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CASE



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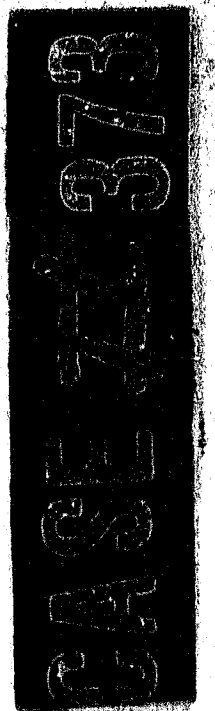
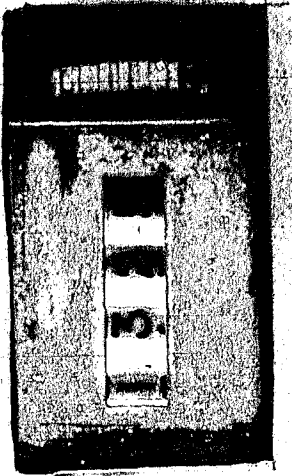
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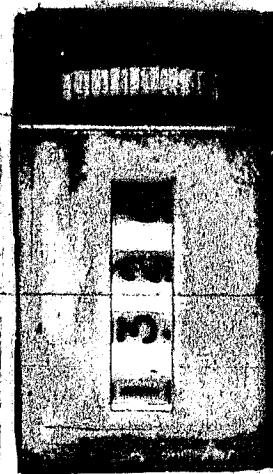
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CASE 2-373

COURT OF GENERAL SESSIONS OF THE PEACE,

City and County of New York,

Part I.

-----x
THE PEOPLE

vs.

GEORGE GALBERT.
-----x

:
: Before

: HON. JOHN W. COFF, R.,

: and a Jury.
-----x

Tried, New York, June 16, et seq, 1903.

Indicted for Sodomy.

Indictment filed, March 4, 1903.

APPEARANCES.

ASSISTANT DISTRICT ATTORNEY JAMES E. WILLY, for the People,

CHARLES E. LE BARBIER, ESQ., for the defense.

Frank S. Beard,
Official Stenographer.

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(Examination of the Jury.)

THE CLERK: Mr. Le Barbier, do you waive the notice, required to be given as to each juror, according to Section 369 of the Penal Code, when he is called and before he is sworn?

MR. LE BARBIER: Yes.

WILLIAM L. GEER, being duly sworn, and examined as to his qualifications as a juror, testified as follows:

MR. LE BARBIER: May it please the court, the defendant being now arraigned for trial, before any examination of any juror, I desire to move for the discharge of the defendant, upon the ground that the indictment is insufficient to confer jurisdiction upon this Court for the trial of this case.

THE COURT: Motion denied.

MR. LE BARBIER: Exception.

DIRECT EXAMINATION BY MR. ELY:

Q. Mr. Geer, what is your business? A. An architect, by profession.

Q. You are an architect? A. Yes, sir.

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Q And are you married? A Yes, sir.

Q Where do you reside? A 145 West 84th street.

Q Please speak louder. 145 East 84th street? A Yes, sir.

Q And how long have you lived there? A Within the last week I have moved there.

Q And is that an apartment house? A It is; yes.

Q And where did you live before? A I lived at 13 East 22nd street.

Q And how long did you live there? A I lived there for the neighborhood of about-- very near a year.

Q Where are you engaged in business? A Steinway & Sons, 109 East 14th street.

Q And Steinway & Sons are architects? A No, sir; they are a piano firm. At the present time I am in the art department, a designer there, on special occasions.

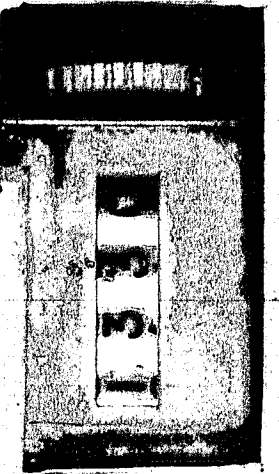
Q Have you ever sat as a juror before? A Yes, sir.

Q Do you know the firm of Carrere & Hastings? A I do.

Q Are you acquainted with anybody in that firm? A I may possibly be, with quite a number of the draughtsmen. I don't recall, just at the moment, anybody.

Q Did you ever know one George Caldwell? A I don't recall him.

Q Did you ever know that man there, sitting there (indicating the defendant)? A I don't recall him.



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Q The crime charged in this indictment is sodomy, and sodomy is unnatural intercourse between men or between man and woman, through the anus or through the mouth. Do you know of any reason why you could not sit as a juror in such a case as this? A I do not.

Q And bring in a fair and impartial verdict upon the evidence offered in the case, and upon that evidence alone? A I do not.

Q Without any extraneous or outside consideration of any name or nature whatsoever? A None whatever.

Q Or without being influenced by sympathy?

MR. LE BARBIER: Objected to as incompetent and immaterial.

THE COURT: Put the opposite. Influenced by sympathy for the defendant or prejudice against him.

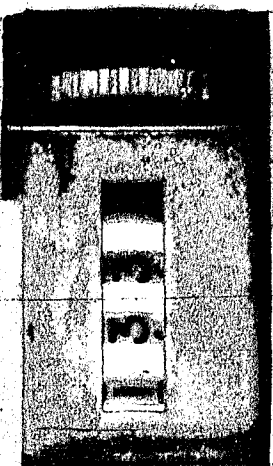
BY MR. KELLY:

Q Well, without sympathy for the defendant or prejudice against him? A I could.

Q And you would do so, if selected? A I would.

Q And, if you were convinced, beyond a reasonable doubt, of the guilt of the defendant, you would pronounce him guilty? A I would.

Q Now, you said that you knew the firm of Carrere & Hast-



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Q The crime charged in this indictment is sodomy, and sodomy is unnatural intercourse between men or between man and woman, through the anus or through the mouth. Do you know of any reason why you could not sit as a juror in such a case as this? A I do not.

Q And bring in a fair and impartial verdict upon the evidence offered in the case, and upon that evidence alone? A I do not.

Q Without any extraneous or outside consideration of any name or nature whatsoever? A None whatever.

Q Or without being influenced by sympathy?

MR. LE BARBIER: Objected to as incompetent and immaterial.

THE COURT: Put the opposite. Influenced by sympathy for the defendant or prejudice against him.

BY MR. ELY:

Q Well, without sympathy for the defendant or prejudice against him? A I could.

Q And you would do so, if selected? A I would.

Q And, if you are convinced, beyond a reasonable doubt, of the guilt of the defendant, you would pronounce him guilty? A I would.

Q Now, you said that you knew the firm of Carrere & Hast-

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ings and that you knew some of the draughtsmen there. If it appeared that this defendant had been at one time connected with the firm of Carrere & Hastings, in any capacity whatsoever, would that, in any way, influence your verdict in this case? A Not at all.

Q Do you know Mr. Le Barbier? A Only by name. I have never met him.

Q Have you ever had any connection, either business, social or otherwise, with the firm of Le Barbier & Parker, or with Mr. Le Barbier or with Mr Parker? A No.

Q Do you know of any reason-- oh, do you know anybody connected with the District Attorney's staff? A Not to recall them.

Q Do you know of any reason why, if selected as a juror in this case, you could not do justice, as between these People of the State of New York and this defendant? A I do not.

Q And you would do so, in so far as it lies if accepted and sworn? A I would.

MR. FLY: Challenge withdrawn.



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CROSS EXAMINATION BY MR. LE BARBIER:

Q Mr. Geer, when you state that you have served as a juror in a case before, was that a civil or criminal case?

MR. ELY: Objected to.

THE COURT: No. Do not answer. I sustain the objection.

MR. LE BARBIER: Exception.

BY MR. LE BARBIER:

Q Are you familiar with the duties of a juror in a criminal case?

MR. ELY: Objected to.

Objection sustained.

MR. LE BARBIER: Exception.

BY MR. LE BARBIER:

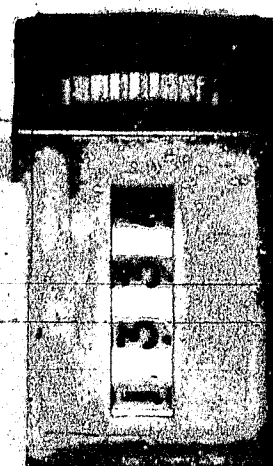
Q If it should appear here by the evidence, or if you should-- question withdrawn. If you should come to the conclusion that there is a reasonable doubt upon the whole evidence, to whom would you accord that doubt? Would you accord that to the defendant?

MR. ELY: Objected to.

THE COURT: Objection sustained.

MR. LE BARBIER: Exception.

THE COURT: Is there any question of this gentleman's intelligence and capacity to act as a juror?



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MR. ELY: Not on the part of the People.

MR. LE BARBIER: I am just asking the question now.

THE COURT: From this gentleman's answers, his manner on the witness stand and his general appearance and deportment, I find, as a fact, that he is possessed of the qualifications required by Section 1079 of the Code of Criminal procedure.

MR. LE BARBIER: And I except to your Honor's finding. Challenge withdrawn.

MR. ELY: No challenge pending.

THE COURT: Any challenge on the part of the prosecution?

MR. ELY: No, sir.

THE COURT: Any on the part of the defense?

MR. LE BARBIER: No, sir. We accept the juror.

(The juror is sworn.)

J E R O M E B. L A T O U R, being duly sworn and examined, as to his qualifications as a juror, testified as follows:

DIRECT EXAMINATION BY MR. ELY:

Q Mr. Latour, what is your business, please? A I am in the publishing business.

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Q With whom? A Harper & Brothers.

Q And in what capacity are you connected with Harper & Brothers? A Bookkeeping department.

Q And how long have you been there? A 29 years.

Q Where do you reside? A 132 West 129th street.

Q Married? A Yes, sir.

Q How long had you lived at 132 West 129th street?

A About 18 months.

Q That is an apartment house? A Yes, sir.

Q Have you ever served as a juror before? A Yes, sir.

Q The crime charged in this case is that of sodomy.

You have heard me describe what sodomy was here? A Yes, sir.

Q Do you know of any reason why you could not sit as a juror in such a case as this? A No, sir.

Q And bring in a fair and impartial verdict upon the evidence offered here, and upon that evidence alone, without any extraneous consideration, uninfluenced by any extraneous consideration of any name or nature whatsoever? A No.

Q Without sympathy for the defendant, or prejudice against him? A No.

Q And you would do that, if selected? A I would.

Q And, if convinced beyond a reasonable doubt of the guilt of the defendant, you would pronounce him guilty? A I would.



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Q Do you know the firm of Carrere & Hastings? A No.

Q Do you know anybody connected with that firm, as far as you know? A No, sir.

Q You don't know the defendant, George Caldwell?

A No.

Q Do you know anybody connected with the District Attorney's staff? A Not that I know of.

Q Or do you know messrs. Le Barbier & Parker?

BY THE COURT:

Q Counsel for the defense?

BY MR. ELY:

Q The counsel for the defense? A No, sir.

Q Have you ever had any business or other connections with them, as far as you know? A No.

Q Do you know of any reason why you could not act as a juror in this case and do justice between the People of the State of New York and this defendant? A No.

Q And, if selected, you would, so far as in your lies?

A Yes, sir.

MR. ELY: Challenge withdrawn.

MR. LE BARBIER: No challenge.

(The juror is sworn.)

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A L B E R T D. W E S S L A U, being duly sworn, and
examined as to his qualifications as a juror, testified
as follows:

DIRECT EXAMINATION BY MR. ELY:

Q Mr. Wesslau, what is your business? A Builder.

Q What is your firm, if any? A Hagenauer & Wesslau.

Q And where are you located? A 110 West 131st street.

Q And are you a married man? A Yes, sir.

Q Where do you reside? A 110 West 131st.

Q You have your office and house there? A Yes, sir; my
home and office together.

Q Is that an apartment house? A No, sir; a private
house.

Q And you occupy all of it? A Yes, sir.

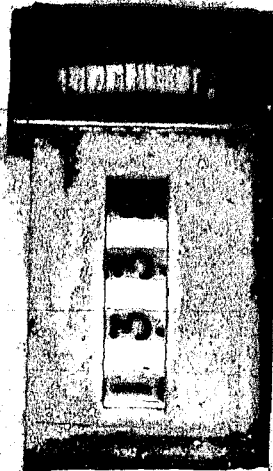
Q Have you ever served as a juror before? A Yes, sir.

Q The crime charged against this defendant in this in-
dictment is that of sodomy. You have heard me describe what
sodomy is, or you know? A Yes, sir; I have heard you
describe it.

Q Do you know of any reason why you could not sit as a
juror in this case? A I don't know of any reason.

Q And bring in a fair and impartial verdict on the evi-
dence offered in this case, and upon that evidence alone?

A I don't know of any reason.



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Q Uninfluenced by any outside consideration of any name or nature whatsoever? A I wouldn't be influenced.

Q Or by any sympathy for the defendant, or prejudice against him? A No, sir; sympathy would not cut any figure with me.

BY MR. LE BARBIER:

Q I didn't hear you. A I say sympathy wouldn't cut any figure with me.

BY MR. ELY:

Q And, if convinced by the evidence in this case, beyond a reasonable doubt, of the guilt of the defendant, would you pronounce him guilty? A I would.

Q Do you know the firm of Carrere & Hastings? A I don't know them.

Q Do you know anybody connected with or employed by that firm? A No, sir.

Q Do you know a man by the name of George Caldwell? A No, sir.

Q Do you know that defendant (indicating the defendant)?
A No, sir, I don't know him.

Q Are you acquainted with any of the members of the District Attorney's staff? A No, sir.

Q Are you acquainted with counsel for the defense, Mr. Le Barbier, or Le Barbier and Parker? A I once served as a juror where he was the---



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Q The prosecuting officer? A No, sir, he was the defendant's lawyer.

Q Well, you have no personal acquaintance with him?

A No, sir, no personal acquaintance.

Q And the mere fact that you served ~~in~~ as a juror in a case in which he was one of the counsel, would not, in any way, prejudice you one way or the other, with respect to your verdict in this case? A No, sir; I would go by the evidence.

Q And do you know of any reason why you could not, if selected as a juror, do justice as between the People of the State of New York and this defendant in this case? A I do not.

MR. ELY: Challenge withdrawn.

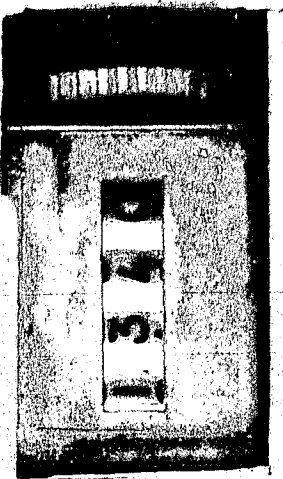
MR. LE BARBIER: No challenge for actual or implied bias.

