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A I did.

Q Did you undress? A I have testified to that.

Q You have not answered my question; do it now? A I decline to answer.

Q You decline to answer? A (No answer).

MR. APPLETON: I ask the Court to instruct the witness to answer.

Q On what ground do you decline to answer? A Well, I decline to answer the question.

THE COURT: He can decline on the ground, I presume, that he believes the answer would degrade him.

THE WITNESS: I decline to answer the question.

Q Why do you decline to answer the question? A Because I do, sir.

MR. APPLETON: I ask the Court for a ruling and instruction to the witness.

BY THE COURT:

Q You must answer the question, unless you base your declination upon one of two grounds, either upon the ground that the answer would tend to make you liable to a criminal charge or upon the ground that it would tend to degrade you?

A Well, it would tend to degrade me. I would not wish to testify to that fact.

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BY MR. APPLETON:

Q What? What did you do, you say, you went into the bed room of Mrs. Martinto? A I said that I went there at twenty minutes to twelve.

Q How long did you stay in that apartment? A I decline to answer the question.

MR. APPLETON: I ask the Court to instruct the witness to answer.

BY THE COURT:

Q I will instruct you to answer how long you remained there? A Until Sunday morning.

BY MR. APPLETON:

Q What room did you stay in in the apartment until Sunday? A To the right off the parlor or sitting room.

Q Is that the room that is the bed room? A Yes.

Q The bed room of Mrs. Martinto? A Yes.

Q Was Mrs. Martinto in the room? A Yes, sir.

Q While you were there? A She was.

Q Was anybody else in the room besides Mrs. Martinto and yourself? A Two children.

Q What two children? A The little girl; two little girls.

Q Who else was in that room there? A Two little girls.

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Q Mrs. Martinto's two little girls? A Yes, sir.

Q Where did the youngest of them sleep? A In a little iron bed.

Q And where did the other one sleep? A In the bed with Mrs. Martinto.

Q And in the bed of Mrs. Martinto, did you go into it?
A I did not say that.

Q You say you stayed in the room? A I said I stayed there.

Q Did you get into that bed? A I decline to answer.

Q Was there any other bed in that room besides those two beds? A No, sir, there was not.

Q Did you go into the bed with the little baby in the crib? A No, sir, I did not.

Q Did you go into the bed with Mrs. Martinto? A I decline to answer the question.

Q Now, at the Police Magistrate's examination, were you asked by Magistrate Whitman this question: "Where were the children the night you were there" -- that is, referring to November 10th; were you asked that question? A I was, sir.

Q Did you make this reply: "A The baby was in its bed and the little girl was in bed with Mrs. Martinto." A I think I did, sir.

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Q Did the Magistrate then ask you: "And you"? A Did he?

Q Yes? A I don't remember that he asked me that.

Q And did you reply, "Yes, sir", and the little boy was in the room with Louise? A Yes, sir, I did.

Q So then in the police court you swore that you got into the bed with Mrs. Martinto and the little baby? A I don't remember swearing that I did get into the bed with Mrs. Martinto.

Q Do you deny you swore to it? A I says I don't remember.

Q Do you deny that you said it? A I don't remember saying it.

Q Do you say now, Page, that you do not remember now whether or not you testified in the Police Court -- A That I got into the bed with Mrs. Martinto.

Q Wait until I finish the question. Do you mean to say now that you do not remember whether or not you testified in the Police Court before Magistrate Whitman, that you occupied the same bed on the night of November 10th as Mrs. Martinto and her little three year and a half old child? A I says I don't remember testifying to that.

Q You do not remember whether you testified to that or not? A I do not.

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Q Is it such a common thing that you, for you to say that you are in bed with a white woman and her babies, that you do not remember it now?

MR. HOCHSTADTER: I object to that.

THE COURT: I will exclude the question.

MR. APPLETON: I think the question is a proper one, if your Honor please.

THE COURT: I have excluded it.

Q Yet you cannot remember whether you said that or not?

A (No answer).

Q Will you answer? A I have answered that.

Q You cannot remember whether you said that or not?

A I don't remember whether I said so or not.

Q If you said so, was it true? A I don't remember saying so.

Q You do not remember saying so? A I don't remember saying so.

Q You know this little child, don't you? A I do, sir.

(Mr. Appleton indicates a child who is brought into the court room at this point).

Q You know it as Mrs. Martinto's little child? A Yes, sir.

Q Is that the little child that sleeps with Mrs. Martinto?

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A She is the child.

Q Is that the little child that slept with Mrs. Martinto on the 10th day of November? A Yes, sir.

Q Now, you say that you decline to answer the question as to whether or not you got into bed with Mrs. Martinto, on that night, on the ground that it would degrade you?

A I decline to answer.

Q That is the reason that you decline to answer?

A Yes, sir.

Q Yet, by your whole conduct, you want the jury to believe that you did get into bed with this woman, don't you? A No, sir, I don't.

MR. HOCHSTADTER: I object to the question and ask to strike out the answer.

THE COURT: Objection sustained. Strike out the answer.

Q Don't you want them to infer that?

Objected to.

Objection sustained.

Q Will you tell how you would be degraded by answering that question?

MR. HOCHSTADTER: I object to that. He does not have to state how it would degrade him. The law says he

need not answer if it tends to incriminate or degrade him.

The man is a married man, and he has a right --

THE COURT: Objection sustained.

Q Now, were you asked this question in the Police

Court: "Now, you told us that on the 10th of November, that was Saturday, you went to Mrs. Martinto's house or apartment, at 202 West 140th street? A Yes, sir." -- is that true; were you asked that question and did you give that answer in the Police Court? A I did.

Q Then was the next question asked of you this:

"Did you occupy a bed there with her? " And did you answer "I did"? A I don't remember whether I did or not.

Q You do not remember whether you did or not? (No answer).

Q And were you asked this question: "In what room was that? A In the front room, right off the parlor or sitting room, a front room with one window in it."-- did you give that answer to that question? A I testified that that was her bed room.

Q Did you give that answer to that question? A To which question, sir?

Q Did you give this answer to this question: "In what room was that? A In the front room, right off the parlor or sitting room, a front room with one window in it." A I

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understand that answer; to which question do you mean, sir?

Q Well, I did not give you but one, did I? A I testified to that, that her bed room was the room, right, with one window in it.

