrs. Levine came to see you; didn't you? A There may have been one or a number in my house.

Q Didn't you have a call from a young man, answering this young man's description (indicating as before)? A I don't recall that man at all.

Q Well, do you remember receiving a call from a young man, who said that his wife was in the family way, and that he was

too poor to have any more children? A No, sir.

Q Do you remember that? A No, sir.

Q And that you said you would not talk with him, but to send his wife down? A I don't remember any such thing taking place.

Q Do you swear that it didn't take place? A I will swear that I don't remember it.

Q Now, this Miss Brown is your nurse; isn't she, Doctor?

A She is a nurse that I employ, occasionally.

Q You sent her to 14 West 65th Street; didn't you?

A Yes, sir.

Q And she was under your instructions? A Yes, sir.

Q And she was to receive \$25 for her services? A For the services.

Q Which were to extend over a week, if necessary? A A week or more.

Q She was to get \$25 for seeing the case through?

A For remaining with the patient as long as I thought necessary; within a reasonable period of time.

Q And you were to receive \$100 for the same services?

A Yes, sir.

Q And it was under your instructions that she went there, and prepared this table; was it not? A Yes, sir.

Q Did you tell her to put the blankets and sheets and

pillows on the table? A She knows how to prepare a table for an examination.

Q Oh, you told her it was for an examination?

A Yes, sir.

Q How would it have been prepared for an operation?

A Well, perhaps not very differently.

Q Well, would it have been at all different? A Well, I can't say that it would have been.

Q You would have used these straps; wouldn't you; if you were going to operate, these leg bands (indicating)?

A If the operation was going to be performed on parts that could be reached with the legs flexed on the abdomen.

Q Well let us assume that an operation was to be performed on the female organs? A Not necessarily.

Q You wouldn't use this? A Not necessarily. It would depend upon the nature of the operation.

Q Do you mean to say that you would use it for any examination of the organs? A Yes, sir.

Q But not for an operation? A Not for every operation.

Q Well, you would use it for an operation on the womb; wouldn't you? A Not necessarily.

Q Well, suppose that you were examining this woman, and found that she had some trouble with the womb, you would have

taken off the straps; would you? A Not necessarily.

Q Now, this bag that you had there, for draining purposes, you would use that in an operation; wouldn't you?

A That one or a larger one. It would depend.

Q And you had a number of instruments there that you could use in an operation; did you not? A They are not operative instruments.

Q None of them? A No, sir.

Q Do you swear to that, Doctor? A I will swear that those are instruments used for the daily examinations and minor treatment of gynecological cases, with the exception of the dilator.

Q This one (indicating)? A Yes, sir. Which might be used on the occasion of a simple cureting; that is a cureting for a catarrhal condition.

Q That means an emptying of the uterus; does it not?

A Not necessarily a scraping or cleaning of the uterus.

Q And what did you have with you, that day, to curet the uterus? A Nothing.

Q You said you were going to scrape or curet the uterus; didn't you? A Not on that day.

Q Well, you couldn't curet or scrape the womb, if she was pregnant, without serious damage; could you? A No, sir.

Q And so that none of these instruments are used, except for examination? A Except for examination and minor treatment; and the dilator must be included.

Q Eh? A That dilator is used more for examination and minor treatment than it is for operative procedure.

Q Now take these rubber affairs. Do you sometimes insert a wire into them, do you not, and that makes a bougie, does it not? A Yes, sir.

Q And is that used for examination? A In my department of practice--

Q I don't care what department. Any department?
A That couldn't be used the way you have it there, in any department.

Q Well, cut off some of it, then, so that the wire will go away up to the end? A Then it might be used, in the department of the male genital organ, for a bougie.

Q And could it be used in the department of female genital organs? A It might be used in the uterus, as I have

said, when prepared, for drainage purposes; but not as you have it there now.

Q Eh? A Not as you have it there now.

Q Now, when the woman came there, and said that she had pain in her womb, didn't you think of asking her whether those might be labor pains?

MR. LYNN: No. Don't make such a bull as that, Mr. Clarke.

A Women with labor pains are not running around the city or the streets.

BY MR. CLARKER:

Q Well, then, the pains of pregnancy. A A normal pregnancy doesn't cause pain.

Q Well, an abnormal pregnancy. Suppose that she had been on the eve of miscarriage; you wouldn't have known anything about it; would you? A Well, a man's experience in such things must count in that. She didn't look or act as though she was going to have a miscarriage.

Q Well, your experience of several years didn't enable you to see that she was pregnant, when you were syringing her; did it? A No, sir.

Q Did you use any palpation? A As I said, in a superficial way.

Q Now, Doctor, what did you have these instruments all

out on the chair for? A Why, to employ them.

Q You were going to employ all of them; were you?

A Not necessarily.

Q Well, how many of them? A This here was absolutely necessary for examination, yes.

Q You had better state the number, to avoid confusion.

A Exhibit 3, Exhibit No. 9, Exhibit No. 14. This, perhaps, Exhibit No. 8. That's all, for examination.

Q What were the others for? A For treatment, if necessary.

Q And you had sterilized them all; hadn't you?

A Yes, sir.

Q And it is true that these instruments were all wet as they lay there? A They were sterilized in my office.

Q With some solution? A No; they were simply boiled.

Q Well, that is, with water? A Yes, sir.

Q And you had a pan of boiling water there; didn't you?

A The water that is prepared for the douche.

Q Did you use that for putting the instruments in it?

A No, sir.

Q And you sterilized them, before you left your office? A Yes, sir.

Q And then you intended to use them; didn't you?

A To employ them, if necessary.

Q And you took nothing along that you didn't think you needed? A I didn't expect to use those bougies in that case.

Q The bougies? A No, sir.

Q Then what did you take them along for? A I had another case to visit, after that.

Q Now, Doctor, had you taken any means to find out how far developed the abscess was? A What do you mean?

Q Before you went there? A This external abscess?

Q Yes. A I didn't examine the woman before I saw her on that day, at 65th street.

Q Well, did you expect to treat that abscess, that day? A No, sir.

Q What did you expect to do with it? A I expected to examine the woman, and prepare her for whatever operative procedure might be necessary.

Q Then none of these instruments that you took there were taken there for the purpose of operating on any abscess, or treating any abscess? A No, sir.

Q Because you didn't know that there was any abscess, for sure? A I wasn't certain, because I didn't discover the abscess until--

Q So that you got out some dozen instruments, and sterilized them, and layed them out on a chair, although you

didn't know that you were to treat any abscess? A These are the instruments that every professional man uses for examination.

Q Now what did you have there that could be used to curet a woman? A Nothing.

Q Well, weren't you going to curet her? A No, sir.

Q Well, you swore, on your direct examination, that you were? A No, sir; not on that day.

Q When? A On the next day, perhaps.

Q And then you would take other instruments there, on the next day; is that so? A If I found that the cureting was indicated.

Q Well, you didn't examine the woman to find out; did you? A I didn't have a chance.

Q Did you tell these ladies that it was simply to be an examination? A Yes, sir; that it was to be an examination, and a preparatory treatment for whatever operative procedures I might think necessary.

Q So that these two ladies knew, while you were there, that afternoon, that you were not going to operate on this woman? A They must have understood that there was to be no operation, that day.

Q Did you tell them so? A Yes, sir, I did.

Q That you had no intention of operating, on that day?

A Yes, sir.

Q And you communicated that to both of them?

A Yes, sir.

Q And, I suppose, you told your assistant so too, didn't you? A You mean the nurse?

Q Yes. A She understood that there was to be simply an examination, and a preparation of the patient for operative procedures, later.

Q This nurse has been used by you in other cases; hasn't she? A She has been employed by me.

Q And is it not true that you have a great many cases of miscarriages of women?

MR. LYNN: Objected to.

THE COURT: I think it goes to the witness's knowledge.

MR. LYNN: But the only point is whether you are going to invade the homes of every family in New York.

THE COURT: I overrule the objection.

MR. LYNN: Exception.

A Repeat the question, please.

Q (Question repeated by the Stenographer) A A certain amount naturally follows in this department.

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BY MR. CLARK:

Q Well, didn't you operate upon some forty cases, the month prior to this 12th of February? A No, sir.

Q And is it not true that you received, sometimes, as high as \$2,000 for causing a miscarriage? A No, sir.

Q And is it not true that you had a case at the Waldorf Astoria, just a few days before this case? A No, sir.

Q And is it true that you have patients that come from all over the world? A I should like to think so.

Q Haven't you had them from California? A Perhaps.

Q Well have you or not? A I don't recall any California patients.

Q Haven't you had them from Europe? A I have had several patients from Europe; yes.

Q Did you ever produce a miscarriage on a woman?
A Yes, sir.

THE COURT: We will suspend here.

Gentlemen of the jury,

You will remember my caution, not to talk about the case, or form or express any opinion concerning the guilt or innocence of the defendant, until the case be finally submitted to you.

Adjourn court until tomorrow morning, at half-past ten o'clock.

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(The trial was then adjourned until
Thursday morning, March 31st, 1904, at 10.30.)

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TRIAL RESUMED.

New York, March 31st, 1904.

EDWARD E. CONRAD, the defendant, his testimony being continued, testified as follows:

MR. LYNN: What do you want, Doctor?

THE WITNESS: There is a physician here, prompting the District Attorney.

MR. LYNN: Oh, he has a right to do that. He can hire any one to help him, if he thinks he can help him.

CROSS EXAMINATION CONTINUED BY MR. CLARKE:

Q Now, Doctor, you say that you didn't expect to use these soft rubber affairs, in this case? A No, sir; not in this case.

Q And you say that they are drainage tubes? A Drainage tubes are made of them, I said.

Q Now aren't there regular drainage tubes, made for the purpose of draining, that don't have to be altered, as you described these? A There are such; yes, sir.

Q Don't you ever use those? A Yes.

Q Now, if you intended to drain an abscess, would you use the drainage tube? A I would prepare one of those for the purpose.

Q Then you didn't expect to drain an abscess, in this case? A No, sir; not in this case, not on that day, I will qualify.

Q Now, you recognize that these are also called bougies? A That is the general term applied to them.

Q Yes. People's Exhibit 15? A Yes, sir.

Q And they are used sometimes without being changed, without being altered? A On the male.

Q Only on the male? A Yes, sir; only on the male.

Q Do you operate on males? A To a limited extent.

Q Well, you said that you had these for another case that you were going to. Was that the case of a male? A That I expected to dress; a female case, that I had operated upon, a few days before.

Q For what? A For pelvic abscess.

Q Oh, then you expected to use them to drain an abscess?

A I expected to change the dressing, in that case.

Q And put a hole in here (indicating), and make a drain out of it? A To make several holes.

Q And that is the reason you had them along with you; is it? A Yes, sir.

Q And then they are only used for two things, for use on the male organs, in case of stricture, or, when altered, as drainage tubes? A So far as I know.

Q Don't you recognize the use of bougies for the purpose of causing miscarriages? A No, sir.

Q It is not a recognized way of causing a miscarriage? A No, sir.

Q Do you know of no authority that holds that it is? A Not to produce a specific miscarriage; that is, within the limitations of the term.

Q Well, call it what you like. An abortion. Is it not one of the recognized ways of causing an abortion, to insert a bougie into the womb? A It is not.