THE COURT: Any challenge on the part of the prosecution?

MR. ELY: No, sir.

THE COURT: Any challenge on the part of the defense?

MR. LE BARBIER: Yes, sir. We challenge peremptorily.



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A R T H U R A . S T O U G H T O N, being duly sworn and
examined as to his qualifications as a juror, testified
as follows:

DIRECT EXAMINATION BY MR. ELY:

Q Mr. Stoughton, what is your business? A I am an architect.

Q And where are you located? A My business is at 96 Fifth avenue.

Q That is about-- A 15th street.

Q And what is the firm, if any? A Stoughton & Stoughton; my brother and I.

Q And you are one of the Stoughtons of the firm?

A Yes, sir.

Q And where do you reside? A At 665 Washington avenue.

Q Near what street? That is in the Bronx? A Yes, sir.

Q And are you married? A Yes, sir.

Q And how long have you been married? A About eight years.

Q You have heard me describe what the crime charged in this indictment is? A I have not.

Q That of sodomy. It is the unnatural carnal intercourse between man and man or woman and man, either through the anus or the mouth, and the unnatural intercourse between man and beast. Do you know of any reason why you could not



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serve as a juror in such a case as this? A No.

Q And bring in a fair and impartial verdict upon the evidence offered in this case and upon that evidence alone?

A No.

Q Uninfluenced by any extraneous consideration of any name or nature whatever? A No.

Q Or ~~un~~influenced by sympathy for the defendant or prejudice against him? A No.

Q And if you are selected, you will do so? A Yes, sir.

Q And, if you are convinced beyond a reasonable doubt, from the evidence offered in the case, of the guilt of the defendant, will you pronounce him guilty? A Yes, sir.

Q Do you know anybody connected with the firm-- do you know the firm of Carrere & Hastings, architects? A Yes, sir.

Q Are you acquainted with any members of the firm?
A Yes, sir.

Q Who do you know there? A Mr. Carrere and Mr. Hastings.

Q Who? A Mr. Carrere and Mr. Hastings.

Q Do you know anybody else? A Yes, sir; I know others.

Q Well would-- if it appeared upon the trial that the defendant was, and had been for sometime employed there, at Carrere & Hastings, would that have any effect upon your verdict, one way or the other? A No.



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Q The acquaintance that you may have with some of the firm and some of the employees would not influence you in any respect? A No, sir.

Q One way or the other? A No; I think not.

Q Well are you confident that it would not? A I am sure that it would not.

Q You don't know George Galbert; do you? A No, sir.

Q Or George Caldwell? A No, sir.

Q Do you know that man (indicating the defendant)?

A No, sir.

Q Did you ever see him before? A Not that I know of.

Q As far as you recollect? A No, sir.

Q Do you know anybody connected with the District Attorney's office? A No.

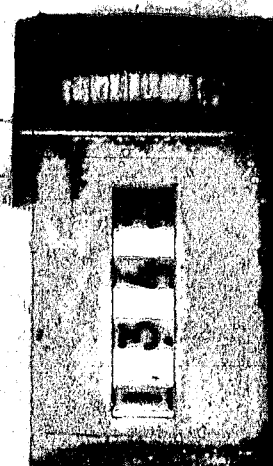
Q Do you know Mr. Le Barbier, counsel for the defendant?

A No.

Q Have you ever had any relations, business or otherwise, as far as you know, or has your firm, with Mr. Le Barbier -- that is Mr. Charles E. Le Barbier (indicating) -- or the firm of Le Barbier and Parker? A No, sir.

Q And, if selected as a juror, do you know of any reason why you could not do justice between the People of the State of New York and the defendant? A No.

Q And if you were selected, you would, as far as within



you lies? A Yes, sir.

MR. ELY: Challenge withdrawn.

MR. LE BARBIER: No challenge for actual or implied bias, on the part of the defense.

THE COURT: Any challenge on the part of the prosecution?

MR. ELY: No, sir.

THE COURT: Any challenge on the part of the defense?

MR. LE BARBIER: Yes, sir; peremptory.

S I G M U N D H O C H S T A D T E R, being duly sworn, and examined as to his qualifications as a juror, testified as follows:

DIRECT EXAMINATION BY MR. ELY:

Q Now, what is your business, Mr. Hochstadter? A Manufacturer of cordials.

Q And where are you located? A Where I reside, you mean?

Q No, where you are in business? A 227 Front.

Q 227 Front? A Yes, sir.

Q What is your firm, please? A The Hochstadter Company.

Q And that is a corporation, is it? A No, sir; it is a firm name.

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Q Hochstadter & Company? A No, sir; the Hochstadter Company.

Q And you are the Hochstadter of the Company? A I am the sole proprietor.

Q And how long have you been located there on Front street? A About nine years.

Q And where do you live? A At present in Far Rockaway.

Q You have gone out, for the summer? A Yes, sir.

Q And where do you live in the city? A 216 139th street.

Q And how long have you lived there? A Since the 1st of May.

Q You are a married man? A Yes, sir, I am.

Q Have you ever served as a juror before? A I have.

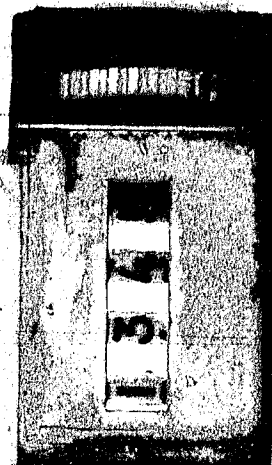
Q You have heard the crime charged in the indictment, have you not? A Yes, sir.

Q Do you know of any reason why you could not serve as a juror in this case fairly and impartially? A No, sir.

Q And bring in a verdict on the evidence in this case, and on the evidence alone? A Yes, sir.

Q Uninfluenced by any extraneous consideration, of any name or nature whatsoever? A Yes, sir.

Q Or without sympathy for the defendant or prejudice against him? A Yes, sir.



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Q And, if you were convinced, beyond a reasonable doubt, from the evidence in the case, of the guilt of the defendant, would you pronounce him guilty? A Yes, sir.

Q Are you acquainted with the firm of Carrere & Hastings?
A No, sir.

Q Architects? A No, sir.

Q Do you know anybody that is employed by them as far as you know or recollect? A No, sir.

Q Are you acquainted with anybody that is connected with the District Attorney's staff? A I am not.

Q Have you ever had any personal or other relations with Mr. Charles E. Le Barbier, counsel for the defendant, or the firm of Le Barbier & Parker? A I have not.

Q Do you know of any reason why, if selected as a juror, you could not do justice, as between the People of the State of New York and this defendant? A I do not.

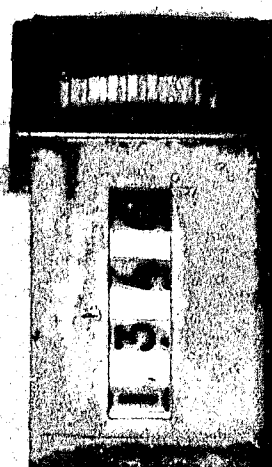
Q And you would do so, if selected, in so far as in you lies? A Yes, sir.

MR. ELY: Challenge withdrawn.

MR. LE BARBIER: No challenge for actual or implied bias on the part of the defense.

MR. ELY: No challenge on the part of the People.

MR. LE BARBIER: We are satisfied to the defense.



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MR. ELY: He is satisfactory to the People.
(The juror is sworn).

W I L L I A M L. B. C. A L L E N, being duly sworn, and
examined as to his qualifications as a juror, testified
as follows:

DIRECT EXAMINATION BY MR. ELY:

Q What is your business, Mr. Allen? A My business has
been fireproofing.

Q And how long ago did you give up business? A Last
November.

Q And, prior to last November, where had you been
located in business? A Corner of Broadway and Waiden Lane.

Q What is your present business address, if any?
A Well, nothing but my home address.

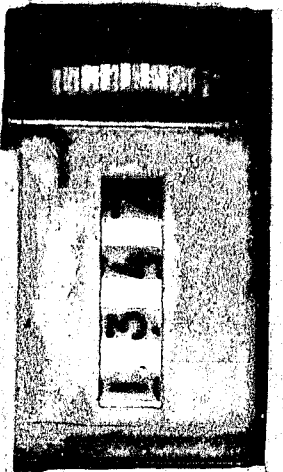
Q Well, where do you reside? A Boulevard Lafayette near
Depot Lane.

Q Well, did you once have the business address of 874
Broadway? A I did, for some six years.

Q How long ago was that? A Two years ago.

Q And what was your business there, sir? A Fireproofing.
It has been fir-proofing for the last eight or nine years.

Q Now, you are a married man? A I am.



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Q And how long have you been living where you are now?

A Six years.

Q Do you occupy a house or apartment? A A house.

Q Have you ever served as a juror before? A I have.

Q Have you heard me describe the crime charged in this indictment? A I have.

Q Do you know of any reason why you could not sit as a juror in such a case as this? A I do not.

Q And bring in a fair and impartial verdict, from the evidence adduced in this case, and upon that evidence alone?

A I do not.

Q Uninfluenced by any extraneous consideration of any name or nature whatsoever? A None at all.

Q Or by sympathy for the defendant, or prejudice against him? A No.

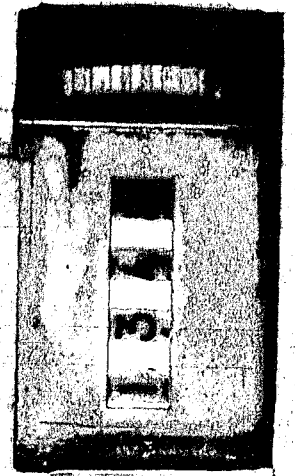
Q And, if selected, you would do so? A I would.

Q And, if convinced, beyond a reasonable doubt, of the guilt of the defendant, would you pronounce him guilty?

A I should.

Q Do you know, or have you ever had any business relations with the firm of Carrere & Hastings, architects? A Our firm have had business relations with them. I have no personal-- I know nothing about them; don't know them personally.

Q You have no personal acquaintance with the firm?



A None at all.

Q Or with any of their employees, as far as you know?

A None at all.

Q And the business relations that may have been had between the firm and that firm would not influence in any way you with respect to the verdict that you might reach on the evidence offered here? A Not at all.

Q Are you acquainted with a person by the name of George Galbert? A I am not.

Q George Caldwell? A No.

Q Have you any acquaintance with any of the District Attorney's staff? A No, sir.

Q Have you ever had any business or other relations with Mr. Charles E. Le Barbier, counsel for the defendant?

A Excepting on jury duty, when he was District Attorney.

Q And the relations that existed between you then would not in any way affect you as a juror in this case?

A Not at all.

Q Have you ever had any business or other relations with the firm of Le Barbier & Parker? A Not a particle.

Q Or has your firm, as far as you know? A No, sir.

MR. ELY: Challenge withdrawn.

MR. LE BARBIER: No challenge for actual or implied bias.



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MR. ELY: He is acceptable to the people.

MR. LE BARBIER: Challenged peremptorily.

GEORGE O. BAKER, being duly sworn and examined as to his qualifications as a juror, testified as follows:

DIRECT EXAMINATION BY MR. ELY:

Q Mr. Baker, what is your business? A I am an electrical engineer.

Q And where are you located? A No. 100 Broadway.

Q And how long ago were you located at 44 Broad?

A Up to the 1st day of February, -- 1901, three years ago.

Q And how long have you been located at 100 Broadway?

A Ever since.

Q What is your firm, if any? A The New England Engineering Company.

Q Is that a corporation? A Yes, sir.

Q Are you one of the officers? A No, sir.

Q How long have you been connected with the New England Engineering Company? A From the 1st of February, 1901.

Q Where do you reside? A 135 West 116th street.

Q Are you married? A Yes, sir.

Q Have you ever sat as a juror before? A Yes, sir.

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Q Have you heard me describe the crime charged in this indictment? A Yes, sir.

Q Do you know any reason why you could not sit in such a case as this? A I don't; no.

Q And bring in a fair and impartial verdict on the evidence offered in this case and upon that evidence alone? A I could bring in such a verdict.

Q Uninfluenced by any extraneous consideration of any name or nature whatsoever? A Yes, sir.

Q Uninfluenced by sympathy for the defendant, or prejudice against him? A Yes, sir.

Q And you would do so if selected? A Yes, sir, I would.

Q And if you were convinced, beyond a reasonable doubt, from the evidence in the case of the guilt of the defendant, would you pronounce him guilty? A I certainly would.

Q Are you acquainted with the firm of Carrere & Hastings? A No, sir.

Q Have you had any acquaintance with any of its employees, as far as you know? A No, sir.

Q Do you know a man by the name of George Caldwell? A No, sir, I do not.

Q Do you know the defendant there (indicating the defendant)? A No, sir.

Q Are you acquainted with any member of the District

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Attorney's force? A No, sir.

Q Have you ever had any business or other relations with Mr. Charles E. Le Barbier? A I don't know who he is.

Q I beg your pardon? A I don't know who he is.

Q That gentleman there (indicating)? A No, sir.

Q Did you ever have any business relations with the firm of Le Barbier & Parker, as far as you know? A No, sir.

Q Do you know any reason why, if selected as a juror here, you could not do justice as between the People of the State of New York and this defendant? A No, sir.

Q And you would, if selected? A Yes, sir.

Q As far as in you lies? A Yes, sir.

MR. ELY: Challenge withdrawn.

MR. LEBARBIER: No challenge for actual or implied bias, on the part of the defense.

THE COURT: Any challenge on the part of the People?

MR. ELY: No, sir.

THE COURT: Then the juror may be sworn.

(The juror is sworn).

J O H N Q U I C K, being duly sworn and examined as to his qualifications as a juror, testified as follows:

DIRECT EXAMINATION BY MR. ELY:

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Q Well, Mr. Quick, what is your business? A Pattern maker.

Q And where are you engaged in business? A 120 Centre street.

Q And what is your firm, if any? A Holden & Quick.

Q And you are the Quick of the firm? A Yes, sir.

Q And how long have you been located at 120 Centre street? A Eight years.

Q Where do you reside? A Katonah, Westchester County.

Q You are a married man? A Yes, sir.

Q Have you ever served as a juror before? A Yes, sir.

Q Have you heard me describe the crime charged in the indictment? A Yes, sir.

Q Do you know of any reason why you could not serve as a juror in such a case as this? A No.

Q And bring in a fair and impartial verdict on the evidence offered in this case, and upon that evidence alone?

A No, sir.

Q Uninfluenced by any extraneous consideration of any name or nature whatsoever? A Yes, sir.

Q And if selected you would do so? A I would.

Q Without sympathy for the defendant or prejudice against him? A Yes, sir.