Q Now, this is on page 63 of the stenographer's minutes; you said you don't remember whether you made the answer "Did you occupy a bed there with her", and your answer, "I did" you say you don't remember that? A I do not, sir.

Q You do not remember this, on page 62, and on page 63, that was asked of you by your own counsel; then you were asked by the Magistrate "Where were the children the night you were there?" And did you answer "The baby was in the bed and the little girl was in bed with Mrs. Martinto"? A He asked me to explain --

Q No, were you asked that question and did you give that answer? A I did give the answer how they slept and how they were situated.

Q And did the Magistrate follow with this question: "And you" -- I will read the two questions and the two answers and see if you gave them: "Q Where were the children the night you were there? A The baby was in its bed and the little girl was in bed with Mrs. Martinto." "And you?" "Yes, sir." -- was that your answer, "Yes, sir, and the little boy was in the room with Louise." -- were you asked those

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two questions and did you give those two answers to the Magistrate? A I did tell, yes, where the children slept.

Q That is not the question. Were you asked those questions and did you give those answers? A I did give the answers just where the children slept:

Q That is not the question. Don't you understand the question? A I understand the question.

Q Well, can't you answer yes or no? A Well, I said I did give these answers to the questions he asked about how the children slept and where they slept, and they called Mrs. Martinto to the stand afterwards, and she stated the same as I have, about where the children slept and how they slept.

Q But you do not remember the part there where you said that the little baby slept with Mrs. Martinto and you? A I said the little baby slept in the bed with Mrs. Martinto.

Q The little girl that was brought here in the court room? A Yes, sir, I testified to that, and she did, afterwards.

Q You are a smart fellow, all right? A I am telling you just what I testified to.

Q I am trying to get you to give me an answer to this question I am trying to put to you? A Well, I says I don't re-

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member.

Q You don't remember whether you testified to that on two occasions in the Police Magistrate's Court? A I says I don't remember.

Q But you remember these other things perfectly, don't you? A Yes, sir, because the Magistrate called Mrs. Martinto and asked her, and she testified the same thing.

Q But these things are not so important as the fact as to whether or not you slept in the same bed with that little girl and her mother; are not as important to your mind, and do not impress you so much, as does the fact that you told where these people slept?

MR. HOCHSTADTER: I object to these statements ex parte made by the District Attorney, on the ground that they tend to prejudice this case before this jury, and are entirely incompetent, immaterial and irrelevant.

THE COURT: The District Attorney is exercising his privilege of cross-examining the witness. I think the matter is sufficiently serious to warrant the question.

Q The fact that you testified in the Police Court that you were in the same bed with Mrs. Martinto and her little three and a half year old child, that you testified to that,

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twice in the Police Court, does not impress your mind so much as the fact that you testified in the Police Court where the little girl slept? A (No answer).

MR. APPLETON: Oh, that is all.

THE COURT: The Court, of its own motion, strikes out all the testimony relating to the incidents of November 10th, as irrelevant to the issues presented by the indictment.

MR. APPLETON: Before your Honor goes further with that, will your Honor hear me? Knowing all this at the time the question was asked by defendant's counsel, just exactly what this defendant had testified to in the Police Court, I entered an objection. At that time, your Honor said you would hear the evidence. They went further, and they created suspicion that ~~he~~ at midnight, on the 10th of November, 1906 --

MR. HOCHSTADTER: The jurymen asked that. I never brought it up here.

MR. APPLETON: May I be heard on this point, if your Honor please? There was suspicion created. In order to be in a position to bring in all the evidence on that point to contradict this witness, I allowed the rest of it to come in, after I had requested your Honor to strike it out.

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THE COURT: Then I will allow it to stay in.

BY MR. APPLETON:

Q Now, where did you go with Mrs. Martinto on Manhattan avenue? A I did not go any place on Manhattan avenue.

Q Where did you go? A I went to the market, to the little fruit stand on 112th street, the second door from the corner, on Eighth avenue. There is a saloon on the corner.

Q You went on Eighth avenue there, did you? A I said Eighth avenue; I have stated that.

Q You met Mrs. Martinto at the corner of 112th street and Manhattan avenue? A I did, sir.

Q And where did you go with her? A At the little market.

Q Whereabouts is that? A That is the second door from the corner of 112th street and Eighth avenue.

Q Is it on the north side of 112th street or on the south side of 112th street? A It is on the west side, or it is on the east side of Eighth avenue.

Q It is on the east side of Eighth avenue? A The east side; Eighth avenue runs this way (indicating), and it is on the right hand side going up.

Q Now, is it on the north side of 112th street or on the south side? A It is on that side (indicating).

Q You know well enough which way is north and which way

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is south? A I beg pardon.

BY THE COURT:

Q Is it on the uptown or downtown side? A The uptown side.

BY MR. APPLETON:

Q This door, then, is two doors east, on the uptown side of 112th street? A It is the second door from the saloon, on the corner of Eighth avenue and 112th street, and next door to that is this little market.

Q And did you go in? A I did.

Q What was bought? A I don't remember. I know some little marketing, maybe some chops or something like that.

Q Haven't you told up to the present time that they fruit bought there? A I certainly did testify to that.

Q Then, did she buy fruit? A I said some fruit, and some little marketing.

Q Whom did she buy the fruit of? A The man on the outside.

Q The man who ran the fruit stand? A On the front. It is all combined together.

Q There is a fruit stand there and a meat market inside? A Yes, sir, they are all together.

Q And she bought the stuff from the man who ran the fruit stand? A She bought the fruit from him, the meat

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from the meat man.

Q What kind of looking man is he? A I don't remember.

Q Do you think you would know him if you saw him here?
A I don't think I would.

Q Was his name Gambella? A Really, I don't know his name. I didn't hear his name called.

Q Now, Mrs. Martino, at nearly midnight on the 10th of November, Saturday night, you say she bought some chops?

A I did not say that; I said some little marketing and some fruit.

Q Didn't you mention the word "chops"? A Well, I said I don't remember whether it was chops or chicken or what it was.

Q Well, you will swear it was meat? A Yes, sir.

Q You are sure it was meat? but you don't know whether it was chops, or steak or chicken or a roast? A It was some little marketing. It was not fish.

Q It some kind of meat? A Yes.

Q But you cannot specify the kind? A I didn't take that much notice of it.

Q But you swear it was some kind of meat? A I do.

