

Criminal Suit, State vs. Rehberg, 1885

PROSECUTION

Upon the hearing of said cause, EMMA REHBERG was introduced as a witness in behalf of the prosecution, and testified in substance as follows:

I am nineteen years-old and daughter of the above named defendant Edward Rehberg, and now live about six miles from the City of Helena. In the year 1885, I was living with my father on his ranch about 18 miles from the City of Helena, in Lewis and Clarke County. Louisa Rehberg, my step-mother, Clara Rehberg, now dead, Bertha Rehberg, Emil Rehberg, my father Edward Rehberg, myself and the hired man Joe Tiebow all lived there together. My sister Clara was nearly eleven years old in August A.D. 1885, she is now dead, died in September 1885, at the Hospital in the City of Helena, County of Lewis and Clarke, Territory of Montana. I remember when my sister Clara was brought to Town from my father's ranch by my father. It was on Sunday, but I do not recollect what month and what date.

Q. Did you see Clara on Saturday before that Sunday?

A. Yes, Sir. I used to help my father at work and so did my sister Bertha. My sister Clara worked in the house at housework. She slept with me and my sister in the same room.

Q. Do you remember eating supper on that Saturday night before Clara was taken to town?

A. Yes, Sir.

Q. Who was around there then, was your father?

A. Yes, Sir, my father was eating supper.

Q. And whom else?

A. Emil, Louisa and Clara.

Q. Was Clara doing her work?

A. No, Sir.

Q. Did Clara go to bed before or after you did that Saturday night, if you remember?

A. No, Sir, she got up before I did on Sunday morning to help Louisa, my step-mother, get breakfast. I was not downstairs all the time Sunday morning ill they were getting breakfast, but while I was there I saw Louisa and Clara together. They got the breakfast ready as usual. When I went down they was setting the table getting breakfast. My father and the hired man ate breakfast that morning first, and I think Clara waited on the table. Clara and Louisa got dinner that Sunday. I stayed home after dinner. We ate about twelve. I was downstairs part of the time, and part of the time upstairs that afternoon. I saw Clara after dinner, she was in the kitchen with Louisa, little Emil was out of doors, I was upstairs about an hour and a half taking care of the baby. I did not see Clara while I was upstairs. When I came down, she was sleeping on the lounge. I afterwards went outdoors and saw her around the house, she

was talking with my father and brother where they were working at the haystack, about ten yards from the house. My father took her to town right after that. A few minutes after I saw her outside, father said he was going to take her to town. My little brother was there. Clara was acting sick but was not crying, she was sitting down, and my father and the hired man were sitting beside her. Someone put her in the wagon. It was too high for her. She was in a bad condition all day. Father said he was going to take her to Helena. I think my stepmother and Bertha went out after a cow that afternoon, I do not know what time they left. Clara helped Louisa get dinner, and father started to town with Clara about five o'clock, I think. This was after my stepmother came back. Father had just finished up the haystack, put the top on, and had come down when Clara went out to him, just before he took her to town. Clara was a weak girl, but she used to do the housework regularly. All she did was to help Louisa in the house, bring in wood, scrub, wash, iron, help cook, wait on table, help get breakfast. My stepmother has lived there about two years. The afternoon that father brought Clara to town, my father and brother and the hired man and two other men were there, these two other men were neighbors. They came over in the afternoon that father took Clara to town. I first saw them when they came there. One was Frank Lang, and I forget the other one's name. They came when Clara was out there with my father at the stack, that is when I saw them.

Q. State what your little brother was doing that afternoon, whether or not you saw him playing, or what he was doing?

Counsel for defendant: I object to this testimony as irrelevant and immaterial. Objection overruled, and exception taken by defendant's counsel.