Q And, if you were convinced beyond a reasonable doubt,

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from the evidence in the case of the guilt of the defendant, would you pronounce him guilty? A Yes, sir.

Q Are you acquainted with the firm of Carrere & Hastings, or any of its employees, as far as you know? A No, sir.

Q You know one George Caldwell or George Galbert? A No, sir.

Q Do you know that man sitting there (the defendant) (indicating)? A No, sir.

Q Do you know anybody connected with the District Attorney's staff? A No, sir; not personally.

Q Are you acquainted with Mr. Charles E. Le Barbier, counsel for the defense? A No, sir.

Q Have you any business or other relations with him, or with the firm of Le Barbier & Parker, as far as you know? A No, sir.

Q Do you know any reason why, if selected as a juror in this case, you could not do justice, as between the People of the State of New York and this defendant? A No, sir.

Q And you would, if selected, in so far as in you lies?
A I would.

MR. ELY: Challenge withdrawn.

MR. LE BARBIER: No challenge for actual or implied bias.

THE COURT: Any challenge on the part of the



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prosecution?

MR. ELY: No, sir.

THE COURT: Any challenge on the part of the defense?

MR. LE BARBIER: yes, sir; peremptory.

C H A R L E S E. B E R G E R, being duly sworn, and examined as to his qualifications to serve as a juror, testified as follows:

DIRECT EXAMINATION BY MR. ELY:

Q Mr. Ely, what is your business? A I am executor and manager of the Kerr estate.

Q Of whose estate? A Of Peter Kerr's estate.

Q And how long have you been so engaged? A Since the last ten years.

Q And what was your business, prior to that? A I was the bookkeeper and confidential man of Peter Kerr.

Q And where are you located in business, as executor and manager of this estate? A 333 East 55th street.

Q And where do you reside, the same address? A Yes, sir, the same address.

Q Have you ever served as a juror in a case? A I have, yes.

Q You said you were married, I believe? A I am single.

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Q And have you heard the crime charged in this indictment? A I have, sir.

Q And do you know of any reason why you could not serve as a juror in such a case as this? A No, sir.

Q And bring in a fair and impartial verdict on the evidence offered in the case, and on that evidence alone?

A No, sir.

Q Without any prejudice against the defendant, or sympathy for him? A Either way.

Q Uninfluenced by any extraneous consideration, of any name or nature whatsoever? A Yes, sir.

Q You would do it, if selected? A Yes, sir, I would.

Q And, if convinced, beyond a reasonable doubt, from the evidence in the case of the guilt of the defendant, would you pronounce him guilty? A I would.

Q Do you know the firm of Carrere & Hastings, architects?

A I do not; no, sir.

Q Do you know anybody connected with them, or employed by them, as far as you know? A No, sir.

Q Do you know anybody connected with the District Attorney's staff? A I do not.

Q Are you acquainted with Mr. Charles E. Le Barbier?

A No, sir.

Q This gentleman here (indicating)? A No, sir.

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Q Have you ever had any business or other relations with him, or with his firm, Le Barbier & Parker? A I have not.

Q As far as you know or recollect now? A No, sir.

Q Do you know of any reason why, if selected as a juror, you could not do justice between the People of the State of New York and this defendant? A I do not, sir.

Q And you would, in so far as within you lies? A I would.

MR. ELY: Challenge withdrawn.

MR. LE BARBIER: No challenge for actual or implied bias.

MR. ELY: No challenge on the part of the People.

MR. LE BARBIER: Challenged peremptorily.

ROBERT LITTLE, being duly sworn, and examined as to his qualifications, as a juror, testified as follows:
DIRECT EXAMINATION BY MR. ELY:

Q What is your business, Mr. Little? A Builder.

Q Where are you located in business? A At my home.

Q Well, where is that? A 2349 Bathgate avenue.

Q New York City? A Yes, sir.

Q And what is your firm, if any? A No firm.

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Q And how long had you been located at 2349 Bathgate avenue? A About six years.

Q You are a married man? A Yes, sir.

Q Have you ever served as a juror before? A Yes, sir.

Q Have you heard me describe the crime charged in this indictment? A Yes, sir.

Q Do you know of any reason why you could not sit as a juror in this case in such a case as this? A No, sir.

Q And being in a fair and impartial verdict on the evidence in the case and upon that alone? A No, sir.

Q Uninfluenced by any extraneous consideration, of any name or nature whatsoever? A Yes, sir.

Q And you would do so? A Yes, sir.

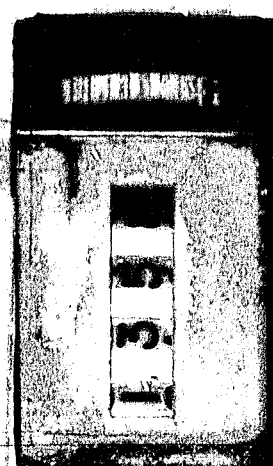
Q And uninfluenced by any sympathy for the defendant or prejudice against him? A Yes, sir.

Q And, if convinced beyond a reasonable doubt upon the evidence in the case, of the guilt of the defendant, would you pronounce him guilty? A Yes, sir.

Q Are you acquainted with the firm of Carrere & Hastings?
A No.

Q Do you know any of the employees of that firm? A No, sir.

Q Are you acquainted with a man by the name of George Caldwell, otherwise called George Galbert? A No, sir.



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Q Do you know anybody connected with the District Attorney's staff? A Not to my knowledge.

Q Do you know, of, or have you ever had any business or other relations with Mr. Charles E. Le Barbier? A No, sir.

Q Or the firm of Le Barbier & Parker? A No, sir.

Q Do you know of any reason why, if selected as a juror, you could not do justice, as between the People of the State of New York, and this defendant, in this case? A No, sir.

Q And would you do so, in so far as in you lies?

A Yes, sir.

MR. ELY: Challenge withdrawn.

MR. LE BARBIER: No challenge for actual or implied bias.

MR. ELY: No challenge pending on behalf of the People.

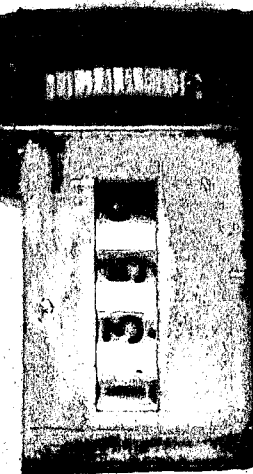
MR. LE BARBIER: Challenged peremptorily.

GEORGE D. BROOKS, being duly sworn and examined as to his qualifications as a juror, testified as follows:

DIRECT EXAMINATION BY MR. ELY:

Q Mr. Brooks, what is your business? A I am not in any business, sir.

Q How long have you been engaged in business? A 20 years.



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Q What was your business when you were engaged? A Importing laces.

Q Where? A In New York City.

Q What was your firm, if any? A Brooks, Oakley & Cooper.

Q And for the last 20 years you have been out of business? A Yes, sir.

Q Where do you reside? A New York.

Q Whereabouts? A 265 West 38th street.

Q How long? A For eight years.

Q Married? A Yes, sir.

Q Ever served as a juror before? A Yes, sir.

Q You heard me describe the crime charged in this indictment? A No, sir, I did not.

Q Well, the crime charged in this indictment is that of sodomy. Do you know what sodomy is, by definition? A No, sir. Well, I think I do, yes. I think I do.

Q Well, if you do not, I will tell you? A I think, sir, that I understand, in a general way, what it is.

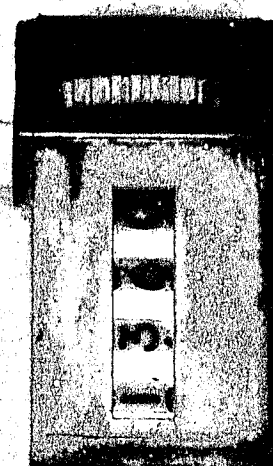
Q Well, all right.

MR. LIEBERMAN: Well, that is satisfactory to me if he knows what it is in a general way.

THE COURT: Yes.

BY MR. ELY:

Q Do you know of any reason why you could not sit as a



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juror in this case in such a case as this and bring in a fair and impartial verdict on the evidence and on that alone?

A No, sir.

Q Uninfluenced by any extraneous consideration, of any name or nature? A No, sir.

Q Or through sympathy for the defendant or prejudice against him? A I could, sir.

Q You could bring in a verdict, uninfluenced? A Yes, sir.

Q And you would do so, if selected? A Yes, sir.

Q And if you are convinced beyond a reasonable doubt, from the evidence offered in the case of the guilt of the defendant, would you pronounce him guilty? A Yes, sir.

Q Do you know the firm of Carrere & Hastings? A No, sir.

Q Are you acquainted with any of its employees? A No, sir.

Q Were you ever, as far as you know? A No, sir.

Q Do you know a man by the name of George Caldwell, otherwise called George Calbert? A No, sir.

Q Do you know that man sitting there (indicating the defendant)? A No, sir.

Q Are you acquainted with any of the District Attorney's staff? A No, sir.

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Q Have you ever had any business or social or other relations with Mr. Charles E. Le Barbier? A No, sir.

Q Of the firm of Le Barbier & Parker? A No, sir.

Q Do you know any reason why, if selected as a juror in this case, you could not do justice as between the People of the State of New York and this defendant? A No, sir.

Q And you would, in so far as in you lies, if accepted; wouldn't you? A Yes, sir.

MR. ELY: Challenge withdrawn.

MR. LE BARBIER: No challenge for actual or implied bias.

THE COURT: Any challenge pending, Mr. District Attorney?

MR. ELY: No, sir.

THE COURT: Any challenge pending, on the part of the defense?

MR. LE BARBIER: Challenged peremptorily.

THE COURT: Gentlemen of the jury, who are impaneled,

It is my duty to caution you not to talk about the case among yourself, or allow any person to speak with you concerning it; and not to form or express any opinion regarding the guilt or innocence of the defendant until the case is finally submitted

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to you.

The Court will take a recess until half past
two o'clock.

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AFTER RECESS.

SOLOMON B. DAVEGA, being duly sworn and examined as to his qualifications as a juror, testified as follows:

DIRECT EXAMINATION BY MR. ELY:

Q And what is your business, sir? A Sporting goods.

Q Where? A 32 East 14th street.

Q What is your firm, if any? A It is my own place of business.

Q Solomon B. Davega? A Yes, sir.

Q And where do you reside, Mr. Davega? A 53 Morningside avenue.

Q And when did you live at 2966 Decatur avenue? A About two years ago.

Q And how long have you lived in Morningside avenue?

A About two years.

Q And are you a married man? A Yes, sir.

Q Have you served as a juror before? A Yes, sir.

Q And have you heard of the crime charged in this indictment? A Yes, sir.

Q And do you know of any reason why you could not sit as a juror, an impartial juror, in this case, and find a ver-

dict on the evidence, and the evidence alone, uninfluenced by any extraneous consideration whatever? A Yes, sir.

Q And without sympathy for or prejudice against the defendant? A Yes, sir.

Q And, if you were convinced, beyond a reasonable doubt, of the guilt of the defendant, on that evidence, would you find him guilty? A Yes, sir.

Q Do you know the firm of Carrere & Hastings, architects? A No, sir.

Q Are you acquainted with any of their employes, as far as you know? A No, sir.

Q Are you acquainted with any member of the District Attorney's staff? A No, sir.

Q Do you know Mr. Charles E. Le Barbier? A No, sir.

Q That gentleman there (indicating)? A No, sir.

Q Have you any business or other relations with him, as far as you know? A No, sir.

Q Have you ever had, as far as you know? A No, sir.

Q Or with the firm of Le Barbier & Parker? A No, sir.

Q Do you know of any reason why, if impaneled as a juror here, you could not do justice between the People of the State of New York and this defendant? A No, sir.

Q Do you know that man there, sitting in the middle (indicating the defendant)? A No, sir.



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MR. ELY: Challenge withdrawn.

MR. LE BARBIER: No challenge for actual or implied bias.

MR. ELY: No challenge pending, on the part of the People.

MR. LE BARBIER: Challenged peremptorily.

J A C O B A. F E L T E R, being duly sworn and examined
as to his qualifications as a juror, testified as follows:

DIRECT EXAMINATION BY MR. ELY:

Q Mr. Felter, will you please try to talk loud, so that Mr. Le Barbier can hear you? A I will try to.

Q Now, what is your business, Mr. Felter? A Well I have been retired for the last two years.

Q And what was your former business? A Contractor.

Q And have you ever been a collector? A Yes, sir.

Q Collector of what? A The New York Commercial Steam Laundry.

Q And how long ago were you collector for the New York ~~and~~ Commercial Steam Laundry? A Two years ago.

Q And what business were you engaged in as a contractor, two years ago? A A building contractor.

Q A building contractor? A Yes, sir.

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Q And since then you have been out of business? A Yes, sir.

Q Where have you been living? A 290 West Fourth street.

Q Where were you engaged in business as a contractor?
A 428 West 25th.

Q West 25th street? A Yes, sir.

Q Have you ever sat as a jurymen before? A I have, yes, sir.

Q And have you heard me describe the crime charged in this indictment? A Yes, sir.

Q Do you know of any reason why you could not sit as a juror in such a case as this? A I do not.

Q And bring in a fair and impartial verdict on the evidence and the evidence alone? A I do not.

Q Uninfluenced by any extraneous consideration, of any name or nature whatsoever? A I don't know of any.

Q Without sympathy for the defendant or prejudice against him? A I don't know of any.

Q Well, you could bring in a verdict on the evidence without sympathy for the defendant or prejudice against him, on the evidence offered here, and on that only? A Yes, sir.

Q And you would do so, if selected? A Yes, sir.

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Q And, if you were convinced, beyond a reasonable doubt, from the evidence offered in this case, of the guilt of the defendant, you would find him guilty? A Yes, sir.

Q Are you a married man? A I am.

Q Are you acquainted with Carrere & Hastings, the firm of architects, or any of their employees? A No, sir.

Q Did you ever have any business dealings with that firm or anybody connected with it, as far as you know? A No, sir.

Q Do you know the defendant here, George Caldwell, or George Galbert? A No, sir.

Q Are you acquainted with any member of the District Attorney's staff? A I am not.

Q Did you ever have any business, or other connections with Mr. Charles E. Le Barbier? A No, sir.

Q Or the firm of Le Barbier & Parker? A No.

Q Are you acquainted with him? A No, sir.

Q Or them? A No, sir.

Q Do you know any reason why, if selected as a juror in this case, you could not do justice as between the People of the State of New York and this defendant? A No.

Q And you would do so, in so far as in you lies, if accepted? A I would, yes.

MR. ELY: Challenge withdrawn.



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MR. LE BARBIER: No challenge for actual or implied bias.