Q And you swear it was some kind of fruit? A Yes, sir.

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Q And it was all put in a big bag, and you carried that home? A Yes, sir.

Q Now, what time did you leave on Sunday morning? A I left there around seven o'clock.

Q Left there around seven? A Yes, sir.

Q Was it before seven or after seven? A That I wouldn't say. I have testified it was around seven o'clock.

Q In the morning? A Yes, sir.

Q You do not know what time it was, though? A I say it was around seven o'clock. I have testified to that.

Q What time did you take the train for Dobbs Ferry?

A Why, that train ~~at~~ leaves a few minutes before eight, or a few minutes after; I think the train leaves at 8:08. on Sunday morning.

Q Leaves at 8:08? A 8:08.

Q Did you do anything before you took the train? A Did I?

Q Yes, on Sunday morning? A I did, sir.

Q What did you do? A I telephoned.

Q Whom did you telephone to? A To Dr. York Russell.

Q Where does Dr. York Russell live? A I think it is 317 West 36th street.

Q What did you say to Dr. York Russell? A What did I

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say to him?

Q Yes? A I told him there was a lady coming down to see him during that day.

Q Are you sure that is what you told him? A Am I?

Q Yes, are you sure of it? A Why, yes, sir, I am sure of it.

Q You told Dr. Russell over the telephone that a lady was coming down to see him during the day? A Yes, sir.

Q Did you tell him what your name was? A Did I?

Q Yes? A Over the telephone?

Q Yes? A I did, sir.

Q Did you tell him the name of the lady that was coming down to see him? A Did I?

Q Yes? A No, sir, I did not.

Q Well, how was he to know she was the woman you were sending? A Because she would tell him when she got there.

Q Now, you are sure you told him over the telephone that you were going to send a lady down to see him during the day? A I did, sir.

MR. HOCHSTADTER: I presume the District Attorney is aware that he is making him his witness on this subject. While it is a collateral issue, I have not any objection.

Q Now, in the Police Court, page 52 of the stenograph

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er's minutes, did you answer, give this answer to the following question: "Tell the Court what that circumstance is? A On Sunday morning, the 11th, when I left Mrs. Martinto, I goes to the 125th street station, at least I stopped at a drug store in Madison avenue, where the trolleys run up and down, in 125th street, and I telephoned Dr. Russell in 36th street between eight and nine o'clock in the morning." -- is that right? A No, sir, not eight to nine o'clock, because I testified right there that I caught the first train that left a few minutes after eight.

Q Well, I am talking about did you give that testimony before you were cross-examined so much and were tangled up quite a bit in the Police Court? A No, sir. My first testimony was that I did stop on my way up to catch the first train, and I stated there that I don't remember --

Q You stated that after your first answer, and your first statement in the Police Court was that you telephoned Dr. Russell between eight and nine, and then afterwards you changed it; I know that, but I am going to get to it? A I stated that on my way to the station I telephoned to. I testified to that, and this is my third time.

Q Then, later, on page 69, did you testify this, as follows: "Q Well, what did you telephone Dr. Russell? A I tele-

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phoned him to come up at nine o'clock; I wanted to see him."

A Come up? No, sir, I did not.

Q You did not give that answer to that question?

A No, sir, I did not. Come up where?

Q I don't know; I am only reading from these minutes.

What time did you do the telephoning? A What time?

Q Yes? A On my way to the station, Sunday morning, when I was going up to ~~xx~~ catch the first train, which on Sunday morning left, I testified, either left a few minutes to eight or a few minutes after eight; I testified to that.

Q Yes, you did that, after they gave you a time table to show that you could not have telephoned Dr. Russell between eight and nine? A No, sir, I testified to that at the first, the very first day.

Q Can you read? A Yes, sir, I can read.

Q All right. There is your testimony; you begin it, and see when you first say you went on the eight o'clock train, and I refer you to page 69? A I have testified to that, sir.

Q See if you can find it in these minutes? A I don't know that I could or not.

Q Don't you know that you never said "8:08" until they gave you the time table and you became confused over it, and then settled on the 8:08 train? A I said the train left;

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my first testimony, it is there, I guess, my first testimony was either the train left a few minutes to eight or a few minutes after eight. That is what I testified.

Q What time did you leave Mrs. Martinto's house?

A Around seven o'clock. I testified to that.

THE COURT: What is the date of that?

MR. APPLETON: November 11th.

A (Continuing): I testified, I did not say it was seven or a quarter past, or a quarter to; I said around seven o'clock.

THE NINTH JUROR: If your Honor please, I feel very bad; I feel sick to my stomach.

THE COURT: Well, do you think you will be able to go on to-morrow?

THE NINTH JUROR: Yes, sir, I will try to.

THE COURT: Is it agreeable to counsel that an adjournment shall be had now until to-morrow morning?

MR. APPLETON: It is to the People.

MR. HOCHSTADTER: Yes, sir.

THE COURT: We will adjourn now until to-morrow at half past ten o'clock.

The Court admonished the jury in accordance with Section 415 of the Code of Criminal Procedure, and adjourned the further trial of the case until to-morrow, January 24, 1907, at 10:30 o'clock A.M.

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New York, January 24, 1907.

TRIAL RESUMED.

J O S E P H E. P A G E, the defendant, resumes the witness stand.

RE CROSS EXAMINATION CONTINUED BY MR. APPLETON:

Q Now then, you say that you telephoned to Dr. Russell on the morning of the 11th of November, 1906? A Yes, sir.

Q And what did you say to Dr. Russell? A I told him that there was a friend coming down.

BY MR. HOCHSTADTER:

Q Will you kindly talk so that we can hear you up here?

A I told him that there was a friend would be down to see him, a lady.

BY MR. APPLETON:

Q And you say you told him your name over the telephone? A Joseph Page, I told him over the telephone.

Q Did you ever see Dr. Russell afterwards? A I did, sir.

Q Did you ask him if the lady had come down? A I did, sir.

Q What did he say? A He said she was down in com-

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pany with a little boy.

MR. APPLETON: Bring Dr. Russell in, please.

Q Is that Dr. York Russell (indicating person brought into the court room)? A Yes, that is Dr. York Russell, sir.

Q That is the gentleman you say had told you that a woman had come down to see him? A Dr. York Russell, if that is him.

Q That is he, is it? A If that is Dr. York Russell.