A. He was with my father at the haystack.

ON CROSS-EXAMINATION, witness testified in substance as follows:

My father had breakfast about seven or eight o'clock that Sunday morning, with the hired man, and immediately after breakfast, they went to finish the haystack. They went out together. Clara remained in the house with Louisa, my stepmother. I was not in the house during the entire forenoon, I was out helping my father on the haystack. Clara was in the house all the forenoon with Louisa. We left the house and went out to the haystack just as soon as breakfast was over, and returned at dinner time. Father was working on the stack, and the hired man, Joe Tiebow, and myself were working helping him. Father did not get off the stack from the time he went up in the morning until dinner time only when he had to get stack sticks for the stack. He did not return to the house during the forenoon, would have known it, because I was there all the time. We all went to dinner from the stack together. My father and the hired man ate first, and I was in the kitchen then. My sister Clara did not eat any dinner. After dinner father went back again to the haystack to work, he and the hired man. They left the house together about 1 o'clock. I did not go with them in the afternoon. I went past there after he left the house that noon and saw him on the stack. This was about three o'clock in the afternoon. When father and the hired man left the house after dinner, Clara and Louisa were in the house together; Bertha was around the house with us, and so was Emil. I spent about an hour and a half that afternoon upstairs. I do not know just what time in the afternoon it was, but it was after I had been out past the haystack. Clara was downstairs and I was upstairs.

Q. Did you see any person whipping, beating, or abusing Clara on the Saturday before this Sunday?

Mr. Hunt objected to as not proper cross-examination.

Objection sustained by the Court, and Counsel for the defendant duly excepted.

Q. Emma, do you know of your own knowledge, who it was that inflicted those wounds and bruises on your sister Clara?

Hunt objected to as not proper cross-examination, which objection was duly sustained by the court, and Counsel for the defendant duly excepted to such ruling.

The Court, and now the following question, who did it, that would be the question.

MR. CARTER:

Q. Who did beat and maltreat and abuse your sister Clara?

MR. HUNT: We object to this question as not proper cross-examination. The court sustained the objection and the Counsel for the defendant duly excepted. Mr. Carter continued the examination as follows:

The haystacks were just about ten yards from the house. The stables at the same place. My sister Clara was in the habit of helping my stepmother in and about the house, in cooking and taking care of household affairs.

Q. Will you now state to the jury, whether or not Louisa was in the habit of abusing and beating Clara?

MR. HUNT: I object, there is no testimony whatever to show any beating by Louisa or anybody else.

COURT: There is no ground for the question at this time, objection sustained.

COUNSEL FOR THE DEFENDANT: I except of the ruling of the Court.

The witness continued:

It was about five or six o'clock that I noticed my sister Clara out near the barn or stable or haystack with my father. The hired man and my little brother Emil were there all close together. I had not heard any screaming or exclamations before I went out there, any noise about the haystack or stable which called my attention in that direction. My sister Clara went out of the house to get matches from another house near by there, so I might light the fire to warm milk for the baby. I went out right after her. I took the baby and just went along with her. She was a little ahead of me. She then stopped to talk with my father. This was just a little time before he prepared the wagon to go to town. He started in about ten minutes after myself and Clara arrived at the stable and immediately after, Clara did not feel well, she did not complain of being sick, my father commenced a conversation with her and she seemed to be sick. Mr. Lang came soon after we met there. I went back in the house to get her things so she could go to town. My father told me to do so, and he went in the house to get his things. My father was working around the haystack when Clara and I started out to the stable. He was raking hay, Joe Tiebow was with him. Joe hitched up the horses. We were all there when Clara was put in the wagon. Father asked Clara when he first met her what was the matter with her. We all worked hard out there at the ranch but

no harder than the neighbors. My father never drove us to work, but we worked to help him along. It was true that we were compelled to work more because of the fact that father was crippled and suffered from rheumatism.

ON REDIRECT EXAMINATION, witness testified in substance as follows:

Bertha and Louisa went out Sunday afternoon looking for a cow. They were gone about three hours. I was upstairs about an hour and a half.