Q Such as People's Exhibit 15? A It is not.

Q What? A It is not.

Q After dilating the neck of the womb, to insert the bougie, and leave it there? Wouldn't that set up the motion to expell the foetus? A It would I suppose. And any like means would, I suppose. But it is a crude way.

Q It is a crude way? A Yes, sir.

Q Not a recognized method? A No, sir.

Q Now do you recognize the authority of Barton Cooke Hirst as a writer on obstetrics? A Yes, sir.

Q And he is a well known and authoritative writer; isn't he? A Yes, sir.

Q And do you know that he states that the use of bougies is one method of producing-- A Premature labor; not abortion.

Q Oh, premature labor? A Yes, sir.

Q After how many months? A Well, seven or eight months.

Q Don't you know that Dr. Hirst says that, after the fourth month, the method of inducing an abortion is the same as for premature labor?

MR. LYNN: Don't answer, Doctor. I object.

MR. CLARKE: Question withdrawn.

BY MR. CLARKE:

Q Well, you recognize the authority of this work, Hirst on Obstetrics? A Yes, sir; he is a man of good reputation.

Q Now, I read from page 720--721 on that subject: "The method employed by myself, with satisfaction, in a number of cases may be described as follows: The woman is etherized and placed in the dorsal position upon an operating table.

The vagina and vulva are disinfected by tincture of green soap and hot water and absorbent cotton, and by a douche of corrosive sublimate solution, 1:1000. The anterior lip of the cervix is fixed with a double tenaculum, and cervical canal is dilated to the size of the thumb with Hegar's dilators or cautiously with branched dilators. An Emmet's curetment forceps is inserted into the womb, opened and shut in several directions, so as to crush the ovum, and then withdrawn with whatever portion of the ovum or embryo that comes with it. It is impracticable to remove the whole ovum at once. An iodoform gauze tampon is then packed in the lower uterine segment and in the cervical canal, and a tampon of gauze or antiseptic wool is placed in the vagina. The tampons remain in place twenty-four hours. On their removal, if the remainder of the ovum is not yet discharged from the external os, the cervix, now much softened and easily stretched, is further dilated with larger bougies than were used before, or by the fingers, and the uterine cavity is emptied of all its contents, as after an ordinary abortion, by the curet, the finger and a placental forceps (Emmet's curetment forceps)." Do you recognize that authority, and agree with it?

A He is a good man.

Q Well, then, you say that bougies are a recognized means

of producing premature labor? A Yes, sir.

Q And Dr. Hirst says that that is at any time after the fourth month? A That is his own opinion. I admitted that it was to produce premature labor.

Q I read further: "Methods of Inducing Labor-- The following, founded upon Krause's method, is the best plan for use in the vast majority of cases. The parturient tract is made aseptic by tincture of green soap, hot water, and pledgets of cotton, and by an antiseptic douche. An aseptic, stiff, silk or linen bougie (No. 17 French), which has been soaked for at least a half hour in a cold corrosive sublimate solution 1:1000, is thoroughly anointed with carbolyzed vaselin (5 per cent). The patient is placed in the dorsal position across the bed, her feet resting on two chairs. The operator passes two fingers of his left hand into the vagina, inserting one, or, if possible, both finger tips into the cervical canal. The bougie is then passed along the groove between the two fingers until it enters the cervical canal, and passes into the lower uterine segment posteriorly." Now, I ask you, after hearing that read-- and it then proceeds to state how it is packed with iodoform gauze--

MR. LYNN: Read it completely.

MR. CLARKE: Very well.

BY MR. CLARKE:

Q (Continued) "An iodoform gauze tampon is then packed lightly in the vagina, to keep the bougie in place. Active and effective labor-pains begin in from thirty minutes to thirty-six hours. In the majority of cases labor begins within twelve hours". Now, after hearing me read that, I ask you if the insertion of bougies is not one of the recognized methods of causing a miscarriage, after the fourth month?

MR. LYNN: I object.

THE COURT: I sustain the objection. If you read from what purports to be an authority, the proper form is to ask the witness if he agrees with that, or disagrees with it.

BY MR. CLARKE:

Q Well, do you agree or disagree with that method, as stated by Hirst? A Not as it applies to premature labor.

Q Well, now, what do you mean by that, Doctor? A I mean that I am charged with producing an abortion.

Q Yes? A Not with producing an abortion, but with attempting to produce premature labor.

Q Now, Doctor, you are a doctor, not a lawyer, apparently? A I am a physician.

Q You are charged with producing a miscarriage, or attempting to, and I don't care at what stage. Didn't you know that it was unlawful to produce a miscarriage, at any stage? A That is a recognized, lawful method to produce premature labor, when it is required.

Q Now, abortion has a medical meaning.

BY THE COURT:

Q When you say "that", witness, do you refer to what the District Attorney has read from this authority? When you say "that", what do you mean? A That refers to the induction of labor, not an abortion, in its specific sense, but a premature labor.

Q (Question repeated.) A Yes, sir. What the District Attorney has read, your Honor.

BY MR. CLARKE:

Q Now, as I understand you, then, you say that you agree with this book, that the insertion of a bougie, as described here, is a proper method of producing a miscarriage, after four months? A After certain period of development.

Q Well, what period? A I am not acquainted with Hirst's practice. The recognized divisions, clinically, of interference with pregnancy are abortion, miscarriage and premature labor.

Q It is for the induction of premature labor, you say?

A Yes, sir.

Q At an advanced stage of pregnancy? A Yes, sir.

Q And then what did you mean, when I asked you if these articles were not used in producing miscarriages, when you said no? A You said abortion.

Q And you are using abortion, in the medical sense?

A Yes, sir.

Q Which means, how many months? A The first three months or three months and a half.

Q Now what word can we apply to any kind of a miscarriage?

A You might apply it in a general way.

Q Then the bougies that you had in your bag, on that day, are used in producing miscarriage? A After a certain period of development.

Q (Question repeated.) They are articles or instruments used to produce miscarriages?

MR. LYNN: Objected to.

THE COURT: Objection overruled.

MR. LYNN: Exception.

BY MR. CLARKE:

Q Yes or no? A Premature labor, I have to stick to.

Q Well, then, you would not apply the term miscarriage,

at any time? A Yes, perhaps so, in a general way.

Q Now, these articles, People's Exhibit 15, aren't they articles which are used, commonly used, to produce miscarriages? A By some authorities, I should say that they would be recognized as one of the methods.

Q Now, you have told us very glibly what all these instruments are used for. Now can't you tell us what these articles are used for?

MR. McMANUS: I object to the question, and the characterization of the witness's testimony.

THE COURT: The use of the words objected to is objectionable, and should be stricken out. objection sustained.

BY MR. CLARKE:

Q Well, then, you had no objection to telling us the use of all these other instruments; had you?

MR. McMANUS: Objected to.

THE COURT: Allowed.

MR. McMANUS: Exception.

A I have tried to be as clear and specific as to the use of bougies.

BY MR. CLARKE:

Q Then aren't they articles used, commonly used, to produce miscarriages? A Personally, I wouldn't use them.

Q But they are commonly used for that; aren't they?

A That I know nothing about.

Q And the fact that Dr. Hirst gives that as the recognized method, after four months, does not affect your judgment or statement? A I don't know what Dr. Hirst's practice is.

Q He is a recognized authority; isn't he? A Yes.

BY THE 11TH JUROR:

Q Doctor, you didn't have the bougies along, that day, for the 65th Street case, you say? A No, sir.

Q You had taken them along for another case? A Yes; for a dressing that I required to administer, before I returned to the office.

Q Was that the only instrument that you had along, that day, that was not for that case? A Oh, no. I required practically all the other instruments for the other case.

BY MR. CLARKE:

Q Did you pack your valise, just before you started?

A Yes, sir.

Q Don't you keep an outfit in your satchel, for a certain class of cases? A No. That is impossible, if you want to prepare your instruments specifically.

Q Well, you said that you sterilized all the instruments?

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A Yes.

Q Therefore, you intended to use all that you took; didn't you? A Yes.

Q Did you sterilize these bougies? A Yes.

Q Now, take a case of abortion before the fourth month. I read you from page 720 of Hirst's book: "The method employed by myself, with satisfaction, in a number of cases, may be described as follows: The woman is etherized and placed in the dorsal position upon an operating table. The vagina and vulva are disinfected by tincture of green soap and hot water and absorbent cotton, and by a douche of corrosive sublimate solution, 1:1000. The anterior lip of the cervix is fixed with the double tenaculum, and the cervical canal is dilated to the size of the thumb with Hegar's dilators or cautiously with branched dilators." Do you agree with that? A Well--

Q I will read the rest of it: "An Emmet's curetment forceps is inserted into the womb, opened and shut in several directions, so as to crush the ovum, and then withdrawn with whatever portion of the ovum or embryo that comes with it. It is impracticable to remove the whole ovum at once. An iodoform gauze tampon is then packed in the lower uterine segment and in the cervical canal, and a tampon of gauze or antiseptic wool is placed in the vagina. The tampons remain

in place twenty-four hours. On their removal, if the remainder of the ovum is not yet discharged from the external os, the cervix, now much softened and easily stretched, is further dilated with larger bougies than were used before, or by the fingers, and the uterine cavity is emptied of all its contents, as after an ordinary abortion, by the curet, the finger and a placental forceps (Emmet's curetment forceps)." Do you agree with that? A In what particular?

Q Before the fourth month? A In what particular one?

Q Well, that requires the use of the tenaculum; does it not? A A double tenaculum.

Q And what is this (indicating)? A A single tenaculum.

Q And wouldn't a single tenaculum do as well?

A No, sir.

Q You wouldn't have to etherize the woman; would you?

A Absolutely, for that sort of procedure.

Q After four months would you have to etherize her?

A Not necessarily. It depends upon what method is employed.

Q Well, have you employed Hirst's method, described here? A That same method, if I were called upon to pass my judgment, and select the procedure, I would employ, in part, to even the fifth month, and well into the sixth month.

Q You would etherize the patient? A Absolutely.

Q Well, if you put a bougie into the womb, after dilat-

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ing the neck of the womb-- A That wouldn't dilate the neck of the womb (indicating).

Q I say, after dilating it? A It would not require any dilation to introduce that into the neck of the womb.

Q Well, then, if you left it there in the neck of the womb for twenty-four hours, you wouldn't etherize the patient; would you? A No, sir; not necessarily.

Q And it would in all probability cause a miscarriage within twenty-four hours? A It might.

Q (Question repeated.) A It might probably disturb the contents.

Q Well, if it disturbed the contents, a miscarriage would follow; would it not? A Probably.

Q Well, wouldn't it, in all probability? A Yes.

Q Now this method, as described by Hirst, also requires the use of dilators? A Yes, sir.

Q And you had them in your bag? A I had a small dilator, entirely unsuited to that procedure.

Q This also requires the use of iodoform gauze?
A Yes, sir.

Q And you had some of that; didn't you? A Yes.

Q And forceps, did you not? It requires the use of forceps? A Placental forceps.

Q And you had forceps, did you not? A Dressing forceps.

Q Do you mean to say that your dressing forceps could not be used for the purposes described here? A Certainly not.

THE COURT: Described in the book, do you mean, Mr. Clarke?

