It must be remembered that when consent is of no avail as a defence even solicitation is equally unavailable.

Mental Condition of Victim in Rape.

"*Any person who unlawfully and carnally knows or attempts to have unlawful carnal knowledge of any female idiot or lunatic or imbecile woman or girl, under circumstances which do not amount to rape, but which prove that the offender knew at the time of the commission of the offence that the woman or girl was an idiot or imbecile, shall be guilty of a misdemeanour.*"

There is no specific mention of age here, but the insertion of the words "girl" and "woman" lead to a natural inference that the mental condition is only meant to be an additional safeguard against the crime, age being already sufficiently safeguarded.

Time for Bringing an Action.

In reference to the limit of age between thirteen and sixteen, it is expressly laid down :—

"*Provided that no prosecution shall be commenced for an offence under sub-section* 1 *of this section more than three months after the commission of the offence.*"

On this one has only to remark that with the exception of pregnancy or actual communicated disease, all signs of defloration are likely to have become completely obliterated, at least all really reliable signs (*vide* Sub-section B, pp. 30 *et seq.*), and even then they have nothing to do with consent.

It would be very reasonable to place this limitation of time upon all cases, irrespective of age.

Special Circumstances under which Rape may take, or be alleged to have taken, place.

1. **Under the Influence of Narcotics or Alcohol.**—If a woman be drunk or asleep from drink or other narcotic, the commission of an act of sexual intercourse without her consent is, of course, easily possible.

In *R.* v. *White* (Northampton Wint. Ass., 1856), the judge stated that some doubts were entertained whether the crime of rape could be committed (in law) on the person of a woman who had rendered herself perfectly insensible by drink, so as to be unable to make any resistance : he thought it could not be alleged as an excuse for the man. The question was not reserved, as the prisoner was acquitted of rape, and found guilty of an indecent assault (*R.* v. *Camplin*, *Law Times*, June 28th, 1845).

The editor is unable to find any special judicial ruling on the question of drunkenness and narcotics in rape, but there can be no question about the lessons that common sense would teach. If a woman (age is, of course, here not considered) alleges that she was first rendered unconscious by drink, and, furthermore, if she alleges that a soporific was administered in such drink, the first inquiry that springs to one's mind is—What was her previous character ? why did she agree to

have drink alone (such offences are not done in public) with a man? how much did she drink? what exactly happened after she had taken some drink?—*i.e.*, did she get more and more intoxicated with more drink, or did a condition of unconsciousness supervene on one drink only—how long was she alone with the man? All these points and others that would be sure to arise from her explanations require to be carefully considered before an opinion on the case can be arrived at. If it could be definitely proved that a known soporific, such as opium, had been used, there would be little doubt about a conviction; but if no unfair means had been used there can be equally little doubt but that a constructive consent had been given, however much it may have been regretted afterwards. The question (beyond the nature of the drug) is particularly one for a jury and common sense rather than for scientific evidence.

Dixon Mann ("For. Med.," p. 95) gives full details of a case where chloral hydrate was alleged to have been given for purposes of rape; the prisoner was awarded ten years' penal servitude, but was released at the end of two years on special representation to the Home Secretary.