Q I ask you, if that is Dr. York Russell? A The gentleman looks something like Dr. York Russell.

Q Is that the man you had that conversation with? A I wouldn't swear that is Dr. York Russell, because I only saw him one time; that was on a Sunday night. I only saw him the one time, on Sunday night.

Q So now, you are not sure whether or not that is the doctor York Russell or not? A I said I only saw the man once, in his back office. There is a green door, that slides; that divides his two offices.

Q And that was on the Sunday night, the 11th of November, 1906, at No. 317 West 36th street in the City and County of New York? A Yes, sir.

Q Now, I ask you, I believe, if you did not testify

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in the Police Court that you told Dr. York Russell you wanted to see him; you wanted him to come up at nine o'clock?

A No, sir, I did not testify to that.

Q You did not testify to that? A No, sir, I did not.

Q Now, how long would it take, Joseph, to go from 202 West 140 th street down to No. 6 West 99th street, in the City and County of New York? A How long would it take?

Q Yes. A I judge about fifteen minutes.

Q About fifteen minutes? A I judge so, sir.

Q You say you met Mrs. Martinto at about twenty minutes to twelve on the night of the 10th of November? A Yes, sir.

Q Where did you meet her? A At 112th street and Manhattan avenue.

Q Had you been waiting there long for her? A I had, sir.

Q About how long? A About an hour and a half, or an hour and three-quarters.

Q Did she come there walking, or on a car, or how?

A When I saw her she was walking.

Q You saw her no other way except walking? A She said that she was in a cab that went by, when I was down at 113th street, I saw the cab , and it drove up over the hill, where

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the convent -- they are building a convent up over the hill there, and the cabman drove around up there, through a mistake, and she walked back.

Q Do you remember testifying this way in the Police Court, Do you know whether --: "You met her on the street? The defendant: Yes, sir." "The Magistrate: You stood on the corner?" "The Defendant: I met her there twenty minutes to twelve." "Q Day or night?" "A At night time she came there in a cab over at 113th street" -- did you testify that way? A I testified just the same --

Q No, no. Did you give those answers to those questions? A No, sir, I did not.

Q You did not, that is all.

BY MR. HOCHSTADTER:

Q Now, just while I think of it, you met her on the street there at twenty minutes to twelve, did you? A Yes, sir.

Q What was there about a cab? A About a cab?

Q Yes? A She said that she came there in this cab.

Q She told you she had come there in a cab?

A Yes.

Q But when you met her she was walking towards you?

A Yes.

Q She had discharged the cab before she met you? A Yes,

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up on the hill, by that new convent.

Q Now, you say on Sunday morning you telephoned?

A Yes, sir.

Q Do you remember where did you telephone from?

A From a drug store.

Q Who asked you to telephone for the doctor? A Mrs. Martinto.

Q And how long before that had you left Mrs. Martinto?

A How long?

Q Yes? A Well, I judge about half an hour.

Q You had just come from her house? A Yes.

Q And whendid you see him, see this doctor, subsequently? A About half past nine on Sunday night.

Q That same Sunday? A Yes, sir.

Q That same night? A Yes.

Q And who asked you to go there and see him? A I made an appointment over the telephone, that I would be down; at least, he asked me to come down.

Q Who? A Dr. Russell says to me, "You come down; I want to see you."

Q Now, where is Dr. Russell's office? A 317 West 136th street.

Q West what? A West 136th street; West 136th street.

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BY MR. APPLETON:

Q West 136th street? A West 136th street.

Q You are sure it is 136th street? A I think so;
I got it out of the telephone book.

BY MR. HOCHSTADTER:

Q Oh, you got it out of the telephone book? A Yes,
sir.

Q And you saw him once? A I saw him once.

Q Does this man look like him? A He certainly
does. There is a green shade that divides his two offices.

BY MR. APPLETON:

Q Never mind that.

MR. HOCHSTADTER: That is all.

BY MR. APPLETON:

Q Now, you would know the difference between 136th
street and 36th street, wouldn't you? A 136th?

Q Yes? A 36th street; I says 36th street:

Q Oh, you have changed it now? A Well, I testified
there; you will find it in the testimony.

Q Didn't you just answer your counsel that it was
136th street? A Well, I didn't mean the 100; yes, I
answered that.

MR. APPLETON: May the questions be read?

(The stenographer reads as requested.)

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Q Now, which is it, 136th or 36th street? A 36th street. I said 136th street.

Q And you went down to his office? A I did, on Sunday night.

BY MR. HOCHSTADTER:

Q Now, just tell what kind of house Dr. Russell lives in? A Well, it is high steps.

Q How many stories? A That I couldn't tell you.

Q A brick house, a marble building or a frame house?

A I think there is five or six steps goes up.

Q Now, where is his office? A On the first floor when you go up, at the head of the stairs.

Q Will you describe the office? A On the left hand side as you go in the hallway.

Q On the left hand side as you go in the hallway, is that right? A Yes, sir.

BY THE COURT:

Q Which side of the street is the house on, where the doctor's office is, uptown side or downtown side? A Uptown side, sir.

BY MR. HOCHSTADTER:

Q The uptown side, are you sure of that? A The uptown side.

Q You want to be careful, you know, in your answers?

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A The uptown side, on the right hand side going towards Ninth avenue.

Q On the right hand side going towards Ninth avenue?

A Yes, sir.

Q It is nearer to Ninth avenue or nearer to Eighth avenue

A It is nearer to Eighth avenue.

Q Can you give us any description of the interior, the fittings of the office? A Why, I saw an operating table, I would call it, a chair.

Q Where was the operating table? A On the left hand side, in his back office.

Q Do you remember the color of the window shades in his office? A Well, there were some people in the front office. There is a white gentleman in the midst of those people.

Q Is there more than one office there? A I only saw the two, the front office and the back office.

Q Well, then, there is a front and back office? A Yes, sir.

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

Q Now, which of the offices did you go into, the front or rear office? A Where I first went in, I come in the door from the hallway and passed through the front office into the

back office.

Q Now, will you explain how you came to make the error in saying 136th street, when the doctor lives in 36th street? Great stress has been laid upon that? A Well, just because I was thinking of 136th street instead.

Q You lived up in 125th street, did you, with your employer? A No, sir, I said just because I was thinking of 136th street at the time. My testimony is there.