MR. ELY: No challenge pending on the part of the People.

MR. LE BARBIER: He is satisfactory to the defense.

(The juror is sworn.)

D A V I D O C H S, being duly sworn and examined as to his qualifications as a juror, testified as follows:

DIRECT EXAMINATION BY MR. ELY:

Q Mr. Ochs, what is your business? A Insurance.

Q And located where? A 66 Maiden Lane.

Q Fire or life? A Fire.

Q How long have you been engaged in the insurance business?

A Eight years.

Q And how long have you been at 66 Maiden Lane? A Since last September.

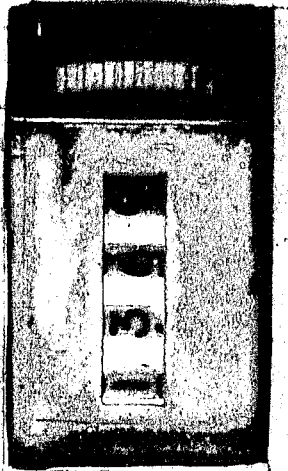
Q And have you any firm, or are you alone? A Alone.

Q You are an insurance agent? A Yes, sir.

Q And where do you reside? A 163 East 87th street.

Q How long have you lived there? A Three years.

Q Is that an apartment house? A A flat house.



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Q A flat house? A Yes, sir.

Q And you are married? A Yes, sir.

Q Ever served as a juror before? A I did.

Q Have you heard me describe the crime charged in this indictment? A I did.

Q Do you know of any reason why you could not sit as a juror in such a case as this? A I do not.

Q And bring in a fair and impartial verdict on the evidence offered in the case, and on that alone, uninfluenced by any extraneous consideration or circumstance of any name or nature whatever? A I do not.

Q Without sympathy for the defendant or prejudice against him? A I do not.

Q And you would do so, if selected, and, if convinced beyond a reasonable doubt, from the evidence in the case, of the guilt of the defendant, would you find him guilty? A I would.

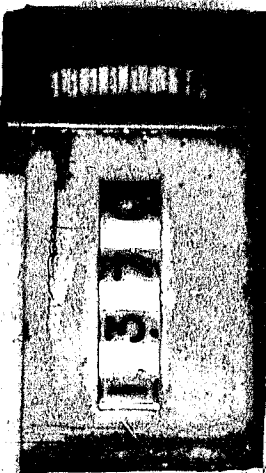
Q Are you acquainted with Carrere & Hastings, the firm of architects? A No, sir.

Q Or any of their employees? A No, sir.

Q Or, have you ever had any business with the firm?
A No, sir.

Q Do you know the defendant here, George Caldwell, otherwise called George Galbert? A No, sir.

Q Are you acquainted with anybody on the District Attorney's staff? A No, sir.



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Q Have you ever had any business or other relations with Mr. Charles E. Le Barbier? A No, sir.

Q Do you know him? A No, sir.

Q Have you ever had any business or other relations with the firm of Le Barbier & Parker? A No, sir.

Q Do you know of any reason why you could not do justice, as between the People of the State of New York and this defendant, if selected to act as a juror in this case?

A No, sir.

Q And you would do so, in so far as in you lies?

A Yes, sir.

MR. ELY: Challenge withdrawn.

MR. LE BARBIER: No challenge for actual or implied bias.

MR. ELY: No challenge on the part of the People.

MR. LE BARBIER: We challenge peremptorily.

EPHRAIM V. COLWELL, being duly sworn and examined as to his qualifications as a juror, testified as follows:

DIRECT EXAMINATION BY MR. ELY:

Q Your name is Colwell, I understand, sir? A Colwell

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(spells it).

Q Mr. Colwell, what is your business? A Cooperage.

Q And where are you located in business? A In Greenwich street, 414.

Q What number please? A 414.

Q Will you talk a little louder, sir? A 414 Greenwich street.

Q 414 Greenwich street? A Yes, sir.

Q And what is your firm? Have you any firm? A The name, that is all.

Q You are in business there for yourself? A Yes, sir.

Q And how long have you been in the cooperage business, at 414 Greenwich street? A Oh, about 20 years.

Q Where do you reside, Mr. Colwell? A 63 Van Dam street.

Q And how long have you lived there? A Since the 2nd of May.

Q And where did you reside before that? A 65 Van Dam street.

Q And how long were you there? A Ten years.

Q You are married? A Yes, sir.

Q You have heard me describe the crime charged in this indictment? A Yes, sir.

Q Do you know of any reason why you could not sit as a

juror in such a case as this? A I do not.

Q And bring in a fair and impartial verdict on the evidence offered in this case, and upon that evidence alone?

A As far as I know.

Q Well, you would not go outside of the evidence, would you, to bring in a verdict? A No, sir.

Q You would bring it in on what was offered in this case and without reference to any outside considerations, wouldn't you? A Yes, sir, I would.

Q Well, that is what I am asking you. Uninfluenced by sympathy for the defendant, or prejudice against him?

A Yes, sir.

Q You have served as a juror before, haven't you?

A Yes, sir, in a civil case.

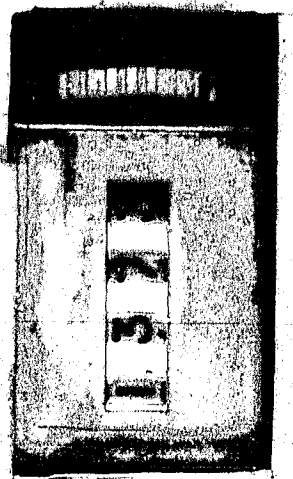
Q And, if you were convinced, beyond a reasonable doubt, from the evidence offered in the case, of the guilt of the defendant, would you find him guilty? A I would.

Q Do you know the firm of Carrere & Hastings? A No, sir.

Q Have you ever had any business or other relations with the firm? A No, sir.

Q Are you acquainted with any of the employees of the firm as far as you know? A No, sir; none that I know as employees.

Q Yes. You don't know the defendant here, George Caldwell, otherwise called George Gilbert? A No, sir.



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Q Now, do you know anybody connected with the District Attorney's staff? A No, sir.

Q Do you know anybody-- do you know Mr. Charles E. Le Barbier, or have you ever had any business or other relations with him? A No, sir.

Q Have you ever had any business or other relations with the firm of Le Barbier & Parker? A No, sir.

Q Do you know of any reason why, if selected as a juror, you could not do justice as between the People of the State of New York and this defendant? A No.

MR. ELY: Challenge withdrawn.

MR. LE BARBIER: No challenge for actual or implied bias.

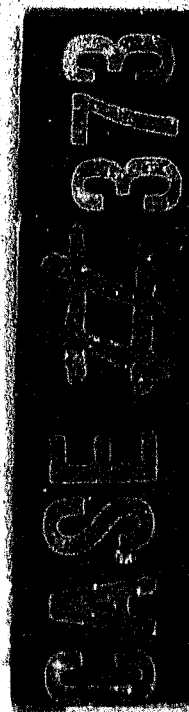
MR. ELY: I will challenge peremptorily.

CHARLES S. LINSLEY, being duly sworn and examined as to his qualifications as a juror, testified as follows:

DIRECT EXAMINATION BY MR. ELY:

Q Mr. Linsley, what is your business, please? A I am out of business.

Q And, when you were last engaged in business, how long ago was it? A December, 1890.



Q And what business were you in? A Importer and jobber of teas.

Q And where were you located? A 104 Front street.

Q And where do you reside? A 20 East 23rd.

Q Are you a married man? A Yes, sir.

Q Have you served as a juror before? A Yes, sir.

Q And have you heard me describe the crime charged in this indictment? A I have.

Q And do you know any reason why you could not sit as a juror in such a case as this? A I do not.

Q And bring in a fair and impartial verdict on the evidence offered in this case, and upon that evidence alone?

A No, sir.

Q Uninfluenced by any extraneous or outside consideration of any name or nature whatsoever? A No, sir.

Q Or prejudice against the defendant or sympathy for him? A No, sir.

Q And you would do that if selected? A Certainly.

Q And if you were convinced, beyond a reasonable doubt, upon the evidence offered in this case, that the defendant was guilty, you would find him so, wouldn't you? A I would.

Q And are you acquainted with the firm of Carrere & Hastings? A I am not.

Q You have heard of the firm? A I have.

Q But have you ever had any dealings with the firm?

A I have not.

Q And you know nobody connected with the firm, as far as you know? A I do not.

Q Do you know a man by the name of George Caldwell, otherwise called George Galbert? A I do not.

Q Did you ever see that defendant there before (indicating the defendant? A No, sir.

Q Do you know anybody connected with the District Attorney's office? A I do not.

Q Have you ever had any business or other connections with the firm of Le Barbier & Parker? A I have not.

Q Are you acquainted personally with either Charles E. Le Barbier or Mr. Parker, his partner? A I am not.

Q You have never had any relations with Mr. Le Barbier, either social or otherwise, as far as you know? A No, sir.

Q Do you know of any reason why, if accepted as a juror in this case, you could not do justice, as between the People of the State of New York and this defendant? A I do not.

Q And if accepted, you would, in so far as in you lies? A I would.

MR. ELY: Challenge withdrawn.

MR. LE BARBIER: No challenge for actual or implied bias.

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MR. ELY: No challenge on the part of the People, pending.

MR. LE BARBIER: He is satisfactory to the defense.

(The juror is sworn).

CHARLES W. WILDER, being duly sworn, and examined as to his qualifications as a juror, testified as follows:

DIRECT EXAMINATION BY MR. ELY:

Q Mr. Wilder, what is your business? A Billiards.

Q What? A Billiards.

Q Well, manufacturer of billiard tables? A No, sir; manager of the Metropolitan Billiard Academy.

Q And where are you located? A 127 Columbus avenue.

Q And were you formerly in the insurance business?

A I was.

Q How long ago? A Three years ago.

Q And how long have you been the manager of this billiard academy? A Two years and a half.

Q Where do you reside? A 117 West 64th.

Q Have you ever served as a juror before? A A great many times.

Q You live at 117 West 64th street? A Yes, sir.

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Q Did you ever hear of the Ariston Baths? A Never have.

Q Well-- A Oh, I think-- they were located on 55th street?

Q Yes. A Oh, I think I have.

Q Would anything that you have ever heard of the Ariston Baths, if it appeared in evidence that certain things were alleged to have occurred there, prejudice you against the defendant? A No.

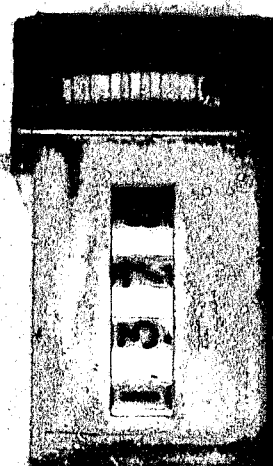
MR. LE BARBIER: Objected to as incompetent, immaterial and irrelevant.

MR. JAY: It is answered.

THE COURT: I think I will allow the answer to stand. It does not seem to me at all harmful, in any sense to the defendant.

MR. LE BARBIER: Exception. Only in this sense, may it please the Court, that the District Attorney is proceeding upon some assumption of facts, and we only want the facts in this case.

THE COURT: I understand. Inasmuch as the gentleman answered the question before the objection was interposed, and inasmuch as that answer shows that the gentleman's mind is free from any prejudice against the defendant, by reason of anything that he has ever heard touching those baths, I do not



see that the defendant can, in any way be prejudiced by it.

MR. LE BARBIER: It is more as a warning to my distinguished friend.

MR. ELY: Oh, thank you, for the warning.

BY MR. HY:

Q You say that you are married? A Yes, sir.

Q You have heard the crime charged in this indictment described by me? A I have.

Q Do you know of any reason why--- do you know of any reason why you could not act as a juror in such a case as this?

A No, sir.

Q Or in this case? A No, I do not.

Q And bring in a fair and impartial verdict on the evidence offered in this case, and upon that evidence alone, uninfluenced by any outside consideration, of any name or nature whatsoever? A Yes, sir.

Without sympathy for the defendant or prejudice against him? A Exactly.

And you would do that, if selected; would you? A I certainly would.

Q And, if you were convinced, beyond a reasonable doubt, from the evidence in the case, that the defendant was guilty, you would pronounce him so? A Certainly.

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Q Have you ~~any~~ ever had any connection with the firm of Carrere & Hastings? A I have not.

Q Do you know them? A I do not.

Q Do you know any of their employees, as far as you now recollect? A No, sir.

Q Have you ever heard of one George Caldwell, otherwise called George Galbert? A I have not; no, sir.

Q Are you acquainted with any member of the District Attorney's staff? A I think not, at present.

Q Are you acquainted with, or have you ever had any business connections with Mr. Charles E. Le Barbier? A I never have had.

Q And you are not acquainted with him? A No, sir.

Q Have you ever had any business or other connections with the firm of Le Barbier & Parker? A No sir.

Q Do you know of any reason why, if selected as a juror in this case, you could not do justice, as between the People of the State of New York and this defendant? A I do not.

Q And you would, in so far as in you lies, if accepted?
A Yes, sir.

MR. ELY: Challenge withdrawn.

MR. LE BARBIER: No challenge, for actual
or implied bias.

THE COURT: Any challenge on the part of the
People.

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MR. ELY: No, sir.

THE COURT: Any challenge pending on the part of the defense.

MR. LE BARBIER: No, sir. He is satisfactory to the defense.

(The juror is sworn).

A R T H U R G. T H O M P S O N, being duly sworn and examined as to his qualifications as a juror, testified as follows:

DIRECT EXAMINATION BY MR. ELY:

Q Mr. Thompson, what is your business? A Pin ticket manufacturer.

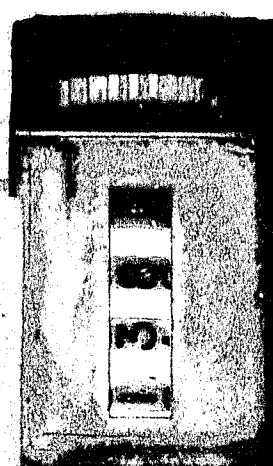
Q And where is your business address? A 307 West Broadway.

Q And what, if any, is your firm? A The A. Kimball Company, a corporation.

Q And what connection have you with the corporation? A Vice President.

Q And how long have you been located at 307 West Broadway, sir? A Nearly ten years.

Q And where do you live? A 587 West End avenue.



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Q Is that an apartment house or a private dwelling?

A A private house.

Q And are you married? A I am.

Q And have you ever served as a juror before? A Yes, sir.

Q And have you heard me describe the crime charged in this indictment? A I have.

Q And do you know of any reason why you could not sit as a juror in such a case as this? A No, sir.

Q And bring in a fair and impartial verdict, on the evidence offered here in this case, and on that evidence alone? A No, sir.

