

Ethel

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Kath McKay is now retired from the paid workforce but still very active in the fields that filled her professional life: research, social change and activism for the rights of women.

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Abstract

This article draws on the detailed record held at the Public Record Office Victoria (PROV) of a criminal trial in the Victorian Supreme Court in December 1895. A man was accused of 'assault with intent to carnally know a girl under 10 years of age', but the charge was dismissed in a lower court: the Essendon Court of Petty Sessions. Among the almost 100 pages of content in the file at PROV are formal court documents, transcripts of witness statements and formal correspondence between court officials, the Victorian attorney-general and Crown prosecutors. The trial lasted one week. The jury found the accused not guilty.

The trial has historical and contemporary significance. It marks a moment in the public life of key public figures such as Victorian Attorney-General Isaac Isaacs, later the first Australian-born governor-general of Australia, and Dr Emma Constance Stone, a pioneer woman doctor and one of the founders of the Victoria Hospital for Women and Children (later the Queen Victoria Hospital). It was the first time that a woman doctor had given professional evidence in a Victorian court. The trial underlines the difficulties still faced by women and girls in making formal complaints against sexual assault. For the writer of this article, Kath McKay, the file has added significance. The little girl was her grandmother Ethel.

On 18 November 1895 in the Essendon Court of Petty Sessions, Ethel Wilkinson gave evidence at the trial of the man accused of raping her. Her deposition, which extended to over 14 handwritten pages, included intimate details of physical assaults and emotional threats by her alleged attacker.[1] She was cross-examined by a Queens Counsel for the accused and questioned by the three justices of the peace and the chair of the court. According to trial documents, Ethel spoke clearly and well, but wept at one point under cross-examination. She was nine years old.

The man accused of raping her, Edwin Worrall, was the father of a family in Ascot Vale with whom Ethel and her two brothers boarded while their sole-parent father, Harry Wilkinson, worked as a journalist at the Age. Worrall had been charged with 'assault with intent to carnally know a girl under 10 years of age'. He was not called to give evidence and was not cross-examined.[2]

According to Ethel's statement to the court, Worrall assaulted her many times over a period of months, but she was too frightened to tell anyone—not Worrall's wife, her brothers or her father. Harry Wilkinson had been a sole parent for around four years and Ethel only saw him once a week on his day off, as he lived in a rooming house in the central business district while his three children were lodged with the Worrall family in Ascot Vale. Eventually, in October 1895, Ethel found a time and the courage to tell her father that she had a 'secret'.[3] She whispered to him what Worrall had done to her. Outraged, Harry confronted Worrall, but Worrall denied everything. Harry wrote several strong letters to Worrall and offered to set up a conciliation with three respectable local women. Worrall refused; he continued to deny everything. Next, Harry took his little daughter to Dr Emma Constance Stone, the first woman doctor to practise in Australia and to register with the Medical Board of Victoria.[4] Stone examined Ethel, confirmed that there was physical evidence to support Ethel's claim of assault and provided an expert report.[5] Harry lodged a complaint with the Essendon police. On 11 November 1895, Worrall went with his family to the Age office where Harry worked and engaged in an argument with him. Worrall was arrested by police and charged with 'assault with intent to carnally know a girl under 10 years of age'.[6]

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The case came before the Essendon Court of Petty Sessions on 18 November 1895 and was heard by four justices of the peace—not magistrates or judges or even legally qualified people. According to the court records, Ethel, who was required to swear on the Bible, gave her testimony clearly and well. In her deposition, she described instance after instance when Worrall had isolated her from the other children in the household—his own children and her brothers. She described assaults occurring in the washhouse with the door locked while the other children were sent to take the dog for a walk, in the kitchen when the others were out and in her bedroom after he had sent his daughters into another room. She described one evening when he had come home drunk and, after his wife had sent him out of their marital bedroom, he had gone into Ethel's room and bed—but not before removing his own daughters into another room. In her childish vocabulary, Ethel told how he:

Put the place where he makes water to the place where I make water. He had sent the others out of the kitchen before this. He told them to go and take the dog for a walk. He said to me not to tell Mrs. W.[7]

Ethel's deposition runs to 14 handwritten pages of transcript. Her father and Dr Stone also made detailed depositions and took the witness stand. Harry Wilkinson was cross-examined by counsel for the defence, QC Purves, who accused him of making the story up to avoid paying a debt to Worrall. This he denied. He was also cross-examined on his suitability as a parent. Stone's evidence comprised details of a thorough physical examination of the child and her opinion that the evidence was consistent with Ethel's claims.