BERTHA REHBERG, a witness introduced in behalf of the prosecution testified in substance as follows:

I was fifteen years-old last August and am a sister of Clara Rehberg. She died in September. The Sunday morning that father brought her to town she got up before I did, she usually got up first. She helped my stepmother in the house. I remember the Sunday that she was brought to town. We ate breakfast about six or seven o'clock. After breakfast I went out to milk the cows. I was there at dinner. Father went out after breakfast to finish the haystack and came back about twelve o'clock with the hired man. Father and the hired man ate dinner together, and we ate after they had done. Clara helped cook dinner. After dinner Louisa and I went out after a cow about three miles away. We went on horseback and did not get back until five o'clock. My father, the-hired man, and Clara and my little brother and Emma were on the ranch when I left, when we came back, father had taken my sister to town, Emma and Clara were in the house, Emma was outside, father was on the stack with the hired man. We came back about five o'clock, and father and Clara had both gone to town. The hired man was out at the stable. Louisa was with me all the time after dinner looking after the cow. Joe, the hired man, does not live there, he left about five months ago, up to that time he was working there on the ranch for my father. The next I saw little Clara after I came from hunting the cow was in the Hospital at Helena. I saw her three or four times before she died, but always at the Hospital.

ON CROSS-EXAMINATION witness testified as follows:

Father and the hired man ate breakfast that morning, about six or seven o'clock. Clara was in the kitchen when I ate breakfast, helping our stepmother. Father and the hired man went to work immediately after breakfast to finish the haystack, about twenty yards from the house. I was outside the house part of the forenoon with my little brother. Clara was in the kitchen with my stepmother during the forenoon. Father was out on the haystack during the entire forenoon. I saw him after he went out and before he returned to dinner, I do not know how often, a great many times though, as I ran in and out of the house, he was always on the haystack, the hired man was there with him. Joe Tiebow, the hired man, was pitching hay on the stack and my father was stacking it. He did not return to the house after breakfast before noon that day. I did not see Clara and father together at all during that forenoon. Clara was in and out to the hay-stack. I was at home on Saturday, Clara was in the house. My stepmother and Emma had gone to Helena on Saturday.

Q. What time did they return on Saturday?

Mr. Hunt: There is no testimony as to what happened on Saturday at all, the testimony is confined to Sunday, and I object to any cross-examination about previous time until he makes the witness his own.

The Court sustained the objection. All these questions pertaining to Saturday were objected to as not proper cross-examination, and such objections were sustained by the Court, and the Counsel for the defense duly had exceptions noted as to such rulings of the Court.

A. Louisa was at home on Sunday morning at breakfast. Emma was there too. They had spent the night previous at the house. I do not know at time Clara went to bed the night before.

Q. Do you know what her condition was when she did go to bed?

Mr. Hunt: I object that it is not proper cross-examination. The Court sustained the objection. Counsel for the defendant duly excepted.

A. I would have known it if my father had beaten the child Sunday forenoon. Father and the hired man left the house to go to work right after dinner about one o'clock that afternoon. Clara was then in the kitchen. When I went out to saddle the horses, father and the hired man were at the haystack, and they were there when I had finished saddling the horses. Father did not return to the house at any time after dinner before I left to look after the cow. Clara was then in the kitchen, I do not know where Emma was. I was not in the house Sunday afternoon, but I was in the forenoon. I do not know how Clara was treated by my step-mother in the forenoon. Clara did not eat any dinner that noon. It may have been as late as two o'clock when we started after the cow, and we were gone about three hours, I think it was about five o'clock when we got back. There was no one on the ranch except Emma, the hired man, and Emil. I had no conversation with Clara that forenoon, I was outside the house and did not notice her particularly before I went, I did not pay any attention to her. She was in the kitchen during the dinner hour and did not come to the table with the balance of them, and I did not see her eat any dinner.

ON REDIRECT EXAMINATION, the witness testified as follows:

Clara helped cook dinner, I did not see her when she helped cook dinner, I was outside. I saw her about dinner time, she was then as she always was.

Counsel for the Territory then requested that the testimony of Dr. Van Holzschuher taken upon the trial of the above entitled cause at the May A.D. 1886 term of this Court, as transcribed by the stenographer, be read as evidence in this trial, as the Doctor was not now within the Territory.

Counsel for the defendant made no objections to the admissions of Dr. Van Holzschuher's testimony in evidence because of his absence but said testimony was admitted by consent subject to any objections as to competency, and Counsel for defendant. Counsel for the defendant objected to the reading of those parts of the Doctor's testimony which referred to the condition of the child, and the treatment which she received at his hands, for the reason that it had not been established by the prosecution that any injuries had been inflicted on this child by the defendant but that, on the contrary, that the defendant did not and could not have inflicted the injuries, as the prosecution itself has established.