Q You did testify in the Magistrate's Court? A Yes, sir, I did.

MR. APPLETON: I object to what he testified to in the Magistrate's Court.

MR. HOCHSTADTER: Well, you referred to it continually.

THE DEFENSE RESTS.

- R E B U T T A L -

MR. APPLETON: Bring Mrs. Martinto in, please.

Y O R K R U S S E L L, M. D., being called and duly sworn as a witness in behalf of the People in rebuttal, testified as follows:

DIRECT EXAMINATION BY MR. APPLETON:

Q You are a duly licensed and practicing physician under

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the laws of the State of New York, are you not? A Yes, sir.

Q Where do you live? A 317 West 36th street.

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

Q I call your attention to that lady standing there, pointing to Mrs. Teresa Martinto; did you ever see her before in your life? A No, sir.

Q I call your attention to the defendant sitting at the bar; did you ever see him before in your life? A No, sir.

CROSS EXAMINATION BY MR. HOCHSTADTER:

Q How long have you been a practicing physician, Dr. Russell? A Since 1899.

Q And your patronage is entirely composed of colored people? A No, sir, not entirely.

Q You see a number of patients daily, do you? A I do, sir.

Q Do you, upon any occasion, keep a memorandum of the visits of patients? A Yes, sir, I keep a book.

Q You do keep a book? A A register, yes, sir.

Q And do you register calls that are made upon you at your office? A Yes, sir.

Q Have you that book here? A No, sir.

Q Where is that book? A It is in my office.

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Q Did you register the calls that were made on you in the month of November, 1906? A Yes, sir.

Q You obtained, or received a subpoena, didn't you, to come here to-day, from the District Attorney's office?

A Yes, sir.

Q Did you feel any anxiety about the import of your testimony, of what they desired you to swear to here? A Not the least, sir.

Q When you were told this morning -- with whom did you consult about what testimony you were required to give?

A No one, sir.

Q Did you know before you went on the stand here to-day that you were to deny the fact of the visit of this lady?

A Not at all, sir.

Q How will you swear that you did not see this particular woman, among all the patients that you had in the month of November, 1906? A I know my patients right well; I could not forget a face.

Q You know every person that visited you in the month of November, 1906, do you? A Yes, sir.

Q And you have a book, as you say, which contains your visitors? A Yes, sir.

Q And your patients? A Yes, sir.

Q You never saw this man before, did you (indicating the

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defendant)? A No, sir.

Q And you swear to that positively? A I do, emphatically.

Q (Continuing): Independent of all the different colored people that you meet in your practice? A Sir?

Q I say, you swear that you never saw this man, irrespective of the fact that you treat any number of colored men, and you remember distinctly that he never called on you?

A Emphatically, I never saw him.

Q You never saw him? A No, sir.

Q Is it that you swear you never saw him, or that you could not remember that you ever saw him? A I swear I never saw him, distinctly.

Q Do you remember the condition of the weather on the 11th of November, 1906? A I do not. I have no knowledge; I record things, but not meteorology. I make no notes of the weather or anything like that.

Q But you do make a study of faces? A Well, not so much, unless the faces manifest symptoms of disease.

Q You do not remember the kind of weather we had on the 11th of November, but you do remember every face that you saw on the 11th of November, and on the 24th of January, 1907, you remember that? A That is easy enough to remember.

Q Yes, it seems to be? A Yes, sir.

Q Did you, on the 11th of November, or the 12th of November, have any white patient call upon you at all?

A No, sir.

Q And you remember that distinctly, without reference to your book, do you? A I do, sir.

Q When did you have a white patient call on you between the 10th and 12th of November, 1906? A I had no white patient.

Q You did not? A No.

Q When did you last have a white patient? A This morning.

Q This morning? A Yes, sir.

Q And before this morning, when did you have a white patient? A I had a white patient the day before yesterday, in my street.

BY MR. APPLETON:

Q Just a minute; did they come to your office? A They come to my office, just in proximity to me.

BY MR. HOCHSTADTER:

Q How many white patients did you have in the month of November, 1906? A None at all, that I remember.

Q Will you swear that you did not have any white patients

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in the month of November, 1906? A I will swear to that, yes.

Q How many white patients did you have in the month of December, 1906? A I probably might have had six or seven.

Q You say you probably might have had; do you mean you do not remember, or that you do remember? A I mean that I might have had six or seven patients in my district.

Q And you might not have had? A Well, I might not have had, but I did have them.

Q But you do not know? A I won't say I don't know.

Q How could you refresh your memory on that? A I could simply look up the district, because most of my white patients are within my district, in 36th street, but I scarcely practice beyond 36th and 60th streets, for I have a very large practice in the west.

Q Have you a telephone? A Yes.

Q And you make note of all telephonic communications that come to you? A No, sir, I couldn't do that.

Q Will you swear that you did not receive a telephone on Sunday, November 11th?

MR. APPLETON: I object to that. He may have received many.

THE WITNESS: I may have received several.

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THE COURT: It is testing his memory. That is all I allow it for.

MR. APPLETON: I withdraw any objection.

Q Did you receive a telephone on Sunday, the 11th of November, 1906? A I am at my office only six hours; eight to eleven in the morning, and five to eight in the evening, and going between those hours from eleven until five. My housekeeper might receive telephone calls, but I receive no calls after I am gone. I am on the road.

Q What is the color of your shades in your office, doctor? A They are light shades.

Q What was the color in November, 1906? A The color of the shades? The same as it is to-day.

Q What is the color? A I think it is light. It is a light shade.

Q You think? A (No answer).

BY THE COURT:

Q What color did you say? A I would say something lighter than that one (indicating).

BY MR. HOCHSTADTER:

Q What is the color of the shade between the two offices?

A Between the two offices I have portiers.

Q What is the color, doctor; it is a very plain ques-

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tion; what is the color of the shades between the two offices?

THE COURT: You did not give him an opportunity, counsel, to answer the question. The question was plain, but the time given the witness to answer was inadequate.

MR. HOCHSTADTER: I ask your Honor's pardon.

A The window shades above my sign is a little lighter than that (indicating). Then I have some portieres leading from the office to the door that I examine in, and that is a large screen -- I would call it a screen, and that is green.

Q That is green, is it? A Yes, sir.

Q And on what side of the house is your office, the right or left hand side? A MY office is on the right side; the right side, as I would sit now.