Represented by QC Purves and QC Dethridge, the accused was not required to address the court and the case was dismissed.[8] Unhappy with this result, the police prosecutor, Robert Walsh, took his concerns to Isaac Isaacs, the Victorian attorney-general.[9] Isaacs agreed with Walsh and they met with the members of the Essendon Court to discuss their decision. The notes of this meeting, made by Isaacs, document the four justices of the peace, Davies, Puckle, Letheran and Maxim's, reasons for dismissing the case:

- 'The girl's statement was apparently straightforward but too good to be real—more like a child repeating a lesson it had learnt'
- 'Purves (counsel for the Defence) pressed upon them that the father's evidence was unreliable'
- 'Stone's evidence was not of a positive character'
- 'The girl was intelligent—too intelligent. But when she was cross-examined she began to cry when she was pushed a little hard and that led me to doubt whether she was telling the truth'
- 'We took into account that although the man had assaulted her several times, she never complained to Mrs. W'
- 'A crime that is not likely to have been committed in daylight'
- 'There was a lack of corroborative evidence which they thought was necessary in the case of rape. This had been impressed upon them by Mr. Purves (counsel for the accused, Worrall). One of the justices was at first in favour of committing but he afterwards fell into our view on the grounds that corroboration was necessary'
- 'It struck them as strange that this was a private prosecution and the Crown was not represented by the police.'^[10]

Isaacs and Walsh did not accept these reasons. Isaacs interviewed Davies, the chairman of the Essendon Bench. With Walsh, he then reviewed the details of the depositions and proceedings. Isaacs stated that 'after weighing all the circumstances I think there is no course open to me other than directing the case to be tried'.^[11]

Isaacs's reasons for referring the case to the Supreme Court are documented on the file. They include:

- 'In the first place the magistrates were evidently under some degree of misapprehension as to the law respecting the necessity of "sufficient corroboration". As the girl was sworn, her evidence did not require by law any corroboration'
- 'In the next place, the evidence of the girl was, according to the Depositions, clear and distinct, and unshaken in cross-examination'
- 'Then certain appearances, as partial rupture deposed to by Dr. Stone, are so far unaccounted for'
- 'The two first letters of the father went unanswered'
- 'And the Defendant did not on oath deny the charge'
- 'The bench should have committed for trial. The matter must be left for the consideration of a jury to finally determine the truth.'^[12]

The case proceeded to the Supreme Court to be heard before a judge and jury.

Before the Supreme Court trial began, Harry Wilkinson wrote to the Crown prosecutor asking for permission to submit further evidence. He explained that 'when this case was heard at the Essendon Court I was abused and reviled by the accused's counsel because I owed some money. I was not allowed to make any explanation.'^[13] Harry had been accused of making the story up because he owed money to Worrall. Therefore, he provided detailed

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information for the court on his earnings, expenditure, borrowings and loans. He also supplied a number of character references from people such as a subeditor of the *Age* and his former employers.[14] A further witness statement was presented to the court from Jane Falconer, a maid at the Victoria Coffee Palace[15] where Harry boarded, to the effect that she had witnessed a heated exchange between Mr and Mrs Worrall in relation to the night when Worrall came home drunk, was told to leave the marital bedroom and went to the room where Ethel was sleeping. The witness statement supported the account given by Ethel in her deposition to the Essendon Court.

The trial began on 16 December 1895 before Chief Justice of the Supreme Court, Sir John Madden, and a jury of 12 men of various occupations.[16] Ethel again gave her evidence, as did her father and Dr Stone. Supporting information was provided by Jane Falconer, housemaid at the Victorian Coffee Palace, and even the accused's wife. [17] Once again, the accused was not required to speak. He had three learned legal counsel to speak for him. They interrogated a nine-year-old child in front of a jury of 12 men, a judge, the accused himself and a courtroom of curious public attendees and reporters. The trial went for over a week. At the end of the trial, Chief Justice Madden made the following statement to the jury: 'If you believe the evidence of the little girl, it proves either of the charges made against him.'[18] On Christmas Eve, 24 December 1895, the jury found the accused not guilty and the case was dismissed. The trial outcome was reported in the metropolitan newspapers that afternoon and both Ethel Wilkinson and Edwin Worrall were named.[19]

Happy Christmas Ethel and Harry.