BY THE COURT: The Court would not undertake to direct the order of proof in this case. If all the testimony connecting the defendant with the commission of the crime was in, then I could decide more intelligently than at the present, but I do not know whether it is or not. I think the prosecution has the right to say how his case shall be presented to the jury. The Court could not undertake to direct in this matter. If it was true that all the testimony was tending to connect the defendant with the crime, then I could pass on the admissibility of this evidence more satisfactorily to myself than I can now. The objection is overruled, Counsel for the defendant duly excepted.

Testimony of Dr. Van Holzschuher was then read in evidence and was in substance as follows:

I am a practicing physician and was practicing in the City of Helena in August 1885. I was called upon about that time to treat the child Clara Rehberg. I think it was in the evening of the ninth day of August. The child was brought to my office, she could not get down from the wagon, she was brought by her father. I never saw them before. The father asked a gentleman passing to help the child down and then came in, and I asked what was the matter with the child. She was in a high degree of pain, and the nature of the trouble was nothing but severe pain, and she wanted to go to bed. She did not want me to touch her or take medicine or anything. I sent her to the Sisters' Hospital and made no examination of her that night but did the following morning. She seemed to suffer from much pain and did not want me to touch her. The surface of the skin was red and inflamed and looked to me as though there had been hot water thrown upon her. She seemed to have a strong fever, and I gave her some medicine and cooling applications for the skin. In the afternoon I went up again, and the child seemed to have blisters all over her leg and arm. I then brought her some soothing applications in the form of linseed oil and lime water to be used continually to soothe the pain. The next day or day after the case seemed to be a very severe one, and I thought I would call in the assistance of Dr. Steele. The wounds were on the inside of the right leg and on the arm and head. The one on the leg was the severest one, and on the left arm near the elbow, and over the hand, and on the neck and head. I thought I saw fingernail marks on the neck. I first thought this injury was done by scalding, and then after I saw marks as if some kind of a heavy instrument was used to whip the child. She died on the night of the 5th day of September at Helena, Lewis and Clarke County, Montana, she died in consequence of gangrene, she seemed to have formed blood clots by the whipping, and the nutrition of the surrounding parts was stopped. This gangrene caused blood poisoning, and the child died of piemia. She was a pretty sickly child and weakly one, and she suffered very much. I considered the wounds mortal. She was crying and suffering and did not want to answer any questions at all.

ON CROSS-EXAMINATION the witness testified in substance as follows:

I think she was brought to my office in a farm wagon, about nine o'clock in the evening. She would not let me make an examination of her that night, but I did the next morning between eight and nine o'clock. I thought that about twenty-four hours had lapsed since the occurrence of the injury; it did not look longer. I could not say as to whether the wounds were all inflicted at the same time or not. I would not dare to say whether the wounds were inflicted twenty-four or forty-eight hours before exactly. It might have been twenty or twenty-four hours before I do not know about it being forty-eight hours before. Next day blisters made their appearance. I do not know of my own knowledge who inflicted these wounds. I cannot give any opinion as to the character of the instrument that inflicted the wounds.

DR. STEELE, A WITNESS, produced on behalf of the defendant, testified in substance as follows:

I was called by Dr. Von Holzschuher on the 17th day of August A.D. 1885, to make an examination for treatment of Clara Rehberg. When I went there, she had been sick for sometime and was suffering from wounds, bruises, and fever. The inside of the right leg from near the thigh to near the ankle was all one running sore. The skin had sloughed off to the muscle, and the muscles were bare except in one or two places. There were wounds on one or both of her arms at each elbow, and there were abscesses on her arms that we lanced that morning, and there were abscesses on her head and scalp that we were also compelled to lance. These wounds produced septicemia and piemia, a low form of fever caused by the absorption of pus, or a kind of poison or a kind of decomposing animal matter. From these abscesses and the amount of sloughing the poison was absorbed into the system which produced the disease. The immediate cause of her death was septicemia and piemia produced by the condition of these wounds. I did not consider any one single wound as mortal, but it is my opinion that she died as a result of these wounds. They may have been produced by beating with a hard instrument. Kicking might do it, or a strap with or without a buckle. I think the abscesses that were upon the child's head were produced by blows. There were also marks on the child's neck, which in my judgment were produced by fingernails. The child, in my opinion, at the time these wounds were inflicted, might walk for sometime if kept moving, but the minute it sat down and cooled off, it could not move again without excruciating pain. I refer to the wound on the leg. I saw her once, twice or three times a day from the date I called until her death. After she got cool, whenever those muscles were called into play, they would move with excruciating pain. I cannot conceive how she could even walk in the condition these muscles must have been. She looked rather a weakly child, with scrofula, and on a child of her physical condition, these wounds would be more liable to run into suppuration, gangrene, or mortification. In my judgment a healthy person would give way quicker from the effects of such wounds, than one like this little girl, because of the fact that a healthy person would absorb the pus much quicker because of the activity of the circulation.

Q. Supposing the child, Doctor, to have bruised and wounded as this child was and must have been, do you think that after she had been so treated and bruised and wounded that she would be able to wait on a table, cook dinner, or assist in cooking a dinner for a large number of people, five or six, and move around?

Counsel for the defendant: We object to that for the reason that there is no proof here that she moved around or assisted in getting dinner or did any of the work which is presumed by her.

Objection overruled, and Counsel for the defendant duly excepted.

A. She might have been able to have done it but with excruciating pain. Her body was bruised and marked all over. I should say the bruising came from external injuries, inflicted by means of some hard substance.

ON CROSS-EXAMINATION, witness testified as follows:

I cannot inform the jury how, when, and where these injuries were inflicted, from any observations I have made in this case. I think a healthy child would show indications of pain and suffering and coming dissolution more quickly than this child would show them. At the time I saw the child, I could not form any opinion in regard to whether or not all these injuries were received at one and the same time.

DR. BROWN, A WITNESS called in behalf of the Territory, testified in substance as follows:

I am a practicing physician, and have heard the testimony of Drs. Van Holzschuher and Steele. In my opinion, a child of the age of about ten years, in the weakly condition that this child was in, would succumb or give way soon after the injury was received. If she were kept moving around, she might not feel pain near so much as she would after an hour or two of rest. If she kept going, she might get around several hours. I should not think she would be able to walk very long, if she had sat down she could not have again moved around without pain. The pain would be much greater after a few hours rest and would be increased by muscular action. My judgment is that she would have succumbed within two or three hours after the injuries were inflicted.

ON CROSS-EXAMINATION, witness testified in substances as follows:

If this child had been whipped, for instance before 12 o'clock, and then been kept moving about the house immediately after the whipping, and after two o'clock had a season of rest, I think that in about three hours from that time, she would begin to suffer this terrific pain.

DR. HUNTER, A WITNESS called on behalf of the Territory, testified in substance as follows:

if a child of about 10 years of age is so beaten and bruised as to superinduce a condition of piemia or septicemia, and if these conditions produce death in a few hours, in my judgment it might-be two or three hours, or it might be in the neighborhood of a day after such beating before the child would give up. I think that a child in that condition could move around and perform work after she had been so bruised and wounded, it would be, however, with great pain.

ON CROSS-EXAMINATION, witness testified in substance as follows:

That piemia might set in is a result of any kind of bruise if it is not attended to in time.

LOUISA REHBERG was called by the prosecution.

DEFENDANT objected on the ground that said Louisa Rehberg was the wife of defendant.

OBJECTION sustained.

COUNSEL FOR THE DEFENDANT produced as a witness, EDWARD REHBERG, the defendant herein, who testified in his own behalf in substance as follows:

I am the defendant in this case. I never at any time struck my child Clara with any blunt instrument, strap, stick of wood, wooden shoe, stove lifter or any other instrument named in the indictment, and I never kicked her or bruised her flesh.

ON CROSS EXAMINATION witness testified in substance as follows:

I do not know whether I have ever whipped her or not. I guess I have whipped all my children sometimes a little with the hand, but I cannot remember of ever whipping them with any other instrument. I do not remember how often I used to whip them, but I never whipped them hard. It is not a fact that I whipped my child the Sunday before I brought her to Town that 9th day of August. It is not a fact that

while I was out at the haystack that afternoon I got down and beat her, and grabbed her by the neck, and then took her to Town.