Q You swear that the office is on the right hand side going in? A Let us see. The door leads from that (indicating). I am in the court now, and my office would be just on the same side as I am now. Entering the door from Eighth avenue, coming into 36th street, it would go in like at that door, and the office is this side (indicating).

BY THE COURT:

Q Let me ask you this, doctor, is your office in what is called a flat or apartment house? A Yes, sir.

Q Is there a hall in that house, on the ground floor?

A Ther e is, yes, sir.

Q On which side of the street is that flat house, where your office is, the uptown side or the downtown side?

A What would you mean by uptown, your Honor?

Q Is it on the north side of 36th street or the south side?

A The north side or south side? You see, I do not understand the geometry of the places. I am quite a stranger to the place, except practicing.

Q There is an apartment house in which your office is?

A Yes.

Q Is that apartment house on the uptown side of 36th street?

A Well, my office is up, so far as the avenue bounds the street, coming from Eighth avenue up, it is on that side, what I would call, if I were walking in the direction if I went uptown say from 34th street, then I would turn, I should call that on my right.

Q If you were at 34th street and you walked up to the apartment house, where your office is on 36th street, would you have to cross 36th street?

A Yes, sir.

Q When you go in the front door of the house, and into the hall, on which side is your office, the left hand side or right hand side?

A My left. Yes, sir, that is it.

BY MR. HOCHSTADTER:

Q How many offices have you there, doctor, one or two?

A I have one office on the floor, and my family live in what

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is called the rear.

Q Where is your operating table, in which room? A My operating table is in the second room.

Q The second room? A Yes, sir.

Q Do you mean the front or back room? A I would call that the front room. The office would be in the room, and as a patient entered on the left hand side, this would be my office, and then the division by the blue screen, of which I have spoken, that divides the second room from this office proper.

Q Now, where is the operating table, in the front parlor or in the rear room? A In the rear room.

Q And there are some stairs leading up into your house, are there? A After you pass the left hand side of this office.

Q I mean, from the street, doctor, there are some stairs leading up there? A Yes.

Q And it is nearer to Eighth avenue, your house, than it is to Ninth avenue? A It is about even, probably a little nearer Eighth.

Q It is nearer to Eighth, isn't it? A Yes.

Q How many steps lead up from the sidewalk into your hallway? A About five, or four steps.

RE DIRECT EXAMINATION BY MR. APPLETON:

Q Doctor, do you know Mr. Wheaton here? A Yes, sir.

Q Has he been to your office? A He has been there, yes, several times. Yes, sir, we are friends. He has been there often.

J O H N H. A N D R E W S , being called and duly sworn as a witness in behalf of the People in rebuttal, testified as follows:

DIRECT EXAMINATION BY MR. APPLETON:

Q Mr. Andrews, I believe you are one of the official stenographers of the of the City Magistrate's Court, in the First Division of the City of New York? A Yes, sir.

Q Is that correct? A Yes, sir.

Q On the 19th, 20th and 22nd days of December, 1906, were you the stenographer in attendance at the Harlem Police Court, City Magistrate's Court, where City Magistrate Charles S. Whitman presided, at the examination of a case upon the complaint of the People of the State of New York, on the relation of one Teresa Martinto, against a defendant, Joseph E. Page? A Yes, sir.

Q Is this the defendant at the bar who was the defendant on that occasion? A Yes.

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Q Was this defendant called in the examination? A Yes.

Q Did he testify? A Yes, he testified.

Q Now, Mr. Andrews, I call your attention to the testimony of the defendant, and it is along about eleven pages of the defendant's testimony. Did the Magistrate ask this question of the defendant: "Q Do you mean to say you spent the night with this woman?" -- and did the defendant in answer say: "I do." A Yes, sir.

BY THE COURT:

Q Mr. Andrews, you have got your original notes here?

A Yes, sir.

Q And you are now testifying from your original notes, is that so? A Yes, sir.

Q Taken at the examination? A Yes, sir.

BY MR. APPLETON:

Q And just there, I think it is the next question, did the City Magistrate, Mr. Whitman, put this question to the defendant: "Do you mean to testify that on the night of the 10th of November, you passed the night in the apartment of this complainant?", and did the defendant answer, "I do, sir." A Yes, sir.

Q And did the City Magistrate then put this question to the defendant: "Q Do you mean to testify that you occupied the same bed room with her?", and did the defendant answer:

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"I do, sir." A Yes, sir.

Q Now, at about page 62 or 63 of the minutes, taken on that occasion, did the City Magistrate put this question to the defendant on that occasion, and did the defendant give this answer: "Q Where were the children the night you were there?", and did the defendant answer: "The baby was in its bed and the little girl was in bed with Mrs. Martinto."

A Yes, sir.

Q And did the Magistrate then ask questions: "And you?", and did the defendant answer: "Yes, sir, and the little boy was in the room with Louise." A Yes, sir.

Q About page 69 of the minutes, was this question asked of this defendant by Mr. Hochstadter, the attorney for the defendant, the same gentleman who is here now as his attorney? A Yes.

Q "What did you telephone to Dr. Russell?", and did the defendant answer, "I told him to come up at nine o'clock, I wanted to see him." A Yes, sir.

CROSS EXAMINATION BY MR. HOCHSTADTER:

Q Mr. Andrews, your testimony is based upon your original memorandum? A Yes, sir, the original notes.

Q The original notes? A Yes, sir.

Q I want to ask you the question, irrespective of

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of these particular questions and answers, is it possible that in taking testimony in a Magistrate's Court, the stenographer, in the haste of business there, makes any mistake in confusing the testimony? A Not in this case.

Q Not in this particular case? A No.

Q What is there in this particular case other than another case? A Well, the defendant is not a very fast talker, and is very distinct, and it is very easy to report him.

Q So that the questions and answers from your memorandum are exactly as given in the Magistrate's Court? A Yes, absolutely.

JAMES GAMBORIELLA, being called and duly sworn as a witness in behalf of the People in rebuttal, testified as follows:

MR. APPLETON: Bring in Mrs. Martinti, please.

DIRECT EXAMINATION BY MR. APPLETON:

Q What is your business? A Fruit and vegetables.

Q Where is your place of business? A 2074 Eighth avenue.

Q What side of Eighth avenue is that on? A At the east side of Eighth avenue.

Q And how far; is it north or south of 112th street?