Q Uninfluenced by any extraneous consideration, of any name or nature whatsoever? A Yes, sir.

Q Uninfluenced by sympathy for the defendant or prejudice against him? A Yes, sir.

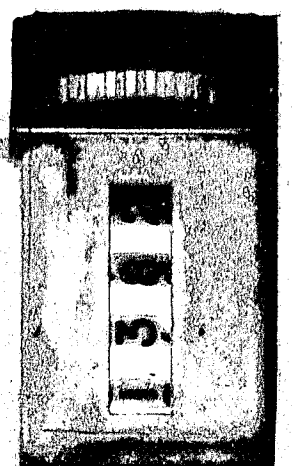
Q And you would do so, if selected? A I would.

Q And, if you were convinced, beyond a reasonable doubt, from the evidence offered in this case, of the defendant's guilt, would you find him guilty? A I would.

Q Do you know the firm of Carrere & Hastings, architects?
A No, sir.

Q Are you acquainted with any of their employes, as far as you know? A No, sir.

Q Are you acquainted with anybody connected with the



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District Attorney's staff? A No, sir.

Q Did you ever hear of a man by the name of George Caldwell, alias George Galbert? A No, sir.

Q You don't know that man there, that defendant (indicating the defendant)? A No, sir.

Q Are you acquainted with Mr. Le Barbier, Mr. Charles F. Le Barbier? A No.

Q Have you ever had any business or other relations with him? A No, sir.

Q Or his firm? A No, sir.

Q Le Barbier & Parker? A No, sir.

Q Do you know any reason why if selected as a juror in this case, you could not do justice as between the People of the State of New York and this defendant? A None.

Q And you would, if selected, as far as in you lies? A Yes, sir.

MR. CLY: Challenge withdrawn.

MR. LE BARBIER: No challenge for actual or implied bias.

MR. CLY: No challenge pending on the part of the People.

MR. LE BARBIER: He is satisfactory to the defense.

(The juror is sworn.)

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B U S H R O D R . B A Y N E , being duly sworn, and
examined as to his qualifications as a juror, testified
as follows:

DIRECT EXAMINATION BY MR. ELY:

Q Mr. Bayne, what is your business? A I am in Wall
street, sir; broker.

Q A broker? A Yes, sir.

Q What is your firm, if any? A Ellingwood & Cunningham.

Q Where? A 41 and 43 Wall street.

Q Married? A No, sir; I live with my sisters.

Q Ever served as a juror before? A Many a time.

Q Have you heard me describe the crime charged in this
indictment? A Yes, sir.

Q Do you know of any reason why you could not sit as a
juror in this case? A I don't know of any reason.

Q And bring in a fair and impartial verdict upon the
evidence offered in this case, and upon the evidence alone?

A I do not, sir.

Q Uninfluenced by any extraneous consideration of any
name or nature whatsoever? A No, sir.

Q Without sympathy for the defendant or prejudice
against him? A Yes, sir.

Q And you would do so, if selected; would you?

A I would. I would do my best, of course.

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Q And if you were convinced, beyond a reasonable doubt, from the evidence offered in this case, that the defendant was guilty, would you find him guilty? A I would, sir.

Q Are you acquainted with the firm of Carrere & Hastings?
A No, sir.

Q Do you know any of their employees? A No, sir.

Q Did you ever hear of the Ariston Baths? A No, sir.

Q Turkish and Russian Baths? A No, sir; I have never been to a turkish bath in my life.

Q You have never been to a turkish bath in your life?
A No, sir.

Q Are you acquainted with anybody connected with the District Attorney's office? A No, sir.

Q Do you know anybody by the name of George Caldwell or George Galbert? A No, sir.

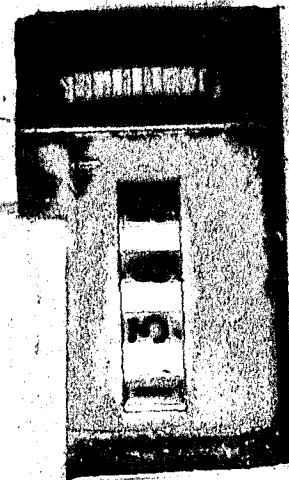
Q Are you acquainted with that man at the bar (indicating the defendant)? A No, sir.

Q The defendant? A No, sir.

Q Do you know Mr. Charles E. LeBarbier, his counsel?
A No, sir.

Q Do you know the firm of LeBarbier & Parker?
A No, sir.

Q And have never had any business or other relations with them, as far as you know? A No, sir; I have never had any.



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Q Do you know of any reason why, if selected as a juror in this case, you could not do justice, as between the people of the state of New York and this defendant? A No, sir.

Q And if selected, you would do so, as far as with you lies? A I would, certainly.

MR. ELY: Challenge withdrawn.

MR. LeBARBIER: No challenge for actual or implied bias.

MR. ELY: He is acceptable to the People.

MR. LeBARBIER: He is satisfactory to the Defense.

(The juror is sworn.)

W I L L A R D E . H O W A R D , being duly sworn, and examined as to his qualifications as a juror, testified as follows:

DIRECT EXAMINATION BY MR. ELY:

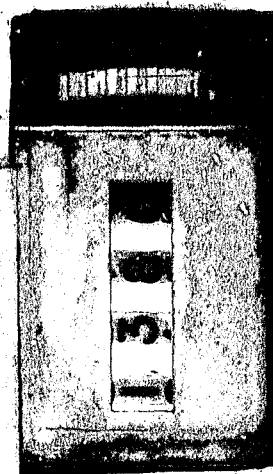
Q Mr. Howard, what is your business? A Manager of a baking business.

Q For whom? A For James Rowland & Co.

Q Where is that bakery, sir? A 817 Sixth Avenue.

Q And that is about what street? A 46th Street.

Q How long had you been manager of the bakery? A Two years.



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Q Where do you reside? A 817 Sixth Avenue.

Q The same place? A Yes, sir.

Q Are you married? A Married.

Q Did you ever hear of the Ariston Baths? A I never did.

Q A Turkish and Russian bath place? A No, sir.

Q You never heard of it? A No.

Q Have you ever served as a juror before? A I have.

Q And you heard me describe the crime charged in this indictment? A I have.

Q Do you know of any reason why you could not sit as a juror in such a case as this? A I do not.

Q And bring in a fair and impartial verdict on the evidence offered in this case, and upon that evidence alone?

A I can.

Q Uninfluenced by any extraneous or outside consideration of any name or nature whatsoever? A yes, sir.

Q Without sympathy for the defendant or prejudice against him? A yes, sir.

Q And you would do so, if selected? A Yes, sir, I will.

Q And if you are convinced beyond a reasonable doubt, from the evidence offered in the case, that the defendant is guilty, will you find him so? A I would.

Q Do you know the firm of Carrere & Hastings? A I do not.

Q Did you ever have any business or other dealings with

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them? A No, sir.

Q Do you know any of their employees? A No, sir.

Q Did you ever hear of a man by the name of George Caldwell, otherwise called George Galbert? A No, sir.

Q Did you ever see that man before, or are you acquainted with him (indicating the defendant? A No, sir.

Q Are you acquainted with anyone connected with the District Attorney's staff? A No, sir.

Q Do you know Mr. Charles E. LeBarbier? A No, sir.

Q The defendant's counsel? A No, sir.

Q Did you ever have any dealings with his firm, the firm being LeBarbier & Parker? A Nonewhatever.

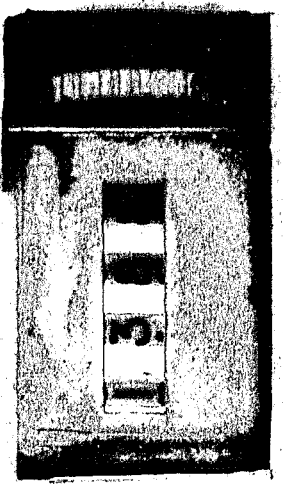
Q Do you know of any reason why, if selected as a juror here, you could not find a verdict on the evidence, a fair and impartial verdict on the evidence, uninfluenced by any extraneous circumstance or matter whatever? A No, sir.

MR. ELY: Challenge withdrawn.

MR. LeBARBIER: No challenge for actual or implied bias.

MR. ELY: None on the part of the People.

MR. LeBARBIER: Challenged peremptorily.



J O S E P H M A P L E S , being duly sworn, and examined
as to his qualifications as a juror, testified as follows:

DIRECT EXAMINATION BY MR. ELY:

Q Mr. Maples, what is your business? A Truckman.

Q Truckman? A Yes, sir.

Q And whereabouts are you located in business? A 93
Water street.

Q What is your firm, if any? A None. I work for
myself.

Q How long have you been engaged in the trucking bus-
iness, in Water street? A About 15 years.

Q Yes. And where do you reside? A 103rd Street,
203, West.

Q Married? A Yes, sir.

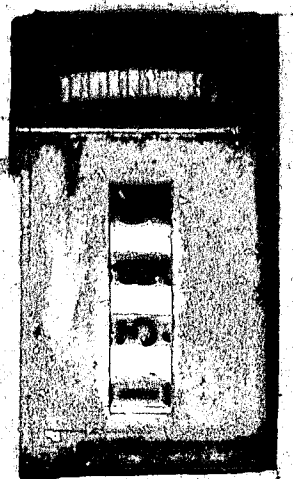
Q Ever served as a juror before? A Yes, sir.

Q You know -- have you heard me describe the crime
charged in this indictment? A Yes, sir.

Q Do you know of any reason why you could not serve as a
juror in this case? A No, sir.

Q And bring in a fair and impartial verdict on the
evidence offered in the case, and on that evidence alone,
without any outside consideration of any name or nature what-
soever? A No, sir.

Q Without sympathy for the defendant, or prejudice
against him? A No, sir.



Q And you would bring in a verdict, upon the evidence offered here, and that alone, if accepted? A Yes, sir.

Q And, if you were convinced, beyond a reasonable doubt, from the evidence in the case, of the guilt of the defendant, would you find him guilty? A Yes, sir.

Q Have you any connection or acquaintance with the firm of Carrere & Hastings, architects? A No, sir.

Q Did you ever know any of the firm, or any of their employees, as far as you know? A No, sir.

Q Do you know a man by the name of George Caldwell, alias George Galbert? A No, sir.

Q Did you ever see that defendant there, the man with the moustache and bald head (indicating the defendant)?

A No, sir.

Q Did you ever hear of the Ariston Baths? A No, sir.

Q Are you acquainted with anybody connected with the District Attorney's office? A No, sir.

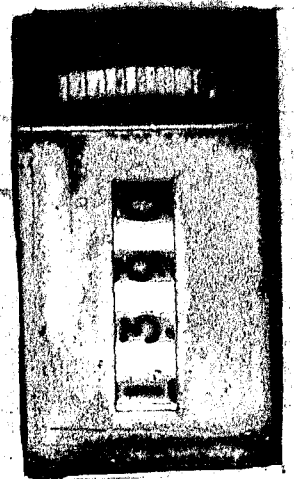
Q Are you acquainted with Mr. Charles E. LeBarbier?

A No, sir.

Q Did you ever have any business or other relations with him, or with the firm of LeBarbier & Parker? A No, sir.

Q Do you know of any reason why, if selected as a juror, you could not do justice as between the people of the State of New York and this defendant? A No, sir.

Q And you would, insofar as in you lies, if accepted?



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A yes, sir.

MR. ELY: Challenge withdrawn.

MR. LeBARBIER: No challenge for actual or implied bias.

MR. ELY: No challenge pending, on the part of the People.

MR. LeBARBIER: Peremptorily challenged.

HENRY C. BELDEN, being duly sworn and examined as to his qualifications as a juror, testified as follows:

DIRECT EXAMINATION BY MR. ELY:

Q Mr. Belden, what is your business? A Drug business.

Q Where? A 91 Fulton Street.

Q With whom, connected with whom? A McKesson & Robbins.

Q For how long? A 35 years.

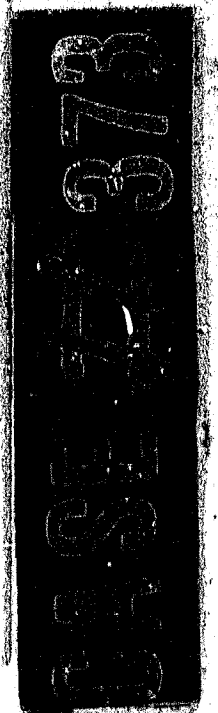
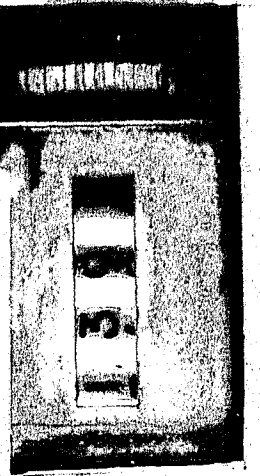
Q Where do you reside? A 638 Washington Street, New York City.

Q Are you married? A Yes, sir.

Q Ever served as a juror before? A Yes, sir.

Q Have you heard the crime charged in this indictment, as described by me? A Yes, sir; I did hear it.

Q I beg pardon? A I did hear it, yes.



Q Do you know any reason why you could not serve as a juror in this case? A No, sir.

Q And bring in a fair and impartial verdict on the evidence offered in this case, and upon that evidence alone? A I would.

Q Uninfluenced by any extraneous consideration, of any name or nature whatsoever? A No, sir.

Q Without sympathy for the defendant, or prejudice against him? A No, sir; without prejudice against him or sympathy for him.

Q And, if you were convinced, beyond a reasonable doubt, from the evidence offered in the case, of the guilt of the defendant, would you pronounce him guilty? A I would.

Q Have you ever had any business or other relations with the firm of Carrere & Hastings? A No, sir.

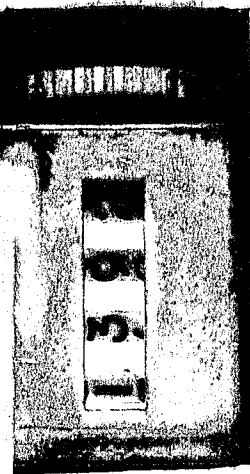
Q Do you know any of their employees? A No, I do not.

Q Did you ever hear of a man by the name of Galbert, George Galbert? A No, sir.

Q Did you ever hear of a man called George Caldwell? A No, sir, I did not.

Q Are you acquainted with any of the District Attorney's staff? A No, sir, I am not.

Q Are you acquainted with, or have you ever had any business or other relations with Mr. Charles E. LeBarbier?



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A No, sir.

Q That gentleman there (indicating) counsel for the defendant? A No, sir; I don't know him.

Q Have you ever had any business or other relations with the firm of LeBarbier & Parker? A No, sir.

Q Or has your firm? A No, sir; not that I know of. I don't know them at all.