COUNSEL FOR THE DEFENDANT, produced as a witness on behalf of the defendant, one JOE TIEBOW, who testified in substance as follows:

Q. What is your name?

A. Joe Tiebow.

Q. Were you working for Mr. Rehberg about the 9th day of August A.D. 1885?

A. Yes, Sir.

Q. Do you remember the Sunday afternoon on which Mr. Rehberg brought his daughter Clara to Town?

A. Yes, Sir:

Q. Will you tell this jury what time it was that you ate breakfast that morning?

A. It was about seven o'clock in the morning.

Q. Who ate breakfast with you?

A. Rehberg ate with me, that is all.

Q. Where did you go after breakfast?

A. To work on the haystack.

Q. State now, whether or not Mr. Rehberg remained with you at the haystack from the time that you commenced work after breakfast until you came into dinner?

A. Yes, Sir, he did

Q. State whether or not he was out of your sight at any time from seven o'clock in the morning until you came into dinner?

A. Yes, Sir.

Q. You do not seem to understand my question. Was he out of your sight?

A. He was on the haystack behind the hay.

Q. What time did you leave the haystack and go to dinner?

A. About twelve o'clock.

Q. Who ate dinner with you that day?

A. A strange man, Mr. Rehberg, and myself.

Q. The three of you ate dinner together?

A. Yes, Sir.

Q. How long did you remain at the house for dinner?

A. It was about half an hour, as soon as we got dinner we went out to work.

Q. State whether or not Mr. Rehberg went out with you after dinner.

A. Yes, Sir, he did.

Q. What did you do after dinner?

A. We did not get through with the haystack, and we just finished it up.

Q. What time did you finish it?

A. Between half past three and four.

Q. Do you remember the time that Mr. Rehberg started to Town with his daughter Clara.

A. Yes, I guess it was a little after four.

Q. Did Mr. Rehberg leave you that afternoon at any time before going to Town?

A. No, Sir, he did not.

Q. Explain to the jury Mr. Tiebow, if you know, the circumstances under which little Clara came out of the house and what was said?

MR. HUNT: I object to any statement made by the deceased.

MR. CARTER: Then you need not explain what she said but tell what was done.

A. When she came out to me, she was sick and could hardly walk.

Q. She came out of the house in that condition did she?

A. Yes, Sir.

Q. That was between four and five o'clock in the afternoon?

A. Yes, Sir.

Q. What was done?

A. I don't know what was done that day, I did not see anything.

Q. Did you hitch up the team?

A. Yes, Sir.

Q. Who told you to?

A. Mr. Rehberg.

Q. What did he do then?

A. He just go in the house and put his clothes on.

Q. Where did Clara stay?

A. She was with Emma by the wagon.

Q. Did Mr. Rehberg ask the child Clara any questions?

A. Yes, Sir, he did.

Q. Did he ask her how long she came to be hurt?

A. Yes, Sir.

Q. Did she answer him?

A. She would not do it.

Q. She would not do it?

A. No, Sir.

Q. Did he make any examination of her condition there?

A. Yes, sir, he examined her face. That is all.

Q. Now, Mr. Tiebow, could Mr. Rehberg have whipped that child that day or beat her or abused her without your knowledge of it?

A. He did not leave me at all, and I cannot say that he was in the house.

Q. He was up on the haystack during the day?

A. Yes, Sir. That is all.

CROSS EXAMINATION

MR. HUNT:

Q. Do you remember whether or not Mr. Rehberg got down off that hay-stack to get any implements or tools?

A. Well, sometimes he just came around to me.

Q. Came around to go to the well?

A. No, he came by me there.

Q. Then he would get down sometimes?

A. Yes, he would help me on the stack.

Q. Do you say that you came down from the stack before the child came out?

A. Yes, Sir.

Q. Who was around that afternoon?

A. Some men whose names I do not know.

Q. Where was Bertha?

A. I do not know.

Q. Did you see her that afternoon?

A. No, Sir, not until the old man had gone to Town.

Q. Did you see Louisa Rehberg that afternoon?

A. No, Sir.

Q. Do you know where they were?

A. No, I did not know.

Q. Then there was you and Mr. Rehberg and Clara and Emil around, and Emma. Was that all?

A. Yes, that was all.

Q. Did you see Emma that afternoon?

A. I saw her when she came when the little girl was there.

Q. How long did you work for Mr. Rehberg?

A. One year.

Q. When did you leave him?

A. Not quite four months.

Q. Did you come here with him?

A. No, Sir.

Q. When did you come over?

A. On the cars on Monday.

Q. Have you seen Mr. Rehberg since he has been over here?

A. Since he has been away?

Q. Yes? Have you been with him?

A. Yes, sometimes.

Q. Have you been to the ranch in the past four or five months?

A. Yes, a few times.

Q. Did you see all the family there?

A. I seen Louisa and Bertha and the little boy.

Q. Do you remember whether you or Mr. Rehberg got off the stack that afternoon for water.

A. No, Sir, the little boy got the water there.

Q. Could he get on the stack without you getting down?

A. Yes, Sir, he pushed it up on a fork.

Q. Were you on the ground?

A. Yes, sometimes.

Q. What time did you and Mr. Rehberg come out from dinner that Sunday?

A. I don't know, as soon as we got through dinner.

Q. Did you come out ahead of him or behind him?

A. He was ahead of me.

Q. How much ahead?

A. Three or four steps.

Q. And you stayed together all that afternoon?

A. Yes, Sir.

Q. You said that Mr. Rehberg just looked at the child's face when Clara came up?

A. Yes, sir, he showed me where she was marked.

Q. How long was that before he put her in the wagon to take her to Town?

A. About ten minutes.

Q. Do you know where Louisa was or where Bertha was when they started for Town?

A. No, Sir.

Q. Did you see Clara at dinner that day?

A. No, Sir.

Q. Who put dinner on the table for you?

A. Emma did, I guess.

Q. Did you see Clara have any trouble with anybody on Sunday?

A. On Sunday, no, Sir.

Q. Did you see her at breakfast that morning?

A. I cannot tell.

Q. You said just now that you did not see her in the afternoon until she came out?

A. I did not.

Q. How far was the haystack from the house?

A. About forty or fifty steps.

Q. What was little Emil doing that afternoon?

A. He was just playing around the stack there.

Q. Anybody playing with him?

A. No, Sir.

Q. Did not you see Clara that afternoon playing with him?

A. No, Sir.

Q. Did you ever talk over this matter with Mr. Rehberg in the past year?

A. Sometimes.

Q. About how many times did you talk it over with him?

A. That I cannot tell, not very often.

Q. You have sometimes! Did he and you talk about testifying in Court?

A. No, Sir. I never had anything to say about that at all

Q. Just avoided the subject entirely?

A. Yes, he just talked to me the same as any other man.

REDIRECT EXAMINATION

MR. CARTER:

This little boy Emil was carrying water out there for you men, and whenever you wanted a drink he would bring it.

A. Yes Sir.

COUNSEL FOR THE DEFENDANT then introduced MR. E. D. WEED, who testified for defendant in substance as follows:

I saw little Clara the day before she died, at St. Peters' Hospital in Helena. Mr. Hathaway, Dr. Van Holzschuher and Dr. Steele, Counsel for defendant and myself were present, and one of the sisters of the Hospital. I was present during the conversation between little Clara and Dr. Steele. The Dr. notified the child that she was very sick, and was going to die. The child stated in my presence ("I wonder now if I am dying:"). From her words and actions, I think she did at that time realize what death was. The child was suffering very great pain and was told by both Drs. Steele and Von Holzschuher that she could not live. She seemed very angry about it and said she did not want to die, and then shortly after that when a short spasm of very severe pain came over her, she said something to the effect as to whether she was then dying. She seemed to be rational all the day, and I think that is all she said about dying. I remember that they did say that she could not see so well.

COUNSEL FOR THE DEFENDANT, here produced the dying declaration, which was identified by the witness, and asked him the following:

You may state to the Court whether or not you are the person who wrote that statement, referring to the dying declaration.