MR. CLARKE: Yes, sir; in Hirst's book.

BY MR. CLARKE:

Q "An Emmet's curetment forceps is inserted into the womb, opened and shut in several directions". A That is an entirely different instrument.

Q Now, I ask you again, if the bougie is not a recognized instrument for producing a miscarriage, using the word in its broad sense?

MR. LYNN: That has been asked and answered several times.

THE COURT: I overrule the objection.

MR. LYNN: Exception.

A It is one of the methods employed by some physicians to induce a miscarriage, after a certain period in the development.

BY MR. CLARKE:

Q Now, the period differs with different physicians; is that it? A You mean as to the terminology?

Q No. As to when they use the bougies? A That may be

amatter of personal judgment.

Q What is the earliest stage at which the bougie is ever used? A To my mind, it should not be used until after the seventh month.

Q The seventh month? A Yes, sir.

Q Well, you wouldn't say that it is not commonly used before that? A That I know nothing about.

Q And you said yesterday, when I inserted a stilet in the bougie--is that the stilet (indicating)? A That is a wire, simply a wire.

Q Now, I inserted this in one of these bougies, and you said it could not be used in that way. Do you mean to say that still? A It couldn't be used in that way.

Q What is to prevent your placing the wire inside of this rubber article, of this bougie? Now, what is to prevent a physician from placing the wire inside of the bougie in that way (indicating)? A Oh, that could be done.

Q And insering it into the womb? A You didn't ask that.

Q And inserting it and leaving it there. And that would leave a soft body in there, that would set up a motion in the womb that would produce a miscarriage? A Probably.

Q And it would be eminently adapted for that purpose, wouldn't it? A Not to my mind.

Q It would be even better than a hard bougie, with a wire

in it, wouldn't it? It would be better to leave the soft bougie in, wouldn't it? A Are you trying to get some technical points from me?

MR LYNN: Oh, tell Mr Clarke how to perform this operation, because he may want to know.

THE COURT: No. This is improper, Mr Lynn.

MR LYNN: I was trying to assist the District Attorney, your Honor.

THE COURT: No. The District Attorney has the witness.

BY MR CLARKE:

Q Now, you said that that couldn't be used, before?

A I said that you couldn't use it before you cut off the end.

Q Well, it is an easy matter to cut off an end of this rubber with a scissors, is it not (illustrating)? A Well, I am trying to answer your questions, sir.

Q Well, it is one of the recognized means of producing a miscarriage? A A t a certain period.

Q At any period? Can't you answer the question?

MR LYNN: I object.

BY MR CLARKE: Q Isn't that what these are made for, and sold for

A No, sir.

Q What is the use of a bougie in gynecological cases?

A Do you ask me---

Q In women's diseases? What is the use of the bougie?

A They are used for the purpose of drainage tubes.

Q Well, there are such things as drainage tubes, and you can buy them in any store, can't you? A Yes; they are made by the thousands and thousands, that kind of instrument that you hold in your hand, and it is not reasonable to assume that they are made for illegitimate purposes.

Q Now, if you went into a surgical instrument place, and asked for a drainage tube, would they give you one of these (indicating the bougies)? A They would give you a soft rubber bougie. You would get that instrument.

Q If you asked for what? A A soft rubber bougie.

Q And, if you asked for a drainage tube, they would give you something else, wouldn't they? A Those are used, sir, by a great many physicians, in preference to the regular drainage tubes; and they even have drainage tubes---

Q A gain I ask you, if you went into a store and asked for a drainage tube, whether they would give you one like these, without any hole in the end? A One very similar to that.

Q Well, how could you drain, without a hole in it?

A You prepare them.

MR LYNN: Take the scissors and prepare them for him, Doctor.

MR CLARKE: Well, I will ask him how he could do it, but I didn't ask him that. There are your scissors, Doctor, go ahead.

THE WITNESS: That is the way they are prepared (illustrating), and they are considered much better and safer than the ordinary drainage tube, because this closed end will not do any injury to the wound into which this is introduced. And these are then cut off, or left at the regular length, in accordance with the position of the abscess, and its distance from the external parts of the woman.

Q Now, you can buy drainage tubes just like that which you have made, can't you? A You can, very similar.

Q Closed at the end? A Yes, sir. So I have been told.

Q You never buy any? A I prefer to prepare them myself.

Q You never bought any drainage tubes; did you? A I prefer these.

Q I say, you never buy the others? A No, sir; not any more; because my experience has taught me that those render better service.

Q What were you going to use the drainage tubes for, that day? A To dress an abscess case that had been operated upon, a few days before that, four or five days before.

Q Well, you had these tubes out on the chair at 14 West

65th Street, didn't you? A They were sterilized with the of the instruments.

Q (Question repeated)? A Yes.

Q Well, why were they out there? A Well, because they were all put in the towel and boiled together.

Q Where? A At my office.

Q But you didn't take everything out of the satchel, did you? A Well, everything that it was necessary for me to have; and, not wishing to handle these, I simply took them out with the rest of the instruments.

Q You took out everything that it was necessary for you to have? A In that case?

Q Yes. Why did you put them in with your other instruments, when you sterilized them, unless you intended to use them in that case? A Because I didn't have time to go back to my office to prepare them specially for that other case.

Q Well, couldn't you have sterilized them in a different cloth? A That's your own idea of how I should have done it.

Q Well, wasn't it wrong to expose them there at 65th Street, and have them infected? Didn't you take chances there? A No, sir; because I never intended to contaminate them.

Q Why, you laid them on the chair right alongside of the woman you were about to examine? A Yes, sir.

Q Who was suffering from a discharge? A Yes, sir.

Q And, if any of these tubes had touched it---

A It is a physician's duty to see that they are not infected.

Q Well, didn't you think it was necessary to take precautions to protect other patients? A I took every precaution. That is my duty.

Q And yet you laid them right open on that chair, where a ny number of germs could come in contact with them? A No, sir; not unless the germs came in direct contact with them, sir.

Q Now, after you got them out of your bag, why didn't you wrap them up, so as to prevent their getting infected from the air? A Because I had nothing sterile to wrap them up in.

Q They might be infected by the air? A Very improbably. That's theory is exploded, long since.

Q So that you had them laid out there with the other instruments? A Yes, sir.

Q And you intended to use all the others? A Not necessarily.

Q Well, the greater part of them? A The ones that were required for examination and preparation.

Q Could you use an article like these, or any instrument, that had been laid out for any length of time, in contact with the air? Would you use that in a surgical case?

A I never expected to have them exposed for any length of time.

Q Can you answer that question? You wouldn't, would you?

A Not for any length of time. I am not certain but what they were materially protected by an end of the towel. I am very careful about these things.

Q Then how long did you expect to be there, in that flat?

A Actually engaged with the patient?

Q Yes. A Perhaps fifteen or twenty minutes.

Q And you sent a nurse there an hour ahead to make preparations? A Well, it happened to be an hour because I was detained.

Q Is it customary, Doctor, to put these leg holders or straps on a patient, who is simply to be examined and treated?

A Yes, sir.

Q And not operated upon? A Yes, sir.

Q And that is your practice? A Everybody's practice.

Q That is the common practice? A The common practice.

No examination could be made satisfactorily without them.

Q Now, you recognize, don't you, Doctor, that it is impossible, sometimes, to tell from one instrument what operation a physician is going to perform, from any one instrument?

A What do you mean by that?

Q Well, supposing a physician is about to perform an operation, and you are shown the instrument he had, could you tell what operation he was going to perform? A If it had a specific

purpose and use, I could.

Q Well, could you tell it from one single instrument, or would you want to see all the instruments? A I would--there are instruments which might be used for several purposes.

Q Yes, that's just what I mean. So that, if you were to determine by looking at a physician's outfit, who was about to perform an operation, you would want to see them all, to decide what the operation was? A Yes, sir, the exact operation.

Q It is a recognized thing that the whole collection of instruments must be looked at to decide what an operation is, is it not? A If they are prepared specifically for one operation.

Q Is the operation for causing miscarriage, at any stage, a rare operation, or a common operation? A A rare operation.

MR McMANUS: We object to that, if your Honor please.

BY MR CLARKE:

Q It is a rare operation? A Yes, sir; comparatively.

Q And all physicians, who are expert in that line, are supposed to be prepared to perform that operation? A Yes, sir.

Q But the actual cases that arise for legitimate abortions are comparatively rare, are they not? A Yes, sir.

Q That is, it is the last resource to save the life of the mother, is it not? A Yes, sir.

Q Have you ever performed the operation? A Yes, sir.

Q Will you tell us how many times? A In my career?

Q Yes. A Perhaps forty-five or fifty times.

Q And here in New York? A In New York.

Q How long have you been practising here? A Fifteen years

Q Well, about three or four times a year? A About three times a year.

Q Well, you say that you have performed the operation forty odd times? A Yes, sir.

Q Since you have been in New York? A Yes, sir.

Q Well, did you have other physicians in consultation to decide whether it was necessary? A Yes, sir.

Q What? A Yes, sir.

Q Well, regular practitioners in New York? A Yes, sir.

Q Could you give me the names of any? A No, sir.

MR LYNN: I object to that, your Honor.

THE COURT: I overrule the objection.

MR LYNN: It is a personal communication between physicians, your Honor, and they are protected.

THE COURT: No. Between physicians and patients there is protection.

MR LYNN: We except.

THE COURT: Answer the question, witness.

(The question is repeated by the stenographer.)

THE WITNESS: Repeat the question.

(It is repeated by the stenographer.)

A Dr. Frank Miller has found it necessary to consult me.

BY MR CLARKE:

Q Where is his office? A On 31st Street.

Q Give us the number? A 22.

Q West or East? A West 31st.

Q Any other? A Dr. Cromley.

Q Where is his office? A At the corner of 56th Street and Broadway.

Q Any other? A Dr. Stevens.

Q Where is he? A That is a woman physician, on 42nd Street.

Q What number? A I don't recall the number. It is just east of Eighth Avenue.

Q Well, just give us all that you can remember, and save time? A That's all I recall at present, as, laterly, finding it necessary to consult me.

Q Well, do you mean by that that these are physicians who have sent you cases? A Who have consulted with me about cases where it was necessary.

Q To have an operation? A To induce an abortion, a miscarriage.

Q And you produced the abortion? A Yes, sir.

Q Well, what I meant is, cases where you yourself was the physician, and, in order to determine whether an abortion was necessary, and you say that it is the last resource of the medical science to save the life of the mother, and then medicine and the law permits the production of an abortion--that is true, is it not? A Yes, sir.

Q And I ask you, when you have a case in your own charge, and you are the physician, do you call in somebody to help you to determine whether it is a proper case to perform an abortion or not? A I have not had any cases in my own practice lately.

Q Well, at any time? A Not in the last few years.

Q Well, did you, when you had them? A Yes, sir.

Q You called somebody in to determine? A Yes, sir.

Q Can you give us the name of anybody that you called in?
A Dr. Lesser has consulted with me on one or two occasions

Q But I am talking about you consulting with somebody else? A You asked me to give you the names of my consultants, and I have done so.

Q Where is his office? A 19 East 61st Street.

Q And, that is to say that you had a case in which you wished a physician to aid you in determining this thing, as to committing an abortion and you called Dr. Lesser in?

A Yes sir.