Q Do you know any reason why, if selected here as a juror, you could not do justice, as between the People of the State of New York and this defendant? A No, sir.

Q And you would do so, if selected? A Yes, sir.

MR. ELY: Challenge withdrawn.

MR. LeBARBIER: No challenge on the part of the defendant, as to actual or implied bias.

MR. ELY: He is satisfactory to the People.

MR. LeBARBIER: Challenged peremptorily.

J A M E S F . B R A G G , being duly sworn, and examined as to his qualifications as a juror, testified as follows:

DIRECT EXAMINATION BY MR. ELY:

Q Mr. Bragg, what is your business? A Real estate agent.

Q And where are you located in business? A 218 Eighth Avenue, near 21st Street.

Q And where do you reside? A 358 West 51st street.

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Q You are a married man? A No, sir.

Q Have you ever sat as a juror? A I have.

Q Have you heard me describe the crime charged in this indictment? A I have, sir; I have.

Q Do you know of any reason why you could not sit as a juror in this case? A No, sir.

Q And bring in a fair and impartial verdict, on the evidence offered in this case, and on that evidence alone?
A Yes, sir, I could.

Q Uninfluenced by any extraneous consideration, or by sympathy for the defendant, or prejudice against him?
A Yes, sir, I could.

Q And you would, if selected? A I certainly would.

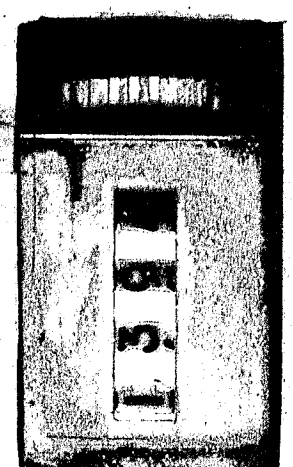
Q And, if you were convinced, beyond a reasonable doubt, from the evidence offered in this case, of the guilt of the defendant, you would find him guilty? A Certainly.

Q Are you acquainted with the firm of Carrere & Hastings?
A No, sir.

Q Did you ever have any business or other relations with them? A I never did.

Q Did you ever know any of their employees, as far as you know? A No, sir.

Q Did you ever hear of a man by the name of George Caldwell? A No, sir.



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Q Did you ever hear of the Ariston Baths? A No, sir.

Q Did you ever hear of a man by the name of George Galbert? A I did not.

Q Do you know anybody connected with the District Attorney's force? A No, sir.

Q Do you know Mr. Charles E. LeBarbier? A I do not.

Q Did you ever have any business or other dealings with him? A No, sir.

Q Or with his firm? A No, sir.

Q Do you know of any reason why, if selected as a juror, you could not do justice, as between the People of the State of New York and this defendant? A I do not.

Q And you would, insofar as in you lies, if you are accepted? A Yes, sir.

MR. ELY: Challenge withdrawn.

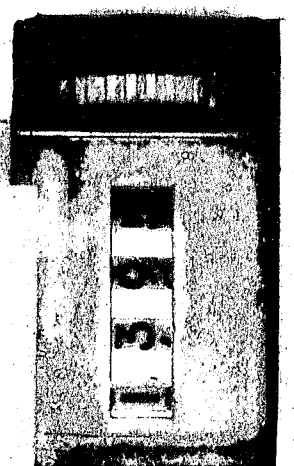
MR. LeBARBIER: No challenge for actual or implied bias.

MR. ELY: I will accept the gentleman.

THE COURT: Any challenge on the part of the Defendant?

MR. LeBARBIER: No, sir; he is satisfactory to the Defense.

(The juror is sworn.)



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W I L L I A M B . Q U A I N T A N C E , being duly sworn,
and examined as to his qualifications as a juror, testi-
fied as follows:

DIRECT EXAMINATION BY MR. ELY:

Q Mr. Quaintance, what is your business? A Importer.

Q Of what? A Curtain goods.

Q What is your firm? A W. B. Quaintance.

Q Where? A 438 Broadway.

Q How long have you been located there? A Ten years.

Q Where do you reside? A 887 West End Avenue.

Q How long have you resided there? A Eight years.

Q Are you a married man? A Yes, sir.

Q Have you served as a juror before? A Yes, sir.

Q And you heard me describe the crime charged in this
indictment? A Yes, sir.

Q Do you know of any reason why you could not sit as a
juror in this case? A No, I don't know of any.

Q Sir? A I don't know of any.

Q And bring in a fair and impartial verdict, on the
evidence offered in this case, and on that evidence alone,
uninfluenced by any extraneous consideration, of any name
or nature whatsoever? A No, sir.

Q Or by sympathy for the defendant, or prejudice against
him? A No.



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Q And you would do so, if selected? A Yes, sir.

Q You would bring in a verdict on the evidence, and the evidence only? A Yes, sir.

Q And, if you were convinced, from the evidence, beyond a reasonable doubt, of the guilt of the defendant, would you pronounce him guilty? A I would.

Q Did you ever hear of the Ariston Baths? A No.

Q Are you acquainted with any members of the firm of Carrere & Hastings, architects? A I am not acquainted with any members of the firm. I do business with some decorators.

Q Are you acquainted with any of the employees of the firm of Carrere & Hastings? A No, sir; I never heard of them.

Q Do you mean to say that these decorators are employed by the firm of Carrere & Hastings? A No. But I heard you mention this concern as decorators, a while ago.

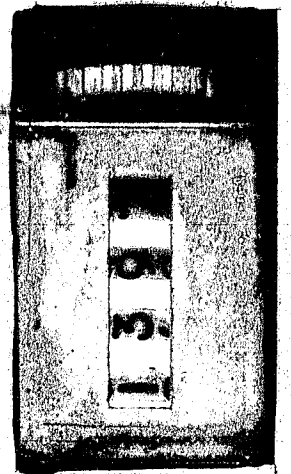
Q No, architects. A No. That is all right then, if they are not decorators.

Q Are you acquainted with a person by the name of George Caldwell, otherwise known as George Galbert? A No; I never heard of him.

Q Are you acquainted with any of the District Attorney's staff? A No; not personally.

Q Are you acquainted with Mr. Charles E. LeBarbier?
A No.

Q Did you ever have any business or other relations with



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him as far as you know? A No; I never heard of him.

Q Did you ever have any business or other relations with the firm of LeBarbier & Parker? A No; I never heard of them.

Q Do you know of any reason why, if selected as a juror in this case, you cannot do justice as between the People of the State of New York and this defendant? A No, sir.

Q And you will do so, if selected, insofar as in you lies? A Yes, sir.

MR. ELY: Challenge withdrawn.

MR. LeBARBIER: No challenge, for actual or implied bias, on the part of the defendant.

MR. ELY: No challenge pending on the part of the People.

MR. LeBARBIER: He is satisfactory to the Defense.

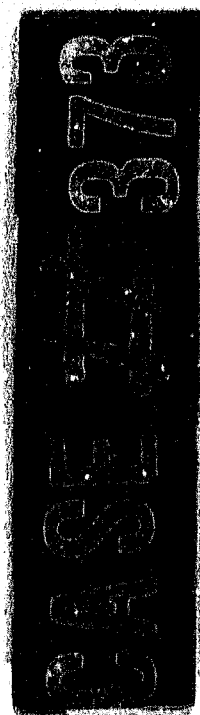
(The juror is sworn.)

H O M E S P . O L M S T E A D , being duly sworn and examined as to his qualifications as a juror, testified as follows:

DIRECT EXAMINATION BY MR. ELY:

Q Mr. Olmstead, what is your business? A Manufacturer of corsets.

Q Of corsets? A Yes, sir.



Q And where? A 44 West 22nd.

Q What is your business? A The Olmstead Corset Company.

Q And is that a corporation? A Yes, sir.

Q And what connection, if any, had you with the corporation? A President.

Q And how long have you been located at 83 Perry Street, did you say? A That is the house address. I didn't say that. That is my house.

Q Well that is your house address; is it? A Yes, sir.

Q And your business address is what? A 44 West 22nd street.

Q And how long have you been located at that business address? A A little over two years; two years and a half.

Q And how long have you resided at 83 Perry Street?
A About 12 years.

Q You are a married man? A Yes, sir.

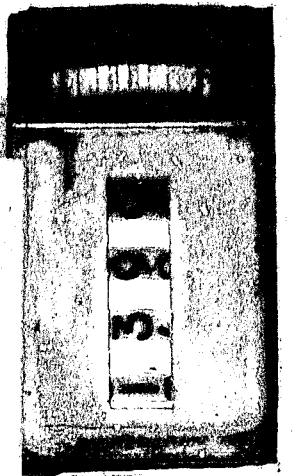
Q Have you ever served as a juror before? A I have, yes.

Q And have you heard me describe the crime charged in this indictment? A I have.

Q Do you know of any reason why you could not serve as a juror in this case? A No.

Q And bring in a fair and impartial verdict on the evidence, and the evidence alone? A I could.

Q Uninfluenced by any extraneous consideration of any name or nature whatever? A Yes, sir.



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Q Without sympathy for the defendant or prejudice against him? A Yes, sir.

Q And you would do that, would you, if selected?

A Yes, sir.

Q And if you were convinced, beyond a reasonable doubt, from the evidence offered in the case, of the guilt of the defendant, would you pronounce him guilty? A Yes, sir.

Q Would you? A Yes, sir.

Q Are you acquainted with the firm of Carrere & Hastings?

A No, sir.

Q Do you know any of their employees? A No.

Q Never had any business dealings with the firm or any of their employees, as far as you know? A No.

Q And do you know any member of the District Attorney's staff? A No.

Q Do you know George Galbert or George Caldwell?

A No, sir.

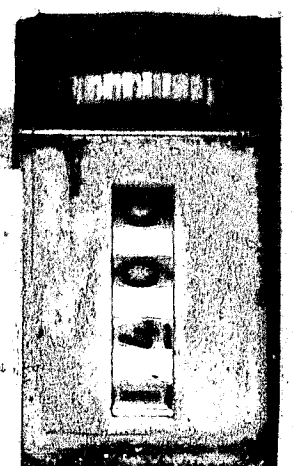
Q Do you know that defendant sitting there (indicating the defendant)? A No, sir.

Q Do you know Mr. LeBarbier, Charles E. LeBarbier?

A No.

Q Have you any business or other relations with him or his firm, as far as you know? A No.

Q Do you know any reason why, if selected as a juror, you could not do justice as between the People of the State



of New York and this defendant? A No.

MR. ELY: Challenge withdrawn.

MR. LeBARRIER: No challenge for actual or implied bias.

MR. ELY: I will challenge the juror peremptorily.

GEORGE G. NICHOLS, being duly sworn, and examined as to his qualifications as a juror, testified as follows:

DIRECT EXAMINATION BY MR. ELY:

Q Mr. Nichols, what is your business? A Fire insurance broker.

Q And where are you located? A 56 Pine Street.

Q Were you formerly at 45? A Yes, sir, at 45; but I moved into a new building, which is 56 now.

Q And how long have you been at 56 Pine Street?

A This is the second year.

Q Are you connected in business with anybody?

A No; by myself.

Q Yes. And how long have you been in the insurance business? A Thirty years.

Q Where do you reside? A 56 Morningside Avenue.

Q Is that an apartment house or a private dwelling?

A An apartment house.

Q Are you a married man? A I am not.

Q Have you heard me describe the crime charged in this indictment? A I did.

Q Do you know of any reason why you could not sit as a juror in this case? A No.

Q And bring in a fair and impartial verdict on the evidence? A No.

Q And the evidence alone? A No.

Q Uninfluenced by any extraneous consideration, of any name or nature whatsoever, or by sympathy for the defendant, or prejudice against him? A No.

Q And you would bring in such a verdict, on the evidence, if selected? A On the evidence only.

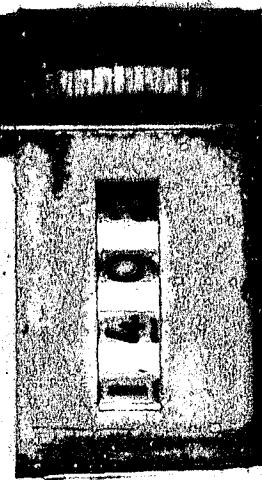
Q And if you were convinced, beyond a reasonable doubt, from the evidence in the case, of the guilt of the defendant, would you pronounce him guilty? A I would.

Q Have you ever done business for Carrere & Hastings?
A Never.

Q Never had any business dealings with any of their employees as far as you know? A As far as I know.

Q Are you acquainted with the members of the firm, or any of their employees, as far as you know? A Not to my knowledge.

Q Are you acquainted with anybody on the District Attorney's staff? A I know one gentleman by sight. I was



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on the first Herlihy trial.

Q And you know no one in the District Attorney's office whose acquaintance would in any way prejudice you, one way or the other, in arriving at a verdict in this case? A I don't know anyone outside of the court room, outside of the Herlihy trial. That lasted some time.

Q Are you acquainted with a man by the name of George Galbert? A No, sir.

Q Did you ever hear of a man by the name of George Caldwell? A Never.

Q Are you acquainted with Mr. Charles E. LeBarbier, or did you ever have any business or other relations with him? A I think I have seen him in court; that's all.

Q I know, but are you acquainted with him? A No.

Q Did you ever have any business or other relations with him? A No, sir.

Q Or with LeBarbier & Parker? A No, sir.

Q Do you know any reason why, if selected as a juror, you cannot do justice, as between the People of the state of New York and this defendant? A I do not.

Q And would you, even so far as in you lies, if selected? A I would.

MR. FLY: Challenge withdrawn.

MR. LeBARBIER: No challenge for actual or implied bias.

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THE COURT: Any challenge, Mr. District Attorney?

MR. ELY: No challenge pending on the part of the People.

MR. LeBARBIER: Challenged peremptorily.

C H A R L E S E . H A R V E Y , being duly sworn, and examined as to his qualifications as a juror, testified as follows:

DIRECT EXAMINATION BY MR. ELY:

Q What is your name, sir? A Charles E. Harvey.

Q Mr. Harvey, what is your business? A I am in the retail shoe business.

Q Where? A 221 Eighth Avenue.

Q How long have you been in business at 221 Eighth Avenue, in the retail shoe business? A Two years.

Q And what is your firm? A Charles E. Harvey.

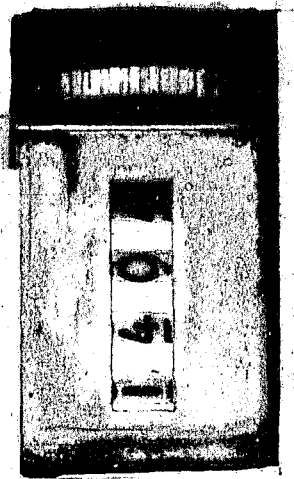
Q Where do you reside? A 243 West 21st.