A. Yes, I made that instrument, which is in substance a true statement of what the child then said, as near as I could get it at the time. I think she was rational at the time. She seemed to answer intelligently, and I should say from her actions and conversation, she appeared to be of sufficient intelligence to discern the difference between right and wrong, between truth and falsehood. Of course, I knew nothing of the Child's education, she seemed to be an intelligent child, and made rational answers to the questions put to her. I do not know whether she could read or write, or whether she understood the nature of the oath. I am unable to answer whether or not she had enough learning to believe in the future reward or punishment, because I never gave that question any attention. She seemed to be an intelligent child of about the age of eight or nine years. I think that if the child had received any sort of moral education or training whatever, she would be received as a reliable witness in any Court of Justice.

DR. STEELE was called in behalf of the defendant and testified in substance as follows:

I was present at the interview at the hospital concerning which Mr. Weed has just testified. I informed the little child every time I went there that she was about to die. I was instructed by Mr. Weed that they wanted her deposition, and when they found out that there was no hope for her recovery, we thought we would inform her, she would know death was approaching. We took the deposition a day or two before she died. I was present when it was reduced to writing. I think Dr. Van Holzschuher informed her immediately preceding the taking of the deposition, she was informed at any rate, that was going to die. I think that she realized the fact that she was going to die from the fact that she always expressed a desire to die from the time she came there, except one time when she expressed the hope of getting well. I think the first time we informed her that she was going to die, it was two or three days prior to the taking of the deposition. She expressed a hope that she might live. I think she realized what death was. Do not think she understood the nature of an oath, but I think she regarded an oath as that she should tell the truth. I hardly think she had any knowledge of a future state of reward or punishment. Mrs. Craven was a very religious lady, that was very kind, and I guess the sisters were. I have no idea that when she came there she had any idea of an oath. I guess her ideas on that question are very vague. After she was informed that death was coming on her, she used to swear very considerably, that made me think she did not know anything about a future state. When we dressed her wounds and would hurt her a little, she would swear at us. I think at the date this declaration was made, she realized that she was to tell the exact truth. I think she knew it was her duty to tell the truth and that her statement was made under the sense of that duty. I do not think that she had any idea of the solemnity of death, she seemed to want to die. She said, "Go away and let me alone. I want to die." One day she expressed a desire to go home with Mrs. Craven and be her little girl, but with that exception she always expressed a desire to die. She answered questions pretty correctly but was not very intelligent. She did not display any great moral or religious training. She had seen death in cattle about the ranch and that was her idea of the solemnity of death, at least that was what I thought. She had a way of saying when she did not want to do anything, no, no, no, no. Dr. Von Holzschuher told her she was going to die, and that they had come to take her deposition, and she must tell the truth, and she said no, no, no, every so many times. That was

her common expression. Whether she was saying that she was not going to die, or whether she would not tell the truth, I do not know.

COUNSEL FOR THE DEFENDANT, duly excepted to the ruling of the Court.

The dying declaration here offered in evidence was the words and figures following, to wit:

Declaration (dying) of Clara Rehberg, as made at St. John's Hospital, Montana Territory, Sept. 5th 1885.

She whipped me (my step-mother) with a stick of wood and with a stove lifter, and then she went to the corral and got a strap, and whipped me with that on the face and legs and all over. She had new shoes on when she came back from town (Helena) she took them off, put on wooden shoes, and kicked me with them.

My step-mother's name is Louisa.

She slapped me at one time at the corral on my father's ranch, then she whipped me in the house, then she threw a bucket of water over me.

Q. Have you been sick ever since you were shipped by your step-mother?

A. Yes. Yes.

Q. Did your father hurt your leg?

A. I told you my step-mother did it. My father didn't hurt me at all.

Q. If you were to die the next minute, its this all true which you have stated?

A. Yes, yes, I told you a thousand times it was.

Q. Do you want to see your father?

A. Yes. Where is he?

Q. Do you want to see your step-mother, Louisa?

A. If my father brings her, but not otherwise. Oh, shall I die, or what? I wish I was dead! I wish I was dead! I can't see so well! I wonder if I'm dying!