Q And he agreed with you that it was necessary?

A Yes sir.

Q And is that the only case out of the forty-five that you can remember? A In several cases, I consulted with him. It has not been necessary in the last two or three years, in my own practice.

Q Why not? A That class of cases has not come my way.

Q Abortion cases? A Cases where abortion was necessary.

Q You haven't had many lately, then? A I say that I mean cases that came directly to me, for primary consultation. I haven't had any in the last few years.

Q That required an abortion? A That required an abortion.

Q How many did you call Dr. Lesser in on? A Two cases I think.

Q How long ago? A Two years ago.

Q Now you have a great many cases sent you, by other doctors; don't you? A Not a great many.

Q In which they ask you to perform an abortion? A Not a great many.

Q Well, some? A I told you that, perhaps, forty odd,

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in my experience.

Q And mostly from other physicians? A Yes; they must have been, necessarily.

Q And, in that case, who determines whether an abortion shall be performed? Who determined, in that case, whether an abortion shall be performed? A It is upon consultation with those physicians.

Q And the physician who sends the patient is the only consultant? A He usually sends them to me to get my opinion, after he has determined, to his own satisfaction, that it is necessary.

Q Well, have you ever had a case where a physician sent you a woman, to have an abortion performed, and you determined that it was not necessary? A Yes sir.

Q Have you had many of those? A A number.

Q What reasons do you recognize as allowing abortion, doctor, permitting abortion? A Very serious constitutional conditions, and a local insufficiency of development in the parts. That covers the ground.

Q Well, this woman -- now, before you were in New York, where did you come from, doctor? A I came direct from my home.

Q Where is that? A In Illinois.

Q Where in Illinois? A Quincy, Illinois.

Q Is that where this Schaghticoke college is? A No.
Chaddock College.

Q That is where the Chaddock School of Medicine, from
which you say you graduated, is? A It is at Quincy, Ill.,
yes.

Q And you lived there in the town? A Yes sir.

Q And attended the medical school there? A Yes sir.

Q When did you graduate? A '89; Spring of '89.

Q Where did you go then? A I came here to New York,
to the New York Polyclinic, and took a year's course there,
and then I opened my office in New York.

Q What year was that? A I began active practice in
the latter part of '89.

Q Here in New York? A Yes sir.

Q Then you were not very long at the Polyclinic; were
you? A I attended the Polyclinic for a year, and even af-
ter I opened my office; for six or seven months.

Q Did you take a special course in gynecology?

A Yes.

Q Where? A At the Polyclinic.

Q Well, did you ever live in Canada? A No; never.

Q Quincy, Illinois, and New York City, are your two
places of residence? A Yes sir.

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Q You have had several offices in the City of New York? A No sir; no sir.

Q Just the one that you have got now? A Yes.

Q For the whole fifteen years? A No no. You mean that I have lived at different places, different addresses?

Q Yes? A Oh yes.

Q And, at one time you had some sort of a Maternity Hospital? A I conducted a lying-in hospital, on 34th Street.

Q What is a lying-in hospital? A In my early years, in this City.

Q (Repeated) -- a place for women to go and have children? A Yes sir.

Q Well how long did you have that? A Not very long.

Q It is usual to get a license for that, is it not? Is there not some law on that subject? A There was an ordinance created, just about that time, requiring an institution of that sort to be licensed, either by the Board of Health or chartered by the State.

Q Yes. And you omitted the formality of getting a license? A I was ignorant of the requirements.

Q Well you didn't have the license? A No sir.

Q And where were you tried for that? In the Special

Sessions? A Special Sessions.

Q And what was the punishment? A Five hundred dollars.

Q Fine? A Fine.

Q Well, now, you kept some sort of a sanitarium, at 127 West 47th Street; didn't you? A Yes.

Q How long have you had that? A I have it now, and have had it ever since I have had the house.

Q And how long is that? A Since the Spring of 1898 or 1899.

Q And what sort of a sanitarium is it? A It is a sanitarium for the treatment of diseases of women.

Q How many patients can you accommodate there?

A Twelve or thirteen.

Q Do you take abortion cases? A I told you just what I have done, in the way of --

Q Well, I ask you if that is part of the business of the sanitarium? A Do I take such cases into the sanitarium?

Q Yes? A I would take cases of that sort, if I thought it was legitimately required.

Q Have you taken any? A Yes. I have treated some cases of that character, in the sanitarium.

Q Well, what do you mean by treating? A I mean that I have done whatever was required for the case.

Q Well, you have had operations there; haven't you?

A Yes.

Q And I suppose some of the patients have died; haven't they? A Abortion cases? Died?

Q Yes? A No sir.

Q You never lost a patient from abortion? A No sir.

Q Are you sure of that, doctor? A Absolute.

Q You mean that they didn't die while they were in the sanitarium; is that it? A I mean that I have never lost a case, where I operated upon them for the purpose of cleaning out the uterus of a pregnancy.

Q You mean that they didn't die within a short time?

A I mean that I have never lost a case of that character.

Q Well you wouldn't swear that no woman ever died of the effects of an operation for abortion performed by you; would you? A I would.

Q Well, now, is that sanitarium running now? A In part.

Q Isn't it a fact that you sent all your patients away, the day after the arrest in this case?

MR. LYNN: Objected to.

THE COURT: Objection overruled. It is on cross examination.

MR. LYNN: Exception.

BY MR. CLARKE:

Q You have assistants, haven't you doctor? A Yes.

Q How many? A One physician.

Q What is his name? A Dr. Weil.

Q Well how many other assistants? A I call them when necessary, for special cases.

Q Who do you have? A Dr. Hatch assists me.

Q Dr. Hatch? A Yes, sir.

A Give us his full name and address? A Dr. John L. Hatch -- Leffingwell J. Hatch.

Q Where does he live? A 123 West 47th Street.

Q You call him in to assist in cases? A Yes.

Q And who else? A That is all the medical assistance I usually require.

Q Well, have you lay assistants? A I have nurses.

Q Any male nurses? A Male nurses?

Q Well, any orderlies, or anybody connected with the place of that kind? A No, sir.

Q Then you have female nurses? A Yes, sir.

Q How long had Miss Jennie Brown been with you? A She has never been a house nurse.

Q Has she ever had cases for you before? A Yes, sir.

Q At houses? A Private houses.

Q Abortion cases? A No, sir.

Q Is her name Jennie Brown? A No; that is not her name.

Q Well, do all your nurses assume names? A I am not responsible for what my nurses do.

Q Well, do they? A No sir.

Q Is there any reason why a nurse, in a legitimate sanitarium, should give a wrong name?

MR. LYNN: Objected to, what the reasons are.

THE COURT: Objection sustained.

Q Well, your assistants don't take assumed names, do they?

MR. LYNN: I object to what his assistants might do.

THE COURT: Objection sustained.

Q Well you never take an assumed name; do you doctor?

A No sir.

Q And you have never taken an assumed name? A Never.

Q Edward E. Conrad is your own right name? A Absolute

Q Well, what other nurses have you? A You mean --

MR. LYNN: I object to that your Honor.

THE COURT: I do not think it is necessary to go into that. Objection sustained.

BY MR. CLARKE:

Q Well, you have a staff of nurses; haven't you? A Yes.

Q Now is it not a fact that, on the day that you were arrested in this case, you ordered your sanitarium dismantled, and sent all your patients away?

MR. LYNN: Objected to, as immaterial, irrelevant and incompetent.

THE COURT: Objection overruled.

MR. LYNN: Exception.

A No sir.

BY MR. CLARKE:

Q Well, you were out on bail; weren't you? A Yes.

Q Then you knew what took place at your sanitarium?

A The next day.

Q Oh, the next day? A Yes. Late that night, I was admitted to bail.

Q Well, now, after you were admitted to bail, did you go up to your sanitarium? A Yes sir.

Q And then you knew what took place there; didn't you? A Yes.

Q Well, is it not a fact that all the patients were taken out? A No sir.

Q Were any of them taken out? A Several were dis-

missed, because they were ready to go.

Q And that is the only reason? A That is the only reason.

Q Weren't some taken out that were still very ill?

A No sir.

Q Positive of that? A Positive.

Q And weren't all the bed clothes taken off, and all the beds stripped?

MR. LYNN: I object to that, what may have been done in that way.

THE COURT: Objection sustained.

A If the case is dismissed, that is necessary.

BY MR. CLARKE:

Q Do you mean to say that your sanitarium has been going on just the same, since your arrest? A Practically, the same.

Q What do you mean by practically? A Practically the same. This trouble, of course, has, in a measure, limited my work. It has upset my staff, and, for that reason, in a measure, demoralized the workings of the institution, but only to a degree.

Q Have you received new patients right along? A Yes sir.

Q Now you say that, when you went to examine this wo-

man, you didn't think you were going to operate? A I knew I wasn't going to operate.

Q Did you expect to operate, in the future? A If necessary.

Q Well, did you expect to? A If I found what I suspected she was suffering from, yes.

Q What did you suspect she was suffering from? A This catarrhal trouble of the uterus, and this abscess.

Q The first thing you looked at was the uterus; was it not? A No sir; the abscess.

Q There was an abscess there; then? A Yes sir.

Q A fully formed abscess? A A positive abscess. No question about that.

Q Well, after looking at it, you looked at the uterus; didn't you? A No sir.

Q Didn't you say that you observed some swelling?
A No; I felt some swelling.

Q Well, that would be one evidence of pregnancy; wouldn't it? A Yes; it might be due to pregnancy.

Q The uterus swells up, when a woman is pregnant?
A Yes sir.

Q And, the longer she is pregnant, the more it swells?
A Yes sir.

Q And, if she is pregnant four or five months, it swells up big; doesn't it? A There is quite a development.

Q Now if you saw that there was an abscess there -- and you anticipated finding that; didn't you? A I judged so, from her story.

Q Well, then, why didn't you take something along, to lance the abscess? A Because I didn't intend to operate, on that day.

Q Under no circumstances, did you intend to perform an operation, on that day? A Under no circumstances, on that day.

Q Do you mean to say that, under no circumstances, you intended to perform any operation? A Under no circumstances.

Q Well, why did you have all these instruments out? A They are necessary for examination and preparation. I have told you that repeatedly.

Q Well, you had them all sterilized, for the purpose of examination? A I always do.

Q And there is not an instrument there that is proper or useful for anything but examination or treatment, as you call it? A The specific use of these instruments, any one or collectively, is for the purpose of examination and

minor treatments, simply.

Q How long would it take for you to have examined this woman and ascertained that she had an abscess? A About a minute.

Q And it could be done by putting her on any ordinary table or couch; couldn't it? A As far as the abscess was concerned, yes. Still, not satisfactorily.

Q And you have examining tables there, at your office? A Yes sir.

Q But, if a woman is pregnant, and it is simply a question of performing or producing a miscarriage, no examination would be necessary, would it? A I beg your pardon?

Q If a woman were pregnant, and a miscarriage were to be produced, would any prior examination be necessary?

A To determine her condition, certainly.

Q No, if you knew it? A How would I know it, without examining her?

Q Well, if she told you so? A Well, you can't take women's word for that.

Q And you never do take their word for it? A I never do.

Q And yet you never made any examination, in this case,

to determine whether she was pregnant or not? A There was nothing said in this case about pregnancy.