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A At the north of 112th street.

Q And how far north? A Half a block.

Q What is next to your fruit place? A There is an ice cream store.

Q And is your fruit place the next place above the saloon?

A No, there is a grocery store before my place.

Q Is there a meat store north of 112th street before they get to your place? A No, sir.

Q Is there a meat store in your place? A In my place, yes, sir.

Q You have your stand in that meat place? A In the butcher's.

Q And that is the first fruit or meat store north of 112th street and Eighth avenue? A That is the only one.

Q And was that there on the 10th day of November, 1906?
A One of the days in November; I don't know if that is the right date.

Q Well, was it there at that time; you had a store there at that time? A Yes, sir.

Q Now, I call your attention to this lady right here (indicating the complaining witness Teresa Martinti); did you ever see her before in your life? A I don't know her.

Q You don't know her? A No.

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CROSS EXAMINATION BY MR. HOCHSTADTER:

Q You were asked to come here to-day, on the 24th of January, and asked whether you recognized a lady, who bought fruit and vegetables in your place on the 11th or 10th of November, on Saturday night; could you remember any woman that was there? A There was a colored man and a white lady come into the store.

Q At what time? A I couldn't tell you the right time.

Q Late in the night? A Late in the night, yes.

RE DIRECT EXAMINATION BY MR. APPLETON:

Q Do you remember when that was, that day? A No, I don't remember the day.

Q Do you remember the month? A Yes, I think November or December sometime.

Q It was either in November or December? A Yes, sir.

Q Was the occasion that this white lady and the colored man came to your fruit stand, late in November or the first of December? A I couldn't tell you very well, because I don't remember.

Q Was it early in November or late in November? A I don't know that either.

BY THE COURT:

Q Was it before or after Thanksgiving? A I think it

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was after Thanksgiving.

BY MR. APPLETON:

Q You think it was after Thanksgiving? A Yes, sir.

Q Now, could you tell that woman is you saw her again?

A No.

Q Do you know what she looked like? A No, I couldn't tell you very well, because the only attention I paid that, we see they were different color, and there was three or four fellows there, I couldn't tell you who they were either.

BY THE COURT:

Q Could you recognize the man? A No.

BY MR. APPLETON:

Q Did she look anything like that woman at all? A No, nothing like that woman at all.

Q Nothing like that woman at all? A No, sir, nothing like that woman at all.

Q Now, the lady that you say came into your place that night with the colored man, your attention was called to this some time ago, wasn't it? A Oh, yes.

Q Somebody representing the defendant went to your first, didn't they? A I don't know anything about that.

Q And did the woman who came into your store some time in the month of November or December, late at night, with a

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colored man, buy any fruit of you? A Nothing.

Q And did she buy anything of you at all? A Nothing from me, from my place.

Q Whom did she buy from? A She bought something from the butcher. She went right out.

Q Now, is it a common thing, does it happen, that women come with their butlers there, marketing there? A Around that place you see it many times.

Q Many times you see that? A Yes.

RE CROSS EXAMINATION BY MR. HOCHSTADTER:

Q How many colored men and white women do you remember serving between November 1st and this time in your place?

A I couldn't tell, you very well.

Q Well, are there so many? A Well, two or three, I think.

Q Two or three? A Yes.

Q Would those people come there as late as twenty minutes to twelve o'clock on Saturday night? A I couldn't tell you the time at all.

Q Do you remember any incident in your business there when a colored man and white woman bought vegetables from you late on Saturday night, or fruit?

Objected to.

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Question withdrawn.

Q Can you identify every white woman that comes there with her butler and buys fruit or vegetables from your place?

A No.

Q But you do serve white women who come there with colored men, their butlers, and their servants, don't you?

A Well, that happens sometimes.

Q You do not make any particular notice, or do not take any particular notice of their appearance? A Not at all.

Q And so that you can identify them in court two months afterwards? A I don't know anything about that.

ELIZABETH DI VERASTEGUI, being called and duly sworn as a witness on behalf of the People, in rebuttal, testified as follows:

DIRECT EXAMINATION BY MR. APPLETON:

Q Now, Mrs. Di Verastegui, you are the wife of Alberto Di Verastegui, are you not? A Yes, sir.

Q And you live at Dobbs Ferry? A Yes, sir.

Q You are the sister of Mrs. Teresa Martinto, the complaining witness in this case? A Yes, sir.

Q And during the month of November, did this defendant work for Mr. Di Verastegui as a chauffeur? A Yes, sir.

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Q Now, did you ever pay him wages? A No, never.

Q During the month of November, did you give this defendant \$15. to get some photographs from Rockwood? A Yes, sir.

Q What photographs were they? A Photographs of the children.

Q Whose children? A Mrs. Martinto's.

Q And what did you tell the defendant with respect to these photographs? A I told him to take them, to get the pictures from Mr. Rockwood, and take them to Mrs. Martinto with the receipt.

Q And you gave him the \$15.? A Gave him the \$15., and I told him to take the receipt and pictures to Mrs. Martinto. I ordered him to go there.

Q Now, after Mrs. Martinto moved down from Dobbs Ferry, did you send her mail down to her often? A Yes, sir, always, when there was any mail there to be sent.

Q Just before Mrs. Martinto moved down to New York, did you and she have some words? A Yes.

Q And what was that about? A Well, something simple, about dressmaking, or something.

Q About dressmaking? A Yes, that she was spending too much money for dressmaking, or something like that. She was

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paying too much for a gown.

Q And you stopped speaking then, did you? A Yes, sir.

Q When was that? A Well, I can't remember the time exactly.

Q Was it just before she came down from there? A Yes, just before she left Dobbs Ferry.

Q Did you speak to her again until the 18th of December?
A No, not until then.

CROSS EXAMINATION BY MR. HOCHSTADTER:

Q Now, let me understand. You were not on friendly relations, I understand, with your sister? A No.

Q From what time? A I can't remember exactly the time. I haven't been keeping track of those things.

Q From the time she moved from Dobbs Ferry to New York?
A Yes, perhaps a week before that time.

Q That was in October, 1906? A I don't remember. I can't say exactly.

Q When did you first speak to her again? A The day that this man was arrested.

Q The day this man was arrested? A Yes.

Q Will you tell us how you came then to give him \$15 about Thanksgiving day, to pay for the pictures -- A About

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Thanksgiving? I couldn't tell you about the time.