Q Married? A Yes, sir.

Q Ever served as a juror before? A Several times.

Q You have heard the crime charged in this indictment, as described by me? A I have.

Q And do you know of any reason why you could not act as a juror in this case? A I do not.



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Q And bring in a fair and impartial verdict, on the evidence offered in the case, and upon that evidence alone?

A No, sir.

Q And you would do so, if selected? A I would.

Q Without being influenced by any extraneous consideration of any name or nature whatsoever, and without sympathy for the defendant, or prejudice against him? A I would.

Q Purely on the evidence offered in the case?

A Yes, sir.

Q And, if you were convinced, beyond a reasonable doubt, of the guilt of the defendant, would you pronounce him guilty?

A I would.

Q Are you acquainted with the firm of Carrere & Hastings, or any of its employees? A I am not.

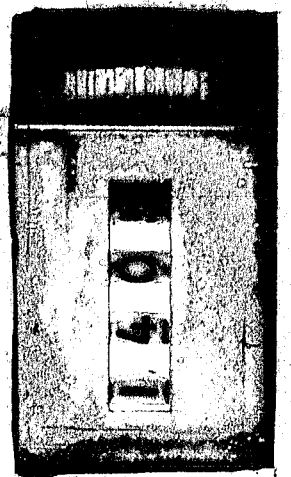
Q Did you ever have any business or other relations with them, as far as you know? A No, sir.

Q Are you acquainted with anybody connected with the District Attorney's staff? A I am not; no, sir.

Q Are you acquainted with one George Galbert, or George Caldwell? A No, sir.

Q Did you ever see that man in your life, before to-day (indicating the defendant,) sitting down there? A I don't think I have; I don't think so.

Q Not as far as you recollect? A No, sir.



Q Have you ever had any business or other dealings with Charles E. LeBarbier, or the firm of LeBarbier & Parker?

A No, sir.

Q You don't know them? A I do not.

Q Do you know of any reason why, if selected as a juror in this case, you could not do justice as between the People of the State of New York and this defendant? A I do not.

Q And you would, insofar as in you lies, if accepted?

A yes, sir.

MR. ELY: Challenge withdrawn.

MR. LeBARBIER: No challenge, for actual or implied bias.

MR. ELY: No challenge pending on the part of the People.

MR. LeBARBIER: Challenged peremptorily.

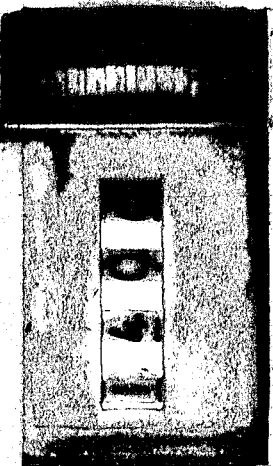
GEORGE P. GERMAINE, being duly sworn,
and examined as to his qualifications as a juror, testified
as follows:

DIRECT EXAMINATION BY MR. ELY:

Q Mr. Germaine, what is your business? A I am out of business.

Q What was your business when engaged? A I was in the insurance business.

Q Where? A In the City of Buffalo.



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Q And were you ever engaged here, in this city, at 45 Cedar Street? A No, sir; I made my headquarters there; that's all.

Q Well, you did have a business address there?
A Yes, sir.

Q At 45 Cedar Street? A Yes, sir.

Q And when you had that business address, you were not in business? A No, sir.

Q And how long since you have retired from business?
A Five years.

Q Where do you reside? A 94 West 104th Street.

Q How long have you lived in the City of New York?
A Six years.

Q How long have you lived at 94 West 104th Street?
A Ever since I have been here.

Q Six years, then? A Yes, sir.

Q Have you ever served as a juror in this County of New York? A Yes, sir.

Q Have you heard me describe the crime charged in this indictment? A I did.

Q Do you know any reason why you could not act as a juror in this case? A No, sir.

Q And bring in a fair and impartial verdict, on the evidence offered in this case, and upon that evidence alone?
A No, sir.

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A No, sir.

Q Uninfluenced by any outside consideration, of any name or nature whatsoever? A No, sir.

Q Without sympathy for the defendant, or prejudice against him? A No, sir.

Q And, if selected, you would do so; bring in a verdict on the evidence? A I would.

Q And that only? A I would.

Q And, if convinced, beyond a reasonable doubt, from the evidence offered in the case, of the guilt of the defendant, would you pronounce him guilty? A I would.

Q Are you acquainted with the firm of Carrere & Hastings, architects? A No, sir.

Q Have you any acquaintance with any of their employees, as far as you know? A No, sir.

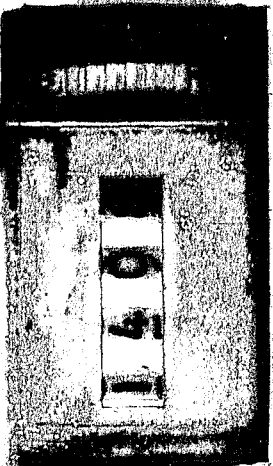
Q Do you know of any relations that you have ever had with the firm of Carrere & Hastings, or either of the firm, or any of the firm, or any of the employees? A No, sir.

Q Do you know anybody connected with the District Attorney's office? A No, sir.

Q Did you ever hear of a man called George Galbert?
A No, sir.

Q Or George Caldwell? A No, sir.

Q Did you ever have any business or other relations with the firm of LeBarbier & Parker? A No, sir.



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Q Are you acquainted with the firm? A No, sir.

Q Or either of the gentlemen composing it?

A No, sir.

Q This gentleman here, Charles E. LeBarbier, you never had any relations with him, of any name or nature whatsoever?

A No, sir.

Q Do you know any reason why, if selected as a juror in the case, you could not do justice as between the People of the state of New York and this defendant? A No, sir.

Q And you would do it, insofar as in you lies, if selected; wouldn't you? A Yes, sir.

MR. ELY: Challenge withdrawn.

MR. LeBARBIER: No challenge, for actual or implied bias.

MR. ELY: No challenge, on the part of the People.

MR. LeBARBIER: He is satisfactory to the defense.

(The Juror is sworn.)

THE COURT: Are you ready to proceed, Mr. District Attorney?

MR. ELY: I can open, to-night, if you want me to do so, sir, but I would prefer to go on, in the morning.

THE COURT: No; we must get along as rapidly as possible, in this case.

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OPENING ADDRESS FOR THE PEOPLE
of
ASSISTANT DISTRICT ATTORNEY JAMES R. ELY.

If your Honor please:

And you, gentlemen of the jury:

The Grand Jury of the County of New York have indicted the defendant, George Galbert, whose real name is George Caldwell, for sodomy; in that, on the 22nd day of February, 1903, in the City and County of New York, at the premises 1730 Broadway, he performed two acts of sodomy on the person of one Walter Bennett.

At 1730 Broadway, in the basement thereof, is a Russian and Turkish bath establishment.

The entrance is on 55th Street, 1730 Broadway being the northeast corner of 55th Street and Broadway, and it is in the basement. You descend a step or so, and get into an office. It is the ordinary Russian and Turkish bath establishment that we all know about.

On the 22nd day of February, about 1:30 o'clock in the morning, it is alleged that this defendant, while reclining on a couch, in a certain room, which will be described as the extreme northwesterly room in this Turkish and Russian bath establishment, while reclining on a couch in that extreme northwesterly room, had carnal connection

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with one Walter Bennett, by penetrating the anus of the said Walter Bennett with the genital organ of this defendant, and going through certain motions, and having, as I have stated, carnal connection with the said Walter Bennett, through the anus.

That, thereafter, this defendant and Walter Bennett lay upon this couch, and, subsequently, this defendant took the genital organ of the said Walter Bennett into his mouth, and went through certain motions; and, eventually, ejected the genital organ of the said Walter Bennett from his mouth.

These acts, as I have said, took place on the morning of the 22nd day of February, 1903, at this Turkish bath establishment, known as the Ariston Baths.

When we prove these facts, we shall ask for a verdict of guilty of sodomy, as charged in this indictment.



THE PEOPLE'S TESTIMONY.

T H O M A S F . P H E L A N , a witness called on behalf
of the People, being duly sworn, testified as follows:

MR. ELY: If your Honor please, I ask that all
the witnesses, on both sides, be excluded from the
court room.

MR. LeBARBIER: As to character witnesses, do
you want them out.

MR. ELY: You had better ask the Court about
that.

MR. LeBARBIER: May it please your Honor, in
regard to the witnesses for character, I think,
probably, there are one or two in court. Are they
included in the rule.

THE COURT: They need not be excluded.

MR. LeBARBIER: Thank you.

DIRECT EXAMINATION BY MR. ELY:

Q Your name is Thomas F. Phelan? A Yes, sir.

Q You are connected with the Municipal Police Force
of the City of New York? A I am.

Q And you were so connected, on the 21st of February,
1903? A I was.



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Q And how attached? A The Fourth Inspection District.

Q Under whom? A Acting Inspector Walsh.

Q And what, if anything, did you do on the evening of the 21st of February, 1903? A I went to the Turkish bath establishment, at the northeast corner of 55th street and Broadway, in the county of New York.

Q And just describe the premises? A Well, it is a Turkish bath establishment, in the basement of a large apartment building.

Q And what time in the evening, of the 21st of February, 1903, did you go? A I went there at nine o'clock.

Q February 21st, 1903. A Yes, sir; 1903.

Q And you arrived there at nine o'clock? A Yes, sir.

Q Now I show you this paper (indicating), and ask you if you know what that is? A It is a diagram of the bath.

Q Of what bath? A Of the bath establishment, the Ariston Turkish Baths.

MR. LeBARBIER: If your Honor please, with your Honor's permission, I will interrogate the witness on the diagram.

BY MR. LeBARBIER:

Q Did you make this diagram? A No, sir.

MR. FITZ: Oh, I will admit that he did not make it. Fitzsimmons made it. I will offer it now for

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identification, if you object.

MR. LeBARBIER: It is incorrect, very incorrect, and it is objected to.

MR. ELY: Then it is offered now for identification only.

(The paper is marked People's Exhibit 1 for identification.)

BY MR. ELY:

Q Now you went, on the evening of the 21st of February, 1903, at nine o'clock, to that place? A Yes, sir.

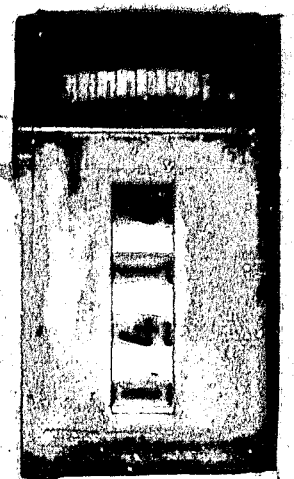
Q That you have mentioned? A Yes, sir.

Q The Ariston Baths? A Yes, sir.

Q And on what day was that? A It was on Saturday evening.

Q And, when you arrived in the turkish bath establishment, known as the Ariston, at 1730 Broadway, on the northeast corner of 55th Street and Broadway, in New York County, what did you do? A I went in the office of the bath, and paid a dollar, and was assigned to a dressing room; and went into the dressing room, and took off all my clothes, and put a sheet about me, and went out and took a bath.

Q Now, when you arrived at nine o'clock, did you see anybody in the turkish bath establishment there, known as the Ariston, with whom you were acquainted? A Not at nine



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o'clock, when I entered, I did not.

Q Did you subsequently see anybody in the baths on that evening, with whom you had been acquainted, before you went there at nine o'clock on the evening of the 21st of February, 1903?

MR. LeBARBIER: Yes or no. Objected to, unless the answer may be yes or no, may it please the Court.

THE COURT: Allowed.

MR. LeBARBIER: Exception.

BY MR. FLY:

Q Go on. A Yes, sir.

Q Who, if anybody did you see there that you knew?

MR. LeBARBIER: Objected to, as incompetent, immaterial and irrelevant, and as not pertaining to the issues here.

THE COURT: Objection overruled.

MR. LeBARBIER: Exception.

A I met six officers there that I knew.

BY MR. FLY:

Q Who were they? A Officers Ward, Connolly, Hibbard, Fitzsimmons, McCutcheon and Abbott.

THE COURT: This is on the night of the 22nd?

MR. FLY: On the night of the 21st, sir, and we charge the commission of the offense on the morning



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of the 22nd.

BY MR. ELY:

Q. At about what hour of the evening, on the 21st of February, 1903, did you see Norman J. Fitzsimmons, one of the Officers whom you have just mentioned, at the premises 1730 Broadway, in New York County, in the Ariston Bath establishment?

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

THE COURT: Objection overruled.

MR. LeBARBIER: Exception.

A About 9:30 P. M.

BY MR. ELY:

Q Well, go ahead now. What, if anything did you do, after getting undressed, and getting your sheet -- after paying your money and getting undressed and getting your bath sheet? A I walked out towards the steam room, and I stopped, on my way, in a room where there was a scale, and I got on the scales, and, as I was about to weigh myself, this defendant here come over, and placed his arm around me, and wanted to weigh me.

Q Well, don't say "Wanted to weigh me." What did he do?

A Well, he did weigh me.

Q Well just say what he said? A He asked me if I would

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allow him to weigh me, and I said yes, to go ahead; and he thereupon fixed the scales and weighed me.

Q Well, what else? Was anybody with you then? A No; not at that hour.

Q About what time was that? A That was about 9:20.

Q Then what did you do, after that? Did you have any further conversation with this defendant? A No. He wanted to see me, and I told him I would probably be there all night.

Q Well go on. Then what? A I went into the hot room, and after that into the steam room, and took a bath, and walked about the premises, after I took a bath. And about 1:25 A.M., February 22nd, I walked into the westerly room of the bath.

Q What room is that? A It is the cooling room.

Q And whereabouts is it? A It is on the northwesterly side of the bath.

Q It is the extreme northwesterly room of the baths?

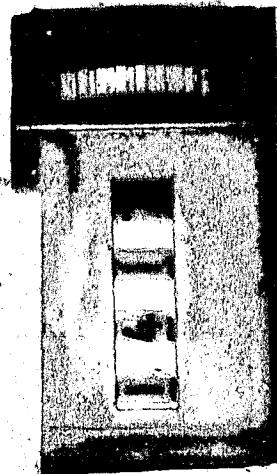
A Yes, sir, it is.

Q And who, if anybody, was with you, when you went into the extreme northwesterly room of these Ariston Baths?

A Officer Fitzsimmons was with me.

Q Well? A I saw the defendant standing against the southerly wall of the room; and, in a few minutes after I entered --

Q And who was with you, when you entered the room?



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A Officer Fitzsimmons.

Q And where did you stand, when you entered the room?

A On the southerly side of the northwesterly room.