MR. LYNN: Would your Honor allow Mr. McManus to question the witness? I feel somewhat depressed, this morning, on account of the death of a friend.

THE COURT: I will permit it, but I will not permit any reopening of the case. It must be on the lines of the cross examination.

MR. McMANUS: Yes, sir.

THE 11TH JUROR: May I be permitted to ask that question now?

THE COURT: No.

RE-DIRECT EXAMINATION BY MR. McMANUS:

Q We will turn now, Dr. Conrad to page 720 of Hirst's Text book on Obstetries, from which Mr. Clarke read to you at length, and relating to the subject of an abortion, at the third or fourth month, wherein he says, "The method employed by myself, with satisfaction, in a number of cases, may be described as follows: The woman is etherized --" Did you have any ether there? A No, sir.

Q "and placed in the dorsal position on the operating

table." Now, the dorsal position is the usual one for making examinations; is it not? A Yes, sir.

MR: CLARKE: Now, don't lead him.

BY MR. McMANUS:

Q "The vagina and vulva are disinfected by tincture of green soap and hot water and absorbent cotton, and by a douche of corrosive sublimate solution, 1:1000." Which of those, if any, did you have with you? A I had the sublimate, but not the green soap.

Q "The anterior lip of the cervix is fixed with the double tenaculum." Did you have a double tenaculum with you? A No, sir.

Q "and the cervical canal " -- what is that? A The canal of the neck of the womb, proper.

Q And he says "and the cervical canal is dilated to the size of the thumb, with Hegar's dilators, or , cautiously, with branched dilators." Did you have such dilators with you? A No, sir.

Q "or, cautiously, with branched dilators." Are these dilators here branched dilators? A They might be termed branched dilators, but small branched ~~it~~ dilators.

Q "An Emmet's curetment forceps is inserted into the womb." Did you have any such instrument with you? A No, sir.

Q "opened and shut in several directions, so as to crush the ovum." Now just describe what that means, so that the jury will understand it. A It means that the ovum, which might be a general term applied to the entire contents of the uterus, during pregnancy, is seized and crushed by this instrument, and extracted.

Q Did you have any instrument with you that could produce that result, by crushing the ovum? A No, sir.

Q "An iodoform gauze tampon is then packed in the lower uterine segment and in the cervical canal, and a tampon of gauze or antiseptic wool is placed in the vagina." Did you have any tampons there, prepared? A I had some iodoform gauze with me.

Q Was that prepared in tampon shape, when these people came in? A No, sir.

Q Was the gauze removed from the bottle at the time they came in? A No, sir.

Q Is it not a fact that gauze is carried for any form of use by a physician or surgeon? A It is necessary for packing and drainage purposes in any department of surgery.

Q What is corrosive sublimate used for? A For germicidal antiseptic purposes.

Q In other words -- A In general surgery.

Q Not only in gynecology? A Yes, in general gynecology,

as well as for other branches of surgery.

Q Now, he says, "While the interruption of pregnancy before the ~~xxx~~ one hundred and eightieth day is called the induction of abortion, the method just described is only practicable up to the fourth month. After that time, abortion is induced in the same manner as premature labor." Do you agree with that? A The method of --

Q The method just described is only practicable up to the fourth month? A No, sir; and I only agree with that method, in part.

Q Well, in what respect do you disagree with it? A It would be my opinion that the entire case should be finished up, then and there.

Q Instead of waiting? A Instead of waiting for the placenta, which is allowed to remain, in that treatment, to set up dangerous symptoms, perhaps.

Q So you have differed from him in this, that you would have completed the operation, at that one time? A Yes, sir.

Q Or period? A Yes, sir.

Q By what method would you have completed it? A Besides the instruments named, or similar instruments for that purpose, it would have required the use of very large curets, or of different sizes, accommodated to the development.

Q Well, did you have any such instruments with you?

A None.

Q Or any instruments that could have been used for curetting purposes? A No, sir.

Q Are any of the instruments that have been identified here such instruments? A No, sir.

Q For curetting purposes? A No, sir.

Q Now, we turn to the bottom of page 721, where the method of inducing labor is set out, and he says: "The following founded upon Krause's method, is the best plan for use, in the vast majority of cases." Now, in the first place, when is it proper to induce labor, at what stage, and under what circumstances? A If the diseased condition of the woman is such that, in order to preserve her life or health it becomes necessary to interrupt this pregnancy, then it is called for at any time during the pregnancy; but the induction of labor --

Q Now, under what circumstances and because of what conditions were these 45 or 50 abortions that you have testified to have performed, or assisted in performing, or taken part in performing, in your fifteen years of practice, performed? A Excessive ~~nausea~~ nausea, and, consequently faulty nourishment of the patient. Structural changes in the kidneys. Heart disease. Lack of proper development in the bony structure of the woman. Fibroid conditions.

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Q Indicating what? Fibroid conditions? A That indicates a condition of fibroid degeneration, giving rise, usually, to tumors,, which interfere with proper development and delivery by the woman, at the full term.

Q Were these operations performed under circumstances when, in your judgment, the woman's life was in danger?

A Yes, sir.

Q And ~~as~~ did you ever perform one of these operations under any other circumstances? A No, sir.

Q Now, these patients from Europe that Mr. Clarke referred to yesterday. Have you had any patients from Europe? A I may have had.

Q And what were those cases, if you recall? A General conditions, gynecological conditions. I don't remember exactly.

Q Well, is it not a fact that women need constant attention for various ailments, and that in their genital organs --

MR. CLARKE: All women, you mean?

MR. McMANUS: No.

BY MR. McMANUS:

Q But I mean that the practice is very extensive; is it not? A Yes, it is very extensive.

Q And how many doctors of medicine or surgeons do you know that are engaged in the practice of gynecology exclusively,

or almost exclusively in this city? A I should say at least two hundred and fifty.

Q About two hundred and fifty? A Yes, sir.

Q Engaged in the same line of practice that you are engaged in? A Yes, sir.

Q And how many physicians are engaged in practice in the city of New York; do you know? A About five thousand.

Q Five thousand? A Yes, sir.

Q Now, this method of inducing labor, mentioned at page 721, to what period does that refer, in the pregnancy? A I get that first part of the question.

Q He refers now to the method of inducing labor: "The following, founded upon Krause's method, is the best plan for use in the vast majority of cases"? A The seventh, eighth and ninth month.

Q Are you able to state, from your examination of this woman, and your examination of her genital organs, so far as it went, whether she was positively pregnant or not? A No, sir, I am not.

Q Now, doctor, is it your habit or custom to carry instruments for more than one case at a time, when you leave your office?

MR. CLARKE: I object.

MR. McMANUS: That was brought out on Mr.

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Clarke's examination, your Honor.

THE COURT: I overrule the objection.

A That is very often necessary for any physician whose time is limited, and who cannot go back to his office.

BY THE COURT:

Q Is that your custom or practice? A Yes, sir.

BY MR. McMANUS:

Q And is it your common practice or not? A Yes, it is, when I am to see more than one case, before returning to the office.

Q And are those instruments sterilized and wrapped up in a towel, before you leaved your office, as a matter of custom? A Yes, sir.

RE-CROSS EXAMINATION BY MR. CLARKE:

Q Did you use a bougie in any of those forty-five cases?

A No, sir.

MR. McMANUS: I object to this, as already gone over.

THE COURT: Objection overruled.

MR. McMANUS: Exception.

BY MR. CLARKE:

Q What is the answer? A No, sir.

Q Did you take a bougie along with you in the bag, in

all of those forty-five cases? A In those particular cases?

Q Yes. A Not for use in those particular cases.

Q Did you have it out, as you did in this case? A I may have had it for use in other cases.

Q But you never used it in your life, to cause an abortion? A No, sir.

Q Is that a fact, doctor? A Yes, sir.

Q Now you say that you took no curet along. That doesn't say that you were not going to perform an abortion, does it, doctor? A As I think it necessary to be performed.

Q Now I ask you as an expert whether the fact that you didn't take that along, is any proof that you were not going to perform an operation, is it? A As I would say it should be performed, yes.

Q But it is one of the recognized forms of procuring an abortion; is it not?

MR. McMANUS: Objected to.

BY MR. CLARKE:

Q Now, the fact that you didn't take a curet with you wouldn't prove that you were not going to perform an abortion on that first day, would it? Now be frank.

MR. McMANUS: Objected to as purely speculative.

THE COURT: Objection sustained.

BY MR. CLARKE:

Q Do you mean to say that it is necessary, if you are going to perform an abortion, to have a curet there? A Absolutely; as I would perform an abortion.

Q Yes. That is one way? A Absolutely, as I would perform an operation.

Q Yes. That is the method by which you would clear out the womb, at once? A Yes, sir.

Q And you don't mean to say that that is the only way of performing the abortion? A That is the only way that I recognize. Perhaps your authorities authorize it.

Q (Question repeated) A Well, it might be performed by pushing this, or this, or this into the womb (taking up various instruments in evidence)

Q And it could be performed on one day and the physician could come back the next day and curet and clean out what was left in the uterus? A Yes, sir. It might be one way.

Q And then the fact that you didn't have a curet was not conclusive evidence that an abortion was not to be performed? A By me, yes.

Q Now, then, take a supposititious doctor. Take the case of a doctor who goes to a house, and has no curet. Would you say it was impossible to perform an abortion? A He could have this pencil with him and induce an abortion, in that way (illustrating).

Q And then you say it is more scientific to pull the fetus out, while it is still attached to the mother? A It is never attached to the mother.

Q Well, it is attached to the ~~xxx~~ tissues? A No, sir. It is floating in the waters, in the bag. And that is the only scientific way, sir.

Q The placenta is attached to the fetus; is it not? A No, sir.

Q And the fetus is attached to the mother? A No, sir.

Q Well, is the fetus attached to the placenta? A No, sir.

Q Then there is no attachment at all? A Not of the fetus.

Q Now, you say it is more scientific to put some instrument up there, and tear that whole thing away at once, than it is to put something up there -- A So your authority says.

Q One moment. Which will cause expulsion, and afterwards take away what is left, with the curet?

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

THE COURT: Objection sustained, the question is ambiguous.

BY MR. CLARKE:

Q Now, do you say that it is more scientific to insert an instrument into the womb and empty the womb at once, of the entire fetus, placenta and all at one time, than it is to insert a bougie, or some soft article, and pack it in there, and leave it there for twenty-four hours, and then remove, with a curet, afterwards, what nature herself has not expelled?

MR. McMANUS: Objected to.

THE COURT: I am of the opinion that the examination and the cross examination of this witness upon the speculative questions has continued long enough, and had better be closed.

MR. CLARKE: Very well, sir.

BY MR. CLARKE:

Q Well, the curet is sometimes used, the second day; is it not?

MR. McMANUS: Objected to.

THE COURT: I think, Mr. District Attorney, you have exhausted that subject.

MR. CLARKE: But they make a great claim, from the fact that he didn't take a curet with him; and I want to show that it comes in, the second day.

THE COURT: No. You have gone far enough on this line, Mr. District Attorney.

BY MR. McMANUS:

Q You can perform an abortion --

THE COURT: No, Mr. McManus. I have stopped the District Attorney.

MR. McMANUS: Oh, very well, sir. That's all, doctor.