2. **Under the Influence of Anæsthetics.**—The vapours of ether and chloroform have been criminally used in attempts at rape, although, by 48 & 49 Vict., the administration of any drug, matter, or thing to a girl or woman with intent to stupefy or overpower, so as thereby to enable any person to have unlawful carnal connection with such woman or girl, constitutes a misdemeanour. In a case which occurred in France, a dentist was convicted of a rape upon a woman, to whom he had administered the vapour of ether. The prosecutrix was not perfectly unconscious, but she was rendered wholly unable to offer any resistance (*Med. Gaz.*, vol. 40, p. 865). A dentist was convicted of rape under somewhat similar circumstances in the United States, but it was thought that the woman had made the charge under some delusion. In *R.* v. *Snarey* (Winchester Lent Ass., 1859) there was a clear attempt at fraud. The prosecutrix asserted that she was *instantly* rendered insensible by the prisoner forcibly applying a handkerchief to her face, and she accused him of having committed a rape upon her. The charge was disproved by a distinct *alibi*, as well as by the improbability of all the circumstances. In *White* v. *Howarth* (Liverpool Wint. Ass., 1861) it was alleged that the defendant's daughter having gone to consult the plaintiff, who was a dentist, he took an opportunity of rendering her suddenly insensible by chloroform, and then had intercourse with her. In cross-examination, however, it transpired that the girl was not rendered insensible at all, but was conscious of all that was going on, and she might have given an alarm, but did not. Most of these stories when properly examined will be found inconsistent and untrue. It is not the property of chloroform or of any narcotic substance, in a non-fatal dose, to render a person instantaneously insensible and powerless. In *Bromwich* v. *Waters* (Chester Lent Ass., 1863) it was alleged on the part of the plaintiff that the defendant had given to a woman some liquid, which she had only tasted, and then suddenly became unconscious. It was suggested that while in this state the defendant had had intercourse with her, which he denied; the woman herself alleged that she was not conscious of her pregnancy until some months after this visit. But such symptoms

could not be reasonably ascribed to any of the known narcotic substances. If given in a non-fatal dose their effects are slowly and gradually produced; if they come on in a few minutes the dose must have been large, and then it is probable the person would die. There is no doubt that many of the charges made against medical men and dentists by women who allege that they have been violated whilst under the influence of anæsthetics are false charges. Anæsthetics stimulate the sexual functions, and the anogenital region is the last to give up its sensitiveness ("Bull. of the Medico-Legal Soc. of New York," May and December, 1881). These charges are sometimes made in all good faith by modest females. A woman under the partial influence of an anæsthetic may mistake the forcible attempts to restrain her movements, whilst she is passing through the preliminary stage of excitement induced by the anæsthetic, for an attempt upon her person. In one instance, a lady engaged to be married was accompanied to a dentist by her affianced husband. Chloroform was given, and a tooth extracted in the presence of this gentleman. She could hardly be convinced that the dentist had not made an attempt upon her chastity. Mann ("For. Med.," p. 93) mentions another similar case.

These are all cases in which the patient has voluntarily taken an anæsthetic for medical purposes; they inculcate the golden rule from which no exception should ever be made under any circumstances whatever, viz., NEVER ADMINISTER AN ANÆSTHETIC WITHOUT THE PRESENCE OF AT LEAST ONE OTHER PERSON BESIDES YOURSELF AND THE PATIENT; and let, at least, one such person be disinterested. It is much easier for a charge of this sort to be brought forward than to be disproved, and especially so if there be a conspiracy of two to blackmail. (For hints on this subject, *vide* "Blackstone's Comm.," vol. 4, p. 213.)

On the other hand, the woman may not take the anæsthetic voluntarily, but may allege that she was anæsthetised (1) violently; or (2) while asleep. That a person can be anæsthetised without being awakened from a natural sleep is certainly possible, though in the many cases in which the experiment has been tried it has failed more frequently than it has succeeded; a statement, therefore, to this effect, when made by the victim of an alleged rape, should require a good deal of corroboration. That a woman may become paralysed, or may even faint, from fear, and subsequently be anæsthetised against her will, is also certainly possible; but when we are told that the throwing over the face of a handkerchief saturated with chloroform has produced instant unconsciousness under which rape has been carried out, the statement requires very careful consideration and close cross-examination as to fear, and what followed immediately upon the covering of the face; for that chloroform anæsthesia, or anæsthesia by any other known drug, can be thus instantly produced is an obvious—lie, no milder word is suitable. In cases such as these, signs of a struggle and consideration of the physical and moral and emotional character of the lady and gentleman respectively become the principal factors.