BY THE COURT:

Q just wait until counsel has finished his question, and take your time in answering? A Yes, sir.

BY MR. HOCHSTADTER:

Q Will you tell us when it was you gave him the \$15. to pay for the pictures of your sister's children, when you were not on speaking terms with her, that time? A I can't tell you about the time.

Q Do you ever have a memorandum of money you pay out from your household? A Not of a thing like that, I don't.

Q Who asked you to pay \$15. for these pictures? A Nobody asked me. Myself told me to do that. The photographer had notified -- the photographer had notified me several times, saying the pictures were finished and waiting, and I said to the man, "I will pay for the pictures; here is the \$15.; you go on your way to Yonkers, when you are going down, stop and get the pictures and deliver them to my sister with the receipt."

Q Did your sister ever return the \$15. to you? A No, sir.

Q Who did? A Nobody.

Q Nobody ever paid you the \$15.? A No.

Q Did you ever learn from your sister that she had paid

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Joe Page the \$15. for the receipted bill that he handed her?

A Yes, sir, on the day that we had made friends.

Q When was that day? A Well, on the day he was arrested.

Q Oh, that was the day you made friends? A Yes.

Q The day that he was arrested? A Yes, sir, the day he was arrested.

Q Did you ever ask him then for the return of the \$15.?

A No, sir.

Q Did you charge him with stealing the \$15.? A Oh, no, sir. I asked him if he delivered the pictures and he told me yes.

Q You heard, however, that your sister had given him the \$15. to pay for them? A The day that I made friends with her.

Q But you never asked him to return that \$15.? A The money?

Q Yes? A No, not at all, because I ordered him to do that.

Q You went with these people to the Police Station, did you, when he was arrested? A Yes, sir.

Q And did you have a letter with you? A Yes, sir. Not with me, no, I did not; that man had my letter.

Q He had your letter? A Yes.

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BY THE COURT:

Q When you say that man, you mean the defendant?

A I mean that colored man, yes.

BY MR. HOCHSTADTER:

Q Will you tell us what charge you made against him at the Police Station? A I didn't make any charge.

Q Did you hear what the charge was made against him there? A Yes, I heard something about it.

Q What was it? A For a felonious assault.

Q Oh, was it? A That this man had taken a pistol to my sister.

Q Yes, you heard that there? A Yes.

Q There was no charge of blackmail made against him there? A I don't know; I couldn't tell.

Q Will you swear there was not? A I don't remember.

Q Was the letter any part of the assault charge? A That was my letter. That was a letter written to my sister in England.

Q But it was your letter? A No, a letter that I had given this man to mail. It was my letter.

Q Is the letter you refer to yours? A I don't quite understand you. Please state it better.

THE COURT: Counsel, ask these questions as slowly and distinctly as you can. Madam, you take all the

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time that is necessary to answer. If you do not understand a question, say so. If you do, answer it.

THE WITNESS: Very well.

BY MR. HOCHSTADTER:

Q Now, where did you meet your sister on the day of this defendant's arrest? A In her home.

Q In her home? A Iⁿ her home.

Q Was that in accordance with the telephone you received from her? A Yes.

Q And up to that time you had not spoken to her?

A No.

Q Is that correct? A Yes.

Q When you came to your sister, what was your first conversation with her? A My first conversation; well, I was glad to see my sister, naturally, after so long a time.

Q Was that the purport of your visit to her? A Well, she called me to go there.

Q Did she tell you what the purport of her desire to see you was? A Yes.

Q Tell us just what your sister said?

MR. APPLETON: Wait. Specify the time.

MR. HOCHSTADTER: She specified it, on the day of the arrest.

MR. APPLETON: Was it over the telephone?

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MR. HOCHSTADTER: Well, she is now in her sister's apartment.

BY THE COURT:

Q Counsel is referring to what you said to your sister and what she said to you when you reached her apartment on the day on which the arrest was made? A What did she say? We talked about so many things, I don't think I can remember what she said.

BY MR. HOCHSTADTER:

Q Don't you remember what she said about Joe Page? A Oh, that he had taken a pistol, yes.

Q And that is all she said about it? A I couldn't tell you if it is all or not.

BY THE COURT:

Q Won't you repeat as fully as you can, inasmuch as counsel wants it on the record, what your sister said to you and what you said to her, regarding this defendant, on the 18th of December, when you reached your sister's apartment in New York? A Well, she talked about this man, how he had taken a pistol to shoot her, and I didn't wait for anything more. I simply told her with that, that she had to protect herself, and we must see further into this thing, and with that we started for the Oneonta.

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BY MR. HOCHSTADTER:

Q Will you swear that you did not see a letter that your sister received from the wife of this defendant Page? A I saw the letter.

Q Why didn't you say so? A Well, you were referring to my letter first.

Q I am referring to the letter which was written by Page's wife to your sister? A No, you didn't tell me that before.

Q I am asking you now? A Oh, now, yes, I see; yes, I saw it now.

Q Did you have any conversation with your sister on that occasion? A Yes, about all these things, but I got very nervous and excited.

Q Now, we will drop all these things except this letter written by Page's wife to your sister? A Yes.

Q Will you tell us what conversation you and your sister had on the 18th day of December, on your visit to her apartments, in regard to that particular letter?

MR. APPLETON: Now, wait a minute. I object to that as incompetent, immaterial and irrelevant. There is no use of attempting to bring anything about that letter into this case, as this case is a case where there is a charge of assault and attempted robbery on the 7th day

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of November. The letter that was received, was alleged to have been received on the 17th of December, and there is no contradiction of it, and said to have been received from the wife of this defendant, by defendant's counsel. Now, any conversation that this woman had with her sister about that letter is absolutely immaterial. There is no use of trying all the family affairs of the Di Verastegui and Martinto families on a charge of assault and robbery against this defendant.

THE COURT: It strikes me that way, counsel.

MR. HOCHSTADTER: If your Honor please, will you hear me?

THE COURT: Yes.

MR. HOCHSTADTER: My friend forgets that the testimony of the complaining witness was as follows: On cross examination, that if she had not received this letter she would never have charged this man with this crime, and that is our defense.

MR. APPLETON: That is all right, but he is bound by that answer. If he chose to go into any of those things that are collateral to this issue, with Mrs. Martin-
to, he is bound by her answers.

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