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

DIRECT EXAMINATION BY MR. McMANUS:

Q Dr. Weil, are you a physician engaged in the practice of medicine, in the city of New York? A Yes, sir.

Q Where is your office? A 252 West 91st.

Q What is that? A 252 West 91st.

Q 252 West 91st? A Yes, sir.

Q And when were you admitted to practice? A In this State or -- I was admitted in '97, in Pennsylvania.

Q And when were you admitted to practice in the city of New York? A Why, a little over two years ago.

Q And were you engaged in the practice of medicine any place else, before you came to New York? A No. Yes. In Philadelphia.

Q In Philadelphia? A Yes.

Q And your office is at 252 West 91st street in New York City? A 252.

Q Have you made any specialty in the practice of your profession? A Well, I practice general medicine but I am taking up surgery and gynecology as a specialty.

Q Gynecology, which is the science of women's diseases? A Yes.

Q Are you associated with Dr. Conrad, the defendant in this case, in any way? A Yes.

Q Did you see the complainant in this case at any time at the office of Dr. Conrad? A Yes.

Q And is she in court to-day? A I do not see her.

Q Well, you saw her the other day, on the stand? A Yes.

Q Did you see her at Dr. Conrad's office? A Yes.

Q If so, when? A I believe it was the early part of February. I don't recall the date, but I think that is approximately the time.

Q Where was this? A At 127 West 47th street.

Q At Dr. Conrad's office? A Yes, sir.

Q Now tell us the circumstances under which you saw her, and just what conversation you had with her, and that she had with you? A Well, at the time that this patient called at the doctor's, I was in the house, and sitting in the room next to the doctor's consulting room, that is, the

room that he consulted this patient in; and while I was sitting there, the doctor opened the door, and asked me to go in and take the history of that case, and take charge of it.

I went in and spoke to her; and asked her to give me the particulars of the case, saying that I would take charge instead of Dr. Conrad.

And she turned to me and she said, "Well, why can't Dr. Conrad come in?" and I said, "He will come in, if you want him, but I will take the facts of the case first. Perhaps his fees will be too high for you, and, if so, I will take charge of the case."

Q Well, what else did she say? A Well, I am afraid I can't give you the exact words, further.

Q Well, give us the best you can. A Well, she said that she was suffering with pain in the region of the vulva, the outer sexual organs of a woman; and that she had quite a swelling there, painful to the touch, and that there was a discharge.

And I said -- well, I said I guessed I could take charge of it, if she wanted me to, and she said, no, she said she wanted Dr. Conrad to take charge.

And so I walked out of the room, and I sent Dr. Conrad in.

Q Now, tell us where she said this swelling was?

A Why, right at the entrance of the vagina. The vagina is slit, similar to that (illustrating); and the abscess laid right at the junction of the skin of the vulva and the mucous membrane of the vagina. The gland lies right in there, and the swelling was there.

Q And she told you that she had the swelling at the outside of the --

THE COURT: No, Mr. McManus. There is no necessity of repeating his answers.

BY MR. McMANUS:

Q Did she say anything as to being pregnant?

THE COURT: No. What did she say? That is the plain question to put. The habit of counsel leading becomes so inveterate.

A Well, I told you practically everything that she said.

BY MR. McMANUS:

Q Was anything said by you or her as to the subject of pregnancy?

THE COURT: No. Now, you must pursue a proper line of examination.

BY MR. McMANUS:

Q Now, have you given us all the conversation that you had with her? A Yes, sir; all the facts.

Q And have you exhausted your memory on that subject?

A Yes, sir.

Q Now did she say anything to you or did you say anything to her on the subject of pregnancy? A Nothing at all.

Q Are you positive on that point? A Absolutely.

Q Did she tell you, or say anything to you, about wishing to be relieved of any pregnancy? A Nothing at all.

CROSS EXAMINATION BY MR. CLARKE:

Q What were you doing at Dr. Conrad's? A Sitting there, reading.

Q Are you an assistant of his? A I am.

Q And you have an office of your own, haven't you? A I have.

Q Well what is the relation? Explain it briefly?

A Well, I simply assist him. Administer anaesthetics for him, and remove dressings and that sort of thing.

Q When are you at his office? A When he sends for me.

Q And he sent for you that day? A I suppose so, or I wouldn't be there.

Q For some special case? A Yes;; I presume so.

Q Well, it wasn't this case? A No, sir.

Q Now, did the lady use the word "vulva"? A No, sir.

Q What did she say? A She said her private parts, and I located it for her.

Q Well, she said near the skin? A She simply said her private parts. She said that it was a swelling that she could feel from the outside, and I assumed it must be there, because that's the only place where an abscess develops in that region.

Q Did you say "vulva" to her? A No, sir.

Q And she didn't say whether there were any others, any other abscesses or swellings further inside, did she?

A No, sir, she didn't; and I didn't ask her.

Q She had her baby with her, didn't she? A Yes.

Q Was this other lady with her? A No.

Q Did you see Mrs. Blecher, at any time? A Never; not until in court here.

Q And so that all you know is what took place, the first time Mrs. Levine came? A Yes.

Q Now, doctor, have you been in court while Dr. Conrad has been testifying? A No.

Q You have been out in the hall? A Yes.

Q Now, do you perform abortions? A No.

Q Have you ever performed an abortions? A Well, under proper circumstances I might, I suppose.

Q Well, have you? A Yes.

Q Didn't you perform an abortion on a young girl, fourteen years old, named May Kenney?

MR. McMANUS: That is objected to as immaterial, irrelevant and incompetent; and, further, as being a violation of Section 831 of the Code of Civil Procedure.

THE COURT: Objection overruled.

MR. McMANUS: Exception.

MR. CLARKE: Bring her in.

BY MR. CLARKE:

Q ~~Did~~ Did you or did you not? A Is that the party you mean (indicating a young girl in the court room)?

MR. McMANUS: The same objection and exception, if the Court please.

THE COURT: There is a question asked by the witness.

MR. CLARKE: Yes, sir. He asks if that is the lady, and I said it is.

BY MR. CLARKE:

Q Now answer my question? A No.

Q You never saw her before? A I did.

Q What did you do to her? A I treated her.

MR. McMANUS: I object to this, on the same

grounds.

BY MR. CLARKE: Do you mean to say that you didn't produce a miscarriage on that young girl?

MR. McMANUS: Objected to.

THE COURT: He has already said that he did not.

BY MR. CLARKE:

Q Did you produce any form of abortion, miscarriage or premature delivery? A No, sir.

Q Was she with child? A No, sir.

Q Will you swear to that? A I will.

Q Who brought her to you? A I don't know the party's name. But I believe I got her through Dr. Conrad; that is, he referred her to me.

Q Well, that is, a woman brought her to his house, and returned her over to you; is that it?

MR. McMANUS: Objected to.

THE COURT: Objection overruled.

MR. McMANUS: Exception.

A I don't know who brought her to Dr. Conrad. I have no knowledge of that at all.

BY MR. CLARKE:

Q You simply know that Dr. Conrad turned her over to you? A I didn't see her until I got the address from

Dr. Conrad, and called at her house.

Q Where was that? A 43rd street.

THE COURT: I think that is sufficient, Mr.

District Attorney.

BY MR. CLARKE:

Q Now, I want to know what operations you performed on that girl? A

THE COURT: No. I exclude it.

BY MR. CARKE:

Q Have you been in court at all during this case?

A Yes.

Q Have you been in court while testimony as to these instruments have been given? A Yes.

Q Do you ever use these bougies? A Yes.

Q What do you use them for? A Different purposes.

Let me see them and I will tell you. They might be used as --

MR. McMANUS: I object to this as not being in the line of the direct examination.

THE COURT: Objection sustained.

BY MR. CLARKE:

Q Do you know Jennie Brown, the nurse? A Yes.

Q How long have you known her?

MR. McMANUS: Objected to, as not within the scope of the direct examination.

THE COURT: Objection overruled.

MR. McMANUS: Exception.

A Why, possibly, a year or a year and a half.

Q Is she a regular nurse for Dr. Conrad? A No.

Q What? A No.

Q Well, what is she? A Well, she nurses for him occasionally, in cases when he has them and wants her. She is not regularly in his employ.

Q Well, what nurses are regularly in his employ?

MR. McMANUS: Objected to.

THE COURT: Objection sustained.

BY MR. CLARKE:

Q What method do you use for performing abortions?

MR. McMANUS: Objected to.

THE COURT: Objection sustained.

BY MR. CLARKE:

Q Well, you are an expert on abortions; aren't you?

MR. McMANUS: Objected to.

THE COURT: He may answer the question.

A I am not. At least, I would like to have experts defined, possibly.

BY MR. CLARKE:

Q Well, you have performed the operation, and know how to perform it? A Well, I suppose every physician knows

how, and has done it.

Q Well, what method would you use? A Well, in the cases where I have acted, the uterus has been emptied, and it was impossible to preserve the contents of the uterus, and the life of the woman was at stake, and, in that case, I simply dilated and cureted.

Q And was that the Kenney girl? A No; that wasn't the Kenney girl.

Q Well, do you not approve of the system of putting a Bougie in and leaving it there for twenty-four hours, and cureting twenty-four hours afterwards? A Well, that is one, possibly, of several recognized methods.

Q Well, if you put in the bougie, how long afterwards would the miscarriage take place?

MR. McMANUS: Objected to.

THE COURT: Allowed.

MR. McMANUS: Exception.

A Well, my experience is not large enough to estimate it.

BY MR. CLARKE:

Q About twenty-four hours, is it not? A I don't know. I haven't had enough experience in that matter.

Q What? A I say, I don't know; that I haven't had enough experience in that matter.

Q Now, did you make any record of this case? A What

case?

Q Of Mrs. Levine's case. A Did I? No.

Q Do you keep any records there, in Dr. Conrad's sanitarium? A No, no permanent records.

Q When a woman comes there, and gives you symptoms like these, don't you write them down?

MR. McMANUS: Objected to, as immaterial, irrelevant and incompetent.

THE COURT: Allowed.

MR. McMANUS: Exception.

A No.

BY MR. CLARKE:

Q In no case? A No.

Q Does Dr. Conrad write them down? A I don't know.

Q You don't know whether he keeps books or not? A No; I have no knowledge of his affairs.

Q So you are able, unassisted by any memorandum to give just what symptoms a woman told you she had, in a private house, on the 3rd of February, or 2nd of February last, just from memory? A Well, memory, together with the fact that the woman's condition didn't seem to warrant the price she intended paying. That impressed itself on my memory; and, for that reason, because the woman came in, and looked as though she

were the wife, possibly, of some poor laborer,

THE COURT: No, never mind that, doctor.

BY MR. CLARKE:

Q Well, because she said that she couldn't pay very much, that impressed itself on you? A No, sir. She didn't say that. I said, it looked to me that she was not able to pay that fee.

Q And that impressed her symptoms upon your mind?

A Very forcibly.

Q And, now, are you sure what her symptoms were? A Yes. I say she said that she suffered from the pain, swelling and discharge.

Q Is that all? A Yes.

Q A discharge and a swelling; and the pain.

THE COURT: Did this witness physically examine the woman?

BY MR. CLARKE:

Q Did you make any examination of the woman at all?

A No, sir.

Q You just asked her ~~these~~ these questions? A Yes.