Ethel Wilkinson was my grandmother. However, until I found the newspaper reports and court records of this case, her grandchildren knew nothing about this harrowing episode in her life; she never breathed a word to anyone. Both her daughters are long dead and it is unlikely that they knew anything about it. To us, Ethel was our adored little Gran; she taught us our table manners—how to use a butter knife and the correct way to take the top off a boiled egg (it is with a spoon!). Gran told us many stories of her life, but never this one. I only came to learn of the court case last year, 50 years after she died. I was trawling through some old newspapers on Trove (National Library of Australia) one day and saw a newspaper article. [20] It detailed the court case and named the victim, Ethel Wilkinson, and the accused, Edwin Worrall. This led me to seek out the trial transcripts from Public Record Office

Victoria (PROV). Was this really 'our' Ethel Wilkinson? Yes, indeed it was. It was all there—on the record, over 100 pages of transcripts. I wept as I stood at the copying facility at PROV, painstakingly scanning each page of this tragic and traumatic episode from my Gran's life. It took me so long that the staff were giving me the hurry-up as they wanted to close the building. 'Give me a break', I said through my tears; 'I am copying the trial of the rape of my grandmother when she was nine years old!' They let me continue.



Figure 1. Ethel Wilkinson as a young woman. Photograph courtesy of the author.

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Has anything changed in 120 years? We regularly hear of young women who have decided not to pursue criminal cases of rape, who have been too fearful to face their rapists in court or to endure the cross-examination of legal counsel for the accused. Has the law developed any more sensitivity than it had in 1895? Will right-thinking people ever be able to shake the social and legal system so that justice can be done?

Many have tried. In 1896, Dr Emma Constance Stone, her sister, her cousin and other women set up a clinic for women and girls in inner Melbourne and later organised the women of Victoria into a 'shilling drive' that resulted in the building of the Victoria Hospital for Women and Children (later the Queen Victoria Hospital).[21] They were pioneers in the rights for women movement in Australia. When Stone gave evidence at Ethel's trial, it was the first time a woman doctor had given evidence in a Supreme Court trial.[22] One wonders what the all-male jury, legal counsel and judges made of that. The newspapers certainly noted it.

Harry Wilkinson, Ethel's father, also tried to improve the lot of women in Victoria. He became a founding editor of the short-lived feminist/socialist journal the Champion. However, by 1898, just three years after the failed trial, he was unemployed, destitute and penniless. The relationship between him and now 13-year-old Ethel had apparently broken down completely. The Presbyterian and Scots Church Neglected Children's Aid Society was concerned for her welfare and took her in, against Harry's wishes.[23] Eventually, they convinced Harry to transfer guardianship to them, which he did, but reluctantly. They placed Ethel as a servant with a family on a large property on the Goulbourn River. She thrived, staying for seven years. She left to marry the love of her life, ex-Boer War soldier and the son of the local Trawool stationmaster, William McKay, who became my grandfather.



Figure 2: 'Ettie's dad by himself', July 1892. Image courtesy of the author. [24]

Harry Wilkinson took his youngest son Roy to Queensland where they too thrived and Harry became a respected and commissioned artist whose paintings are still part of major collections.[25] Harry and Ethel's relationship never recovered from the bruising effects of that sexual assault and subsequent court case, and later forced separation. As far as we know, they never met again.