3. **Under the Influence of Fear or other Moral Restraint or Deception.**—Some medical jurists have argued that a rape cannot be perpetrated on an adult woman of good health and vigour; and they have treated all accusations made under these circumstances as false. Whether, on any criminal charge, a rape has been committed or not, is

the day following. The labia were reddened, and there was injection of the membrane at the entrance of the vagina, which was very sensitive. As an illustration of the rapidity with which the marks of rape disappear in young children, when not attended with great physical injury, it may be stated that this girl was carefully examined by Casper *eleven days* after the assault. The sexual organs were then in their natural state, and there was not the least appearance of local injury.

Medical practitioners are not always sufficiently careful in the inferences which they draw from an examination of children at distant periods after an alleged rape. They allow themselves to be deceived by a plausible story, apparently consistent, and thus see proofs of rape on examining the sexual organs of a girl many weeks after the alleged perpetration of the crime; whereas had the girl been brought before them as a casual patient, and they had heard nothing of violent intercourse, they would have probably ridiculed the idea of setting up a charge of rape on so slender a foundation. The delay in having the examination made, unless satisfactorily explained, is always a suspicious circumstance. On one occasion, a man was tried on a charge of rape on a girl a little above seven years of age. About *six weeks* had elapsed before the girl was seen and examined by the medical man, who was the only witness for the prosecution; and after this long date he was prepared to swear at the trial that a rape had been perpetrated on the child. Fortunately for him, the prosecutrix was first called as a witness. The child, under cross-examination, swore that all that she had previously stated before the magistrates regarding the prisoner was untrue; and her evidence so clearly established the innocence of the man, that the case broke down, and he was at once acquitted. But for the medical evidence against him, this man could not have been committed for trial on the charge; and it is therefore desirable to consider the medical facts and opinions on which he was committed. The medical man came to the conclusion that the girl had been violated six weeks before he saw her. There had, in his opinion, been penetration; the vagina was unnaturally dilated; there was a discharge from it, and an abrasion on the left side; the mucous membrane was generally inflamed. "Such appearances might have existed as the result of violence perpetrated on them three months previously. He had frequently examined the girl since, and his conclusions from the first examination had been confirmed. He thought the appearances could not be the result of any accident or disease; it was not impossible but improbable that they might be so." From what has been already stated on the medical proofs of rape, it will be obvious—1. That in this case there was no evidence of penetration by the male organ, and that the appearances after six weeks had elapsed, did not in any way justify such an opinion from an examination then made. 2. That the discharge, the abrasion, and the inflammation of the vagina were all explicable on other grounds, and did not prove that a rape had been committed on the girl at the date assigned. It is highly probable that this child was suffering under that kind of inflammation and purulent discharge from the genital organs which has been elsewhere described as a fertile source of medical errors (*ante*, pp. 134, *et seq.*); but whether this be

admitted or not, there was not the slightest proof, from the facts, that this girl had ever been violated, even supposing that her own evidence had not shown that the medical man had come to a wrong conclusion from the data before him. Dilatation of the vagina, if really present, could not have been the result of only one attempted intercourse with a child of such tender years, six weeks before the date of examination.

When there has been great laceration of the sexual organs, then certain appearances in the form of cicatrices may remain; but in all cases great caution should be observed in giving an opinion of rape having been perpetrated, from an examination made even two or three weeks after the alleged commission of the offence. Marks of violence on the person can never establish a rape; they merely indicate that the crime may have been attempted.

FALSE CHARGES OF RAPE.

False charges of rape may be easily set up by girls at the age of puberty. The falsehood of the charge may, however, be generally elicited by a careful examination of the prosecutrix, as in the following case.

A schoolmaster was charged (Swansea Lent Ass., 1869) with having committed a rape on a child of thirteen years of age. The child was unusually precocious for her age, and swore very distinctly to a rape having been completed. She made no complaint, however, for a week or ten days. On examination there was no mark of violence about her either recent or remote. The girl's story was inconsistent, and not supported by evidence. On cross-examination she said the prisoner committed the rape while they were standing up. The girl was short, and the prisoner, who was sixty years of age, was tall. She was quite sure that she was never placed on the ground. She resisted all she could, but could not help herself.

Her statements of the mode in which the act was perpetrated, involved so many inconsistencies and improbabilities that the jury acquitted the prisoner.