I brought it out in some way.

Q Did you diagnose the case? A Well, I made an attempt.

Q And what did you diagnose it as? A A vulve-vaginal abscess, primarily. And the discharge would have to be

subjected to a microscopical examination, to determine the exact nature of the discharge .

Q Well, you made a price on it; didn't you? A To her?

Q Yes. A No.

Q Wasn't something said about your doing it for \$75, and that she would rather have Dr. Conrad? A No.

Q That is a mistake, is it? A Yes.

Q Well, now, the fact that the woman was pregnant was not a matter of any importance, in regard to this abscess, was it; whether she was pregnant or not would not figure in the treatment of this abscess, would it?

MR. McMANUS: Objected to.

MR. CLARKE: Why, if your Honor please, Mr.

McManus asked him if he asked her if she was pregnant.

THE COURT: Objection overruled.

MR. McMANUS: Exception.

BY MR. CLARKE:

Q Now I say, in treating the abscess, or inflamed condition of the parts, whether the woman was pregnant or not, would not affect the treatment? A That would depend on the treatment.

Q Well, in making your diagnosis, and preparing to treat her? A Well, no one would treat without examination. That

would depend on the treatment resorted to.

Q Then why didn't you ask her whether she was pregnant or not?

MR. McMANUS: Objected to.

THE COURT: Objection overruled.

MR. McMANUS: Exception.

A Well, I didn't determine the diagnosis or the line of treatment. I had simply formed an opinion from what she told me.

Q Well, but you say that, if she was pregnant, it would have affected the treatment? A I said nothing of the kind. You asked me, and I said it would depend upon the treatment.

Q Well, but you say, if she was pregnant, it would affect the treatment, don't you? A I didn't determine upon any treatment.

RE-DIRECT EXAMINATION BY MR. McMANUS:

Q Can you tell us what you treated that young girl, May Kenney, for? A Why, for gonorrhea.

Q In what form? A Well, gonorrhea at the end of the matrium.

MR. McMANUS: That is the case for the defense, your Honor.

THE COURT: The defense rests. Any testimony,

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in rebuttal?

MR. CLARKE: Just one or two questions of
Dr. West, your Honor.

REBUTTAL.

JAMES N. WEST, being recalled by the District Attorney, testified as follows:

DIRECT EXAMINATION BY MR. CLARKE:

Q Now, doctor, I omitted, on my last examination, to ask you what your position is. Will you state, briefly, what your position is, with reference to the study of medicine and surgery and gynecology?

MR. McMANUS: Objected to.

THE COURT: Objection overruled, to this question.

MR. McMANUS: Exception.

A What my experience has been?

BY MR. CLARKE:

Q Yes. And where. **A** I graduated in 1891, at Bellevue Hospital Medical College; and then served one year as an interne, in St. Catherine's General Hospital, in Brooklyn; and then served eighteen months as an interne in the Women's Hospital in the City of New York. Within a short time, I was appointed an assistant surgeon to the Women's Hospital

in the City of New York, where I had complete charge of the institution during three months in the summer, that is, acting as chief surgeon in my department, during that time.

I was then appointed to the Post Graduate Medical School and Hospital, where I served in various capacities, until about one year ago, when I became Professor of Diseases of Women in the Post Graduate Medical School and Hospital. That has been my experience in that line.

Q Now, what is this? A The Post Graduate Medical School and Hospital?

Q No. The Hospital for Women? A The Woman's Hospital in the State of New York?

Q Yes. Is that a large hospital? A Yes, sir.

Q Where women's diseases are treated? A The largest in this country, and, probably in the world; entirely devoted to gynecology.

BY THE COURT:

Q And where is that located, doctor? A Formerly located at 49th street, between Lexington and Park avenues.

BY MR. CLARKE:

Q Well, you have had some experience in the diseases of women, and operations on women; have you not? A Yes.

Q During all this time? A Yes. I have been devoting almost all my time to that work.

Q Now, in the first place, doctor, you have examined these different instruments, which the defendant has identified here; haven't you? A Yes, sir; this morning; those identified this morning?

Q No. Those on the stenographer's table, and marked in evidence in this case? A Yes.

Q Now, the defendant has stated that these are not operative instruments. I ask you, in your opinion, whether they are not operative instruments?

MR. McMANUS: Objected to, as immaterial, irrelevant and incompetent and improper, as rebuttal.

THE COURT: I overrule the objection.

MR. McMANUS: Exception.

A These instruments are suited for operations.
BY MR. CLARKE:

Q State whether or not they are limited in their use to examination and treatment.

MR. McMANUS: Objected to as before.

THE COURT: Objection overruled.

MR. McMANUS: Exception.

A I don't consider them to be an ordinary outfit for treatment.

THE COURT: Strike out the answer.

BY MR. CLARKE:

Q Well, I ask you if their use is limited to treatment and examination alone? A It is not.

Q Now, the defendant has testified that, in order to tell what operation a surgeon is about to perform, it would be necessary to examine all of his instruments, that is, his outfit. Is that so? A It is.

Q That is recognized to be so, is it not? A Yes.

Q Now, I ask you, after examining this outfit, to tell whether it is -- I will take out the word outfit, and say collection of instruments here -- and ask you whether it is a collection of instruments suited for the performing of the operation known as abortion?

MR. McMANUS: Objected to, upon the ground that the witness has already stated, on his first examination, that he never performed an abortion.

THE COURT: I overrule your objection, on that ground.

MR. McMANUS: Exception.

A It is a suitable outfit for that purpose, according to the most accepted methods.

BY THE COURT:

Q When you say outfit, doctor, is that -- A A collec-

tion of instruments, I should say.

Q Do you mean all the instruments and articles that have been put in evidence here? and on which the defendant has been questioned? A Yes, sir; those instruments which I examined, and that outfit which was contained in that bag.

Q And which are before the jury now? A Yes, sir.

BY MR. CLARKE:

Q Now this strap, which has been put in evidence here, and testified to by the defendant, I ask you if the usual and common purpose of such a strap would be for the examination of the patient, or whether that strap is used commonly for operations?

MR. McMANUS: Objected to.

MR. CLARKE: The defendant testified that it was used only for operations.

THE COURT: Objection sustained.

BY MR. CLARKE:

Q Is it true that that strap, as the defendant testified, is only properly used for examinations?

MR. McMANUS: Objected to. The defendant did not so testify.

THE COURT: Objection sustained.

BY MR. CLARKE:

Q Well, for examination and treatment.

MR. McMANUS: Objected to as before.

THE COURT: Allowed.

MR. McMANUS: Exception.

A It is more frequently used for operations than for examination and treatment. That would be an unusual use, I should think.

THE COURT: Strike out the latter part of the doctor's answer, "That would be an unusual use, I should think."

BY MR. CLARKE:

Q Now, what is the usual and common use of bougies, such as have been put in evidence here, in relation to performing an abortion?

MR. McMANUS: Objected to, as immaterial, irrelevant and incompetent.

THE COURT: Objection sustained.

BY MR. CLARKE:

Q Well, I ask you if those are drainage pipes (indicating People's Exhibit 15)?

MR. McMANUS: I object to that; on the ground that it is immaterial, irrelevant and incompetent.

THE COURT: Objection sustained.

BY MR. CLARKE:

Q Is "Hirst on Obstetrics" a recognized authority, doctor? A Yes.

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Q I ask you whether the insertion of a bougie into the uterus, either with or without a stilet, is a recognized method of causing an abortion?

MR. McMANUS: Objected to, as not based on the evidence, and not proper rebuttal, and incompetent, immaterial and irrelevant.

THE COURT: Objection overruled.

MR. McMANUS: Exception.

A It is.

BY MR. CLARKE:

Q I ask you whether People's Exhibit 15 is such a bougie?

MR. McMANUS: I make the same objection.

THE COURT: Objection overruled.

MR. McMANUS: Exception.

A The exhibit is not marked.

MR. CLARKE: No, but it was marked. That is it (indicating).

A These are such instruments as are used for that purpose.

Q Are bougies used in making examinations?

MR. McMANUS: Objected to on the same ground, as not based on the evidence.

THE COURT: I sustain the objection, on general grounds.

BY MR. CLARKE:

Q Now would the fact, doctor, that there is no curet in this collection, would that show that -- would that prevent the collection from being used for abortion?

MR. McMANUS: Objected to.

THE COURT: The question is ambiguous.

BY MR. CLARKE:

Q Is it necessary to have a curet, in order to perform an abortion? A No.

MR. McMANUS: Objected to as not based on the evidence, and as improper rebuttal.

THE COURT: The question is ambiguous and inartificial. I sustain the objection. Strike out the answer.

BY MR. CLARKE:

Q A curet is a surgical instrument? A Yes, sir.

Q Now is it a necessary instrument for a surgeon to have?

MR. McMANUS: Objected to.

BY MR. CLARKE:

Q For the purpose of performing the operation known as abortion?

MR. McMANUS: I objected, on the ground that it was incompetent, immaterial and irrelevant, and not based on the evidence.

THE COURT: Objection sustained.

BY MR. CLARKE:

Q Taking Hirst's method, as given in the book, where a bougie is inserted, and left there for twenty-four hours, and then, after the foetus is expelled, the operation is performed of removing the contents, would a curet be necessary, on the first day of such an operation?

MR. McMANUS: Objected to as not being within the limits of the evidence, and as immaterial, irrelevant and incompetent.

THE COURT: Allowed.

MR. McMANUS: Exception.

A No,

BY MR. CLARKE: Q It would not? A No.,

Q When would the curet be used?

MR. McMANUS: Objected to.

THE COURT: Objection overruled.

MR. McMANUS: Exception.

A After the contractions had been stopped, and at least a part of the ovum expelled.

Q And that would be in about what time? A Well, it might be anywhere from a few hours to twenty-four hours. The time would vary with the woman.

Q And what is the curet? A A curet is a little spoon-like instrument, fenestrated, that is, with an opening in it, with a handle to it, that is used for the purpose of cleaning out cavities, which contain material which should come away, that is, abnormal tissue. A uterine curet, however --

Q That is what I meant. A Is one that is used to clean out the uterus of such material, unnatural tissues, which may be pathological.

Q Now, doctor, if a woman were suffering from an inflammation of the vulva, with a discharge, leucorrheal discharge, what of these instruments would be necessary, in order to treat her?

MR. McMANUS: Objected to, as immaterial, irrelevant and incompetent.

THE COURT: Objection sustained.

BY MR. CLARKE:

Q Well, suffering from the symptoms that the defendant testifies Mrs. Levine says she was suffering from?

MR. McMANUS: Objected to.

THE COURT: Objection sustained. The indication of your question is, that it is based upon a hypothesis. If that is so, it should be properly framed, and all the facts assumed in the hypothetical

presentation to the doctor.

BY MR. CLARKE:

Q Assuming that the woman was suffering from a painful swelling, on the outer part of her privates, and that was accompanied by a discharge, and that was all the information that the physician had, would you consider this the proper outfit to treat such a case?

MR. McMANUS: Objected to, as not fully stating the evidence.

THE COURT: Objection sustained.

MR. CLARKE: Well, on the ground that I haven't covered the evidence?

MR. McMANUS: Yes.

MR. CLARKE: Then I think he should point out in what respect I have not.