Endnotes

- [1] PROV, VPRS 30/PO Criminal Trial Briefs, Unit 1043, Set Four 543, Office of Public Prosecutions, Criminal Trial Brief, trial of Edwin Worrall, 1895, deposition of Ethel Wilkinson.
- [2] PROV, VPRS 30/PO Criminal Trial Briefs, Unit 1043, Set Four 543.
- [3] PROV, VPRS 30/PO Criminal Trial Briefs, Unit 1043, Set Four 543, deposition of Harry Wilkinson.
- [4] Australian Women's Register, 'Stone, Emma Constance', available at <http://www.womenaustralia.info/biogs/AWE0048b.htm>, accessed 21 May 2018.
- [5] PROV, VPRS 30/PO Criminal Trial Briefs, Unit 1043, Set Four 543, deposition of Dr E Constance Stone.
- [6] PROV, VPRS 30/PO Criminal Trial Briefs, Unit 1043, Set Four 543, statement to Supreme Court by Constable Charles William Thompson, Criminal Investigation Branch, Melbourne, December 1895.
- [7] PROV, VPRS 30/PO Criminal Trial Briefs, Unit 1043, Set Four 543, deposition of Ethel Wilkinson.
- [8] PROV, VPRS 30/PO Criminal Trial Briefs, Unit 1043, Set Four 543, Supreme Court notice of trial, 6 December 1895.
- [9] PROV VPRS 30/PO Unit 1043, Set Four 543, Crown Prosecutor Robert Walsh notes to Victorian Attorney-General Isaac Isaacs 29 November 1895.
- [10] PROV VPRS 30/PO Unit 1043, Set Four 543, notes of Attorney-General Isaacs of discussions with Essendon Magistrates, 3 December 1895.
- [11] PROV, VPRS 30/PO Unit 1043, Set Four 543, 3 December 1895, statement of Victorian Attorney General Isaac Isaacs.
- [12] PROV, VPRS 30/PO Unit 1043, Set Four 543, 3 December 1895, file note of Victorian Attorney General Isaac Isaacs.
- [13] PROV VPRS 30/PO, Unit 1043, Set Four 543, letter from Harry Wilkinson to Victorian Attorney General Isaac Isaacs, 10 December 1895.
- [14] PROV, VPRS 30/PO, Unit 1043, Set Four 543, JS Stephens, sub-editor, *Age*, reference for Harry Wilkinson, 28 June 1895.
- [15] PROV, VPRS 30/PO, Unit 1043, Set Four 543, statement of Jane Falconer, maid at the Victoria Coffee Palace, 16 December 1895.
- [16] PROV, VPRS 30/PO, Unit 1043, Set Four 543, Victorian Police Department, Criminal Investigation Branch, list of jurors to try issues, 18 December 1895.
- [17] PROV, VPRS 30/PO, Unit 1043, Set Four 543, statement of Jane Falconer, maid at the Victoria Coffee Palace, 16 December 1895.
- [18] PROV, VPRS 30/PO, Unit 1043, Set Four 543, handwritten court notes by Crown Prosecutor Robert Walsh in Supreme Court trial 18–24 December 1894, p. 4 of 4.
- [19] 'Alleged assault on a child', *Argus*, 24 December 1895, p. 7.
- [20] 'A criminal assault charge dismissed', *Age*, 24 December 1895, p. 6.
- [21] Australian Women's Register, 'Stone, Emma Constance'.
- [22] 'Latest intelligence', *Avoca Mail*, 24 December 1895, p. 2.
- [23] Care leaver file for Ethel Wilkinson obtained from Kildonan Uniting Care 188 McDonalds Road, Epping (Victoria) on 15 May 2012 by Katherine McKay, granddaughter of Ethel Wilkinson.
- [24] 'Ettie' is the name that Harry used for Ethel. This is a self-portrait of Harry Strongitharm Wilkinson (the name he used in later life and as an artist). It is dated July 1892 and we believe it was given to Ethel when Harry had to leave her and her two brothers in the Sydney benevolent home while he went to Melbourne to seek work. He was separated from his wife, homeless, destitute and unemployed. Ethel kept that picture all her life and her family found it in her wallet after her death—carefully folded. The fold lines can be seen on the copy.
- [25] Harry Strongitharm Wilkinson's art works are spread across Australia and some parts of England in private and family collections. Works in public collections include Royal Historical Society of Queensland, Wellsby Collection (Brisbane River Early Morning (winter) 1907) and Brisbane Turf Club, Permanent Collection (Fitz Grafton 1907, winner of the Viceroy Cup, India; Poseidon 1906, Winner of the Melbourne Cup).