Apart from such a case as this, we have a similar charge noticed under the heading of "Rape under Anæsthetics," p. 117, and also we may have conspiracies between girls or between a girl and her mother, etc., etc. Great circumspection and very close examination of the evidence is frequently required to extricate an unjustly accused man. The medical evidence can rarely be more than merely negative; it is practically impossible from it alone to say that there may not have been such a degree of penetration as constitutes rape in law. Few men, moreover, care to face a trial even for attempted rape or indecent assault, especially on a little girl, for the crime is so rightly detested; when a girl over sixteen or a woman is in question, juries are very prone to think "there cannot be smoke without fire."

Bayard met with a case of this kind, in which a woman charged a youth with having committed a rape upon her infant child. On examination the sexual organs were found uninjured; and on inspecting the marks of blood on the clothes of the child, it was observed that the stains had been produced on the *outside*, and bore the appearance of smearing; the whole fibre of the stuff had not even been completely penetrated by the liquid. These facts established the falsehood of the charge ("Ann. d'Hyg.," 1847, 2, p. 219). A case involving

a false charge of rape was tried at the Glasgow Aut. Circ. in 1859. One of the witnesses, an accomplice, proved that she had purchased some blood and handed it to the female who made the charge, and she saw her smear it over her person and on some sheets on which it was alleged the rape was perpetrated. The woman and her husband, who made this false charge, were convicted of conspiracy.

Dr. Nelson Hardy thus reports a case of alleged rape, which is interesting, *apropos* of a medical man's duty in investigating cases :—

A servant girl of good character rushed home one night, knocked excitedly at the door, and, when her mother opened it, fell fainting into her arms. On coming to, she told the following extraordinary story: She had been out walking with another girl, and had passed a man whom she could not describe. She and the other girl had separated at the end of the road, and she had then come back alone in the direction of where the man had been. When she reached a lonely part of the road she had been thrown down by him on her back, hurting it against a stone. A white scarf had been placed over her mouth to prevent her screaming, and the man, holding down her arms, had had forcible intercourse with her. In less than half an hour the police had searched the road, but no scarf had been found. She was brought to the station, and I found evidence on her dress and hat that she had been on the ground. I also found a red mark about the middle of her back, where she complained of pain, but, on examining for any evidence of the alleged rape, I found absolutely none; no stains on the clothes, no marks of violence, not even a scratch on her limbs; no rupture of the hymen, and no sign of any irritation about the genitals. I came to the conclusion that she had probably enough been thrown down and that, in her fright, she had imagined the rest.

PREGNANCY FOLLOWING RAPE.

It was formerly a debated question whether, in a case of rape, pregnancy could possibly follow; and this was even proposed as a rude test of the truth of a charge made by a woman. This question scarcely requires discussion. Such a defence would not be admitted as an answer to a charge of rape, nor to show under any circumstances that intercourse had been voluntary on the part of a woman. Conception, it is well known, does not depend on the consciousness or volition of a female. If the state of the uterine organs be in a condition favourable to impregnation, this may take place as readily as if the intercourse was voluntary: even penetration is not absolutely necessary for impregnation (*Med. Gaz.*, vol. 44, p. 48). A woman became pregnant after a rape committed on her by a man who subsequently married her; the date of intercourse was accurately fixed, and a child was born after 263 days' gestation.

It has been supposed, that in these cases of pregnancy following rape, in spite of resistance at first, a woman may in the end have voluntarily joined in the act. There is no ground for adopting this theory: conception may occur, and is neither accelerated nor prevented by the volition of the sexes. Many women in married life who anxiously wish for children have none, and *vice versâ ;* and physical impediments do not suffice in all cases to explain these facts. Women are reported to have conceived during the states of asphyxia, intoxication, and narcotism. Ryan mentions a case in which a young woman became unconsciously pregnant from intercourse had with her by a man while she was in a state of intoxication, and in which it was clearly impossible that her volition could have taken any share ("Med. Jurispr.," p. 245). In married life there is no doubt that women