BY MR. CLARKE:

Q Well, I ask you if this speculum, People's Exhibit 3, is used in abortion cases? That sort of a speculum (indicating).

MR. McMANUS: I objected, on the ground that the witness has testified --

THE COURT: Objection sustained.

MR. CLARKE: Mr. Contad said that it couldn't be used; that he would want a depressor.

BY MR. CLARKE:

Q Is it true that, if an abortion was to be performed, such a speculum, People's Exhibit 3, would not be used, or could not be used?

MR. McMANUS: Objected to, as not in accordance with the evidence.

MR. CLARKE: That is substantially the evidence.

THE COURT: Objection sustained.

BY MR. CLARKE:

Q Isn't it true, as testified to by this defendant, that this speculum is not fitted for examination or any other purpose, in a case where the physician intends to operate, and cause an abortion?

MR. McMANUS: I object to that, as not being based on the evidence.

MR. CLARKE: He says that this was not fitted for the purpose.

THE COURT: The prefixing to the question, "Is it true, as the defendant has testified", is improper. Ask the witness the direct question. I sustain the objection.

BY MR. CLARKE:

Q I show you People's Exhibit 3, which is a speculum, and ask you if that could be used, and whether it would be a

proper instrument to use, for distending the vagina, in the case of an operation to produce an abortion?

MR. McMANUS: Objected to.

THE COURT: Mr. District Attorney, you ask if it could be used. An instrument might be used, and it might be used improperly and unprofessionally and unscientifically. The qualification is not broad enough.

BY MR. CLARKE:

Q The proper and usual instrument for that purpose?

THE COURT: Usual, is not broad enough.

BY THE COURT:

Q Professor, from your experience in the profession, and from your examination of that instrument, can you say whether or not it is a suitable and proper instrument to use --

THE COURT: Now, follow up the question..

BY MR. CLARKE:

Q In distending the vagina, previous to performing the operation of abortion?

MR. McMANUS: Objected to.

THE COURT: Allowed.

MR. McMANUS: Exception.

A I would say that it is a suitable instrument for such a purpose.

BY MR. CLARKE:

Q Now, do you know what a depressor is? A Yes.

Q What is it? A It is instrument with a handle and a blade to it, curved somewhat to suit the parts into which it is to be introduced.

Q Is it used for a similar purpose to this? A Yes.

Q Either one can be used? A Yes.

Q Now, as to the dilator, People's Exhibit 8. If an operation for abortion were to be performed, and the neck of the womb dilated, I ask you whether this is a suitable and proper instrument for that purpose?

MR. McMANUS: I object to that, as not being within the evidence.

THE COURT: Objection overruled.

MR. McMANUS: Exception.

A It is.

BY MR. CLARKE:

Q And would it be necessary to have a dilator, that dilated in several directions? A It would not.

Q I show you the tenaculum, Exhibit , and I ask you what part that would play in an operation for abortion?

MR. McMANUS: I object to this, on the same ground.

BY MR. CLARKE:

Q I ask you if that is a suitable and proper instrument for steadying the womb, while a bougie is being inserted, in the operation for abortion?

MR. McMANUS: I object to that, on the ground that it is not within the evidence, and is purely speculative, and is not a proper subject of expert opinion in this case.

THE COURT: Objection overruled.

MR. McMANUS: ~~Objection~~ Exception.

A It is a suitable instrument,

BY MR. CLARKE:

Q Now, doctor, how long did you say you had been engaged in gynecology? I just want to get the number of years. I forget it. A Since 1894; ten years in that specialty.

Q And in that time have you found it necessary to perform the operation of abortion?

MR. McMANUS: Objected to, as seeking to contradict his own witness.

THE COURT: Objection sustained.

BY MR. CLARKE:

Q Well, I ask you whether this is a common operation, or a rare one?

MR. McMANUS: Objected to.

THE COURT: Objection sustained.

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BY MR. CLARKE:

Q I ask you whether forty-five case in fifteen years wouldn't be a remarkable number of abortions to be performed by one physician?

MR. McMANUS: Objected to.

THE COURT: Objection sustained.

THE 11TH JUROR: Your Honor, may I please ask this witness a question that I sent up to you, before. It is very strongly in my mind, and I would like to ascertain.

THE COURT: Have you that memorandum, Mr. Juror?

THE 11TH JUROR: Yes.

THE COURT: Would you let me have it again?

THE 11TH JUROR: Yes, sir.

THE COURT: I was not able to decipher the whole of it, and I did not understand it. I cannot permit it, Mr. Juror, because it is not evidence, it would not be evidence. You may, Mr. Juror, if you think proper, word the question a differently, and I will permit the defendant to be recalled, and you may ask him that question, if it be worded a little differently.

THE 11TH JUROR: Well, I would like to ascertain if it be the common custom among physicians --

THE COURT: No, you see there is the ~~vicious~~ vicious part of the question. What is the common custom among physicians, is not evidence.

THE JUROR: Well, does a patient ever go to a doctor or specialist, and, without being examined, get a rate, unless that specialist investigates what is the matter with him, where he has a fixed scale of charges, according to the evidence?

THE COURT: I cannot permit the question, sir.

CROSS EXAMINATION BY MR. McMANUS:

Q You testified the other day, as I recall, that you had never performed an abortion? A That is correct, sir.

Q Did you ever induce a miscarriage? A No, sir.

Q You produced this book, I believe, here, this morning, did you not? A Yes, sir.

Q This text book of obstetrics, by Hirst? A Yes, sir.

Q And do you accept this as an authority? A Yes.

Q In the performance of necessary abortions? A Yes.

Q Then, it says here, "The woman is etherized." Do you accept that as proper? A As proper, yes, but not necessary.

Q Well, you testified that you accepted this as being the correct method? A As an authority.

Q So that you would not etherize, in performing an

abortion? A If I were to perform an abortion, would I etherize, to begin with?

Q Yes. A No, sir.

Q At that stage? A No, sir.

Q And then you differ from this authority that you have produced here? A Yes.

Q Is that a painful or not painful operation, at this stage, up to four months? A Not very painful, I should think.

Q Not very painful? A No, sir; I should think not. Pardon me. I don't know that I fully comprehended your question. Perhaps, it was not stated fully enough. Do you mean the beginning of the induction of abortion? Is that painful?

Q I mean the method of inducing abortion, mentioned here, at page 720 of Hirst, in his text book of Obstetrics, where he says, "The method employed by myself, with satisfaction, in a number of cases, may be described as follows: The woman is etherized, and placed in the dorsal position upon an operating table." A Well, that is the method, up to four months?

Q Yes. A Well, that would be painful. I thought you referred to the other method, after that time.

Q No, I am referring to the four months period. A Yes.

Q And then you would bring with you, and would use it?

A Yes, for the four months, if I were going to dilate.

Q Now, adopting the methods indicated here --

THE COURT: Mr. McManus, permit me to suggest to you that, in order to have your question properly framed on the record, you should predicate it as being read from this authority, because it may appear as being your own question.

MR. McMANUS: Yes, sir. I thank your Honor for the suggestion.

BY MR. McMANUS:

Q I am reading now from page 720 of Hirst's Text Book on Obstetrics: "The anterior lip of the cervix is fixed with an double tenaculum." Is this a double tenaculum this is here (indicating)? A No.

Q Would you use this tenaculum under the circumstances narrated here? A I might.

Q Is that the regular tenaculum to be used for the purpose? A That tenaculum is for fixing the uterus. There is no regular tenaculum made for that purpose.

Q Is that a double tenaculum? A No.

Q Then you disagree again with your authority, Hirst's Text Book of Obstetrics? A I do not disagree with him, sir.

Q Then you would use a double tenaculum? A I don't

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consider that essential. It doesn't seem so to me.

Q Then you differ with him? A I consider that a non-essential detail. Or, as to whether it is a double or a single tenaculum. I could steady the cervix with either.

Q Can you grasp the anterior lip of the cervix with this tenaculum? A Yes. You can seize and fix it. You can't grasp it, in the sense of having two surfaces opposed, but you can seize ~~it~~ with that hook.

Q Then that presents a different condition from that which obtains here? A I don't think it does.

Q Then absolutely the same? A Well, not absolutely the same, but it is a question of grasping or hooking the cervix, as I see.

Q Would it hold the cervix firmly while you were operating? A I think so.

Q Would it hold the cervix while dilating it, under these circumstances here, for procuring an abortion? A For curing for an abortion, I have done it.

Q Well, now, my question is simple enough, and won't you answer it? Have you used for the purpose of aiding you in securing an abortion? A No, sir.

Q Could you use that speculum to carry out the treatment named here, page 620 of Hirst's Text Book of Obstetrics?

A You couldn't use it.

Q Is it the proper

Q Is it the proper speculum to use for that purpose?

A No, I wouldn't say that it is.

Q Can any operation be performed properly through that speculum? A Yes.

Q What operation? A Dilation of the cervix, and the introduction of one of those bougies, for the production of abortion.

Q Have you ever done it, under those circumstances?

A No, sir.

Q You are merely giving your opinion? A I am.

Q And not from experience? A No, sir.

Q Is this a Hegar's dilator that we see here (indicating)?

A No.

Q Would you, at the period of pregnancy mentioned in this book, use "Hegar's dilators, or, cautiously with branched dilators"? A No, sir.

Q "An Emmet's curetment forceps is inserted into the womb, opened and shut in several directions, so as as to crush the ovum, and then wothdrawn, with whatever portion of the ovum or embryo that comes with it." Would you use an Emmet's curetment forceps, under the circumstances I have just stated? A No.

Q Again you differ from the authority that you have produced? A Yes.

Q Is there any Emmet's curetment forceps here? A No, sir.

Q Doctor, did you ever carry any instruments in your bag, intended for more than one case, when you left your office?

MR. CLARKE: Objected to.

THE COURT: Objection overruled.

A Yes.

BY MR. McMANUS:

Q Haven't you all these instruments in your own office, or instruments similar to them? A I have instruments -- no, I have not; no, sir.

Q Well, which have you not? A I have none of the bougies, which I take up here (indicating).

Q Now, the bougies are articles that can be obtained at any physicians supply house, aren't they? A Yes; I think so.

Q And are used for many purposes? A No, I think the use is quite limited.

Q Why, they are used as drainage tubes, sometimes; are they not? A I haven't seen them used in that way, sir.

Q But they can be used for that purpose; can't they? A They can be used for that purpose.

Q And the bougies are also used for insertion into the male genital organs, aren't they? A Not this kind of

bougies.

Q Didn't you admit so, sir, the other day? A No, sir; I don't think I did.

Q Well, didn't you say, in the first instance, the other day, that they were catheters, and, later on, change your testimony and say they were bougies? A Yes.

Q And so you were mistaken, when you testified as to those articles? A Yes; that's right.

Q Now, think, doctor. Don't you recall that you said the other day that those instruments could be inserted into the male genital organ? A I don't recall having said so. I am not sure that I did not say so, but I do not recall having said so.

Q Now, in the performance of the operation described by Dr. Hirst at page 720 of his work, for the removal of a foetus, would you use the speculum, the tenaculum and the dilator here present in evidence?

MR. CLARKE: Before the four months?

BY MR. McMANUS:

Q At that period? A The first period, you speak of?

Q Yes, up to four months? A No; I would not use that.