Q Yes. And that is on the side towards 55th street; is it? A Yes, sir.

Q And what, if anything -- who, if anybody did you see in the room? A I saw a man whom I have since learned to be Walter Bennett.

MR. ELY: Wait a minute now. Walter Bennett. Bring him up.

THE COURT: Well, you may proceed, for the present, without him.

BY MR. ELY:

Q And what was this person, whom you say you subsequently learned was Walter Bennett, doing, when you say you saw him in this extreme northwesterly room, about 1:30 o'clock on the morning of February 22nd, 1903, in the Ariston Bath establishment in New York County? A He was lying on a couch, a leather cooling couch.

Q Now how was he lying on this couch? A He was lying on the couch, facing me, on his side.

Q Facing in a southerly direction? A In a southerly direction.

Q And how were you facing? A I was facing towards the

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north.

Q And how was Fitzsimmons facing? A He was also facing towards the north.

Q And how far were you and Fitzsimmons from the door of this extreme northwesterly room, that you have mentioned?

A About five or six feet.

Q And how, if at all, was this room, in which you say that you and Fitzsimmons were standing, where you saw the defendant and Bennett, lighted? A It was well lighted, by the light of the room next to it.

Q Did it have any independent light, of its own, in that room? A No, sir, it didn't.

Q And then it was lighted from the light reflected from the room adjoining? A Yes, sir.

Q And how was this extreme northwesterly room connected with this adjoining room? A By a very wide doorway, the whole width of the room.

Q And how was the room next to this extreme northwesterly room, in which you have stated that you saw Bennett and this defendant, at the hour you name, how was that lighted?

A It was brilliantly, very brilliantly lighted.

Q And what, if anything, did you see, after you noticed this man Bennett lying on the couch, as you have stated, facing you and Fitzsimmons? A I saw this defendant--



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Q The defendant here (indicating the defendant)?

A That defendant there. Walk over from the side of the couch to where Bennett was lying. He took Bennett's leg in under his arm, and turned him around, and dropped the sheet off him, so that he stood there --

Q Dropped the sheet off whom? A Off the defendant, Galbert.

Q The defendant dropped his sheet off? A Yes, sir.

Q Off from himself? A Yes, sir.

Q Off from his own person? A Yes, sir. And he stood there, entirely naked. And I noticed his penis was in a state of erection? He raised Bennett's leg, and turned him around, and then he inserted his penis into the anus of the man Bennett.

Q And how was the penis of the defendant, at the time he inserted it into the anus of Bennett? A It was erect, at that time.

Q And what did the defendant do? A Moved backward and forward, for several moments, and then he withdrew his penis.

Q Did you see the penis of the defendant, after he had withdrawn it from the anus of the man Bennett? A I did. I went over and stood right alongside of him, right alongside of the couch.

Q Well when did you go over to stand alongside of the

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couch? A When he went over, I walked over with him.

Q And where was Witzsimmons, when you walked over to the couch, on which Bennett was lying? A He was standing right alongside of me.

Q And he walked over with you; did he? A He walked over with me.

Q And, after the defendant had performed this act that you mention, on Bennett, what did the defendant do? A He then laid down alongside of Bennett, put his arms about him, and they kissed one another several times.

Q Well go on. What next? A Well, then, after a few minutes, lying there with him, and kissing and hugging him, he got down --

Q Who is he? A This Galbert man.

Q This defendant (indicating)? A That's the man. He, then went down, and placed his mouth over the penis of Bennett.

Q Did you see the penis of Bennett before the defendant, Galbert, placed his mouth over it? A I did.

Q In what state was Bennett's penis, before Galbert placed his mouth over it? A He was lying on his back, with his penis erect.

Q His penis was erect? A Yes, sir.

Q And then you saw the defendant, Galbert, place his mouth over the penis of the man Bennett? A Yes, sir; he did.



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Q And then what else? A Moved his head up and down, several moments; and sat down on the couch again; and, shortly afterwards, he got up, and left the room.

Q That is, Galbert did? A Yes, sir.

Q The defendant here? A Yes, sir.

Q Got up and left this extreme northwesterly room of the Ariston Baths? A Yes, sir.

Q And what did you do? A Why, I watched him leave the room, go out, and, a little while afterwards, I walked out after him.

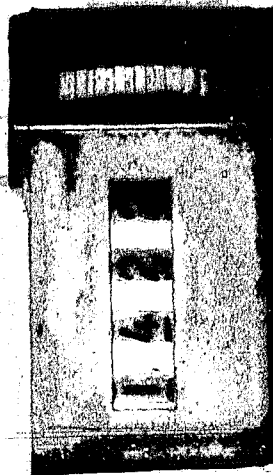
Q Well, then, what happened? A I walked toward my dressing room then, and went in, and, as I was going in, Acting Inspector Walsh entered the premises, and placed everybody under arrest. I got my clothes on, and come out; and all the men were corralled in the large parlor there.

Q All? A Right next to the office.

Q All? A Well a number of them. And the officers came in with them, and stood at all the exits of the bath; and we made a search of the bath then and we found this defendant--

Q Well wait a minute. Who was "we"? A Officer Fitzsimmons, Acting Inspector Walsh and myself.

Q Well, what do you mean when you say that you made a search of the baths? A A final search. We went through the baths.



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Q What did you do? A Why, we came to a dressing room, next to the extreme northwesterly room --.

Q The cooling room of which you have spoken?

A Yes, sir.

Q In which these acts that you have stated were performed?

A yes, sir. And we found a door locked.

Q Yes. A After rapping at the door, and threatening to break it open, if they didn't open it -- someone was inside, I noticed -- this man opened the door.

Q What man? A This Galbert.

Q That defendant (indicating the defendant? A Yes, sir, that defendant. And I ordered him to go out of the room, and told him he was under arrest, and placed him in the parlor, after he had got all his clothes on. And he was then identified by myself and Officer Fitzsimmons.

Q Identified by yourself and Officer Fitzsimmons as what?

A As the man we wanted, that we had seen commit an act that we were going to place him under arrest for.

Q Had seen him perform the acts that you have described?

A yes, sir.

Q What did the defendant say, when he was placed under arrest? A Why he didn't say anything, after he was placed under arrest. He was ordered to go into the parlor, with the other men. They were then sent out, one by one, to be



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identified, and Officer Fitzsimmons says, as this man came, "I want that man," and I said, "We want him, too." We had a nother good look at him, to be sure we had the right man; and then he was taken in the patrol wagon to the 47th street station, and was arrested and locked up.

Q And were you present there when he was arraigned at the desk? A I was.

Q What name did he give? A He gave the name of George Galbert.

Q And what address did he give? A I don't know what address he gave. I have got it in my book.

Q 187 West 84th? A It was West 84th street, but I don't just recall what the number was.

Q Do you know what the defendant's true name is?

A I have since learned it to be Caldwell, I believe.

Q George Caldwell? A Yes, sir.

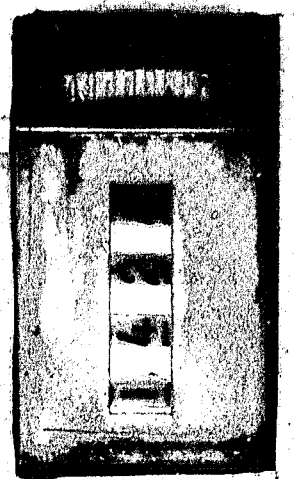
Q Do you know what his true address is? A No, sir, I do not.

Q Do you know whether it is on 84th street?

A I have heard it is on 84th street. I don't know it though, as a fact.

CROSS EXAMINATION BY MR. LeBARBIER:

Q You say there were a number of other officers there with you, that night? A Yes, sir.



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Q Did you go there in pursuance of any instructions?

A Yes, sir, we did.

Q From your superior officer? A Yes, sir.

Q And a raid was made, early on the morning of the 22nd? A Yes, sir.

Q How many people were in the bath, or the baths, there, at that time? A I believe there was some 78, by actual count.

Q Eh? A I believe there was 78 in the bath, that night.

Q Well, were there as many as that, or more?

A Well, there was as many as that.

Q You knew that also, upon the very night of the arrest, and at that time there were about 78 men; did you not?

A Yes, sir.

Q You testified in the case of the People against Bennett, did you not? A I did.

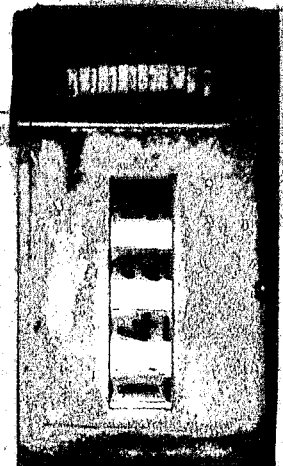
Q Did you then say that you did not know how many men were arrested? A Why, I might have said that.

Q Well now answer, Officer. This is an important case. Did you?

MR. ELY: I object. He is answering, if you give him a chance.

BY MR. LeBARBIER:

Q What is the answer? A Why, every one in the bath



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was placed under arrest; some 78, I think.

Q Did you answer, in that case, that you didn't know whether there were fifty people arrested there or one hundred?

A I don't remember.

Q You don't remember?

A No, sir.

Q Your memory was pretty good, in the trial of the People against Bennett; was it not?

A Yes, sir.

Q Was it better then than it is now?

A No; no better.

Q Now you say that there were seventy-eight men under arrest?

A I have since learned that there were actually seventy-eight men arrested.

Q Now, Officer, I am putting my question. Now you say there were seventy-eight men put under arrest; is that so?

A Yes, sir.

Q In what room were these seventy-eight men put, after the raid?

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A Well, some of them were in the parlor.

Q Yes. How many in the parlor? A I don't know.

Q Twenty? A I don't know.

Q Fifty? A I don't know.

Q Ten? A I don't know.

Q Five? A I don't know.

Q What parlor were they put in? A The parlor east of the office.

Q They were put in the parlor-- no. Question withdrawn.
Where were the other men put? That is to say the men who were not in the larger parlor, where were the others sent to?
A partly in the room adjoining it.

Q Yes. Was it as large as this parlor that you refer to?
A Well, pretty near as large.

Q How many men were in there? A I don't know.

Q Forty? A I don't know.

Q Fifty? A I don't know.

Q Twenty? A I don't know.

Q Ten? A I don't know.

MR. ELY: Oh, I object, sir. It is perfectly immaterial how many were there.

MR. LE BARBIER: Now, I object to any interruption like this, may it please the Court. Here is something where positive, absolute knowledge is required, and I am entitled to it from the witness.

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THE COURT: Give your best estimate of the number.

BY MR. LE BARBIER:

Q And you say you don't know how many were put in the larger parlor? A Yes, sir.

Q And you say some men were put in a other room?
A Yes, sir.

Q Now, I ask you ow many men were put in that other room?

MR. ELY: I object. He says that 78 were arrested altogether.

A Oh, I don't know. The 78 were in the two rooms.

BY MR. LE BARBIER:

Q And that is the best answer that you can give me?
A Yes, sir.

Q Now, what room were you in?

MR. ELY: I object to that as too indefinite.
When?

BY MR. LE BARBIER:

Q What room were you in at the time the 78 men had been arrested? A I went into the parlor.

Q Which parlor? A The parlor east of the office.

Q The parlor east of the office? A Yes, sir.

Q Is that the larger parlor? A Yes, sir.

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Q Was Officer Fitzsimmons in that parlor with you?

A Yes, sir.

Q Did the identification of the persons arrested take place in those two parlors? A It took place in the parlor east of the office.

Q Is it not a fact that the men were marched out?

A In that parlor, yes.

Q And they were marched through a hall? A After they were identified, yes.

Q Is it not the fact that they were marched around the row of officers for the purpose of being identified? A Yes, sir.

Q Now, at what end of the row of officers were you?

A Oh, I don't know; I don't just recollect.

Q Did you head the line of officers, or were you at the other end? A I don't know.

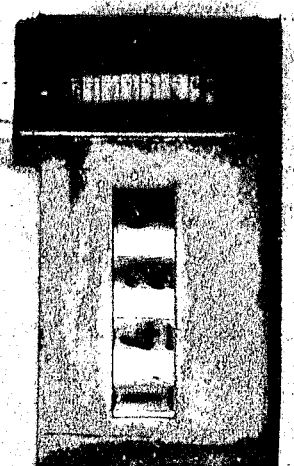
Q Now, do you know whether Galbert was identified at the head of the row of officers, or at the other end? A He was identified by Fitzsimmons and myself.

Q Was he standing near you? A Yes, sir.

Q Fitzsimmons? A Yes, sir.

Q Right by you, right next to you? A I don't remember that.

Q Well, we are trying to get at some facts here. You



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realize that this is a very serious charge of crime here;
do you not?

MR. ELY: Objected to as immaterial. All that
he is to testify to is the facts and not his real-
ization of anything.

MR. LE BARBIER: Oh, we will get at the facts.
We are not going to be hung upon any general state-
ments. I want you to know that.

THE COURT: Well, gentlemen, we will suspend
here.

MR. ELY: Will you direct the witness not to
speak to anyone, if your Honor please?

THE COURT: Yes. You understand, Mr. Witness,
that you are now under examination and that you
must not speak to anyone about this case, or any-
thing connected with it?

THE WITNESS: Yes, sir.

THE COURT:

Gentlemen of the Jury, it is my duty to admon-
ish you, before you separate, not to form or express
any opinion concerning this case, and not to speak
about it with any one, and if anyone speaks with you
about it, it is your duty to remind him that you
are a juror; and if he persists in speaking to you
after that, it is your duty to call the attention



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of the Court to the fact.

Adjourn Court until tomorrow morning at half past ten o'clock.

MR. ELY: I move for the committal of the defendant, sir.

THE COURT: He may be committed.

(The trial was then adjourned until Wednesday morning, June 17, 1903, at 10:30).

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TRIAL RESUMED.

New York, June 17, 1903.

T H O M A S F. P H E L A N, his cross examination being continued, testified as follows:

THE COURT: Had you finished your direct examination, Mr. Ely?

MR. ELY: I had not entirely finished, because Walter Bennett was not brought in to be identified. But I will go on with that Mr. Le Barbier, after you get through.

MR. LE BARBIER: Very well.

CROSS EXAMINATION CONTINUED BY MR. LE BARBIER:

Q There was quite a commotion on the night of the raid there, was there not, Officer? A Yes, sir.

Q And how long after the raid happened was it that you went to the room of the defendant? A Well, I---

Q Now, answer the question, will you, please? A Well, I can't answer that question.

MR. ELY: Well, if your Honor please, I don't see why the witness is not allowed to answer.

MR. LE BARBIER: Well, I have put a question, your Honor, and I don't wish to be interrupted by the District Attorney.

THE COURT: He may answer.

A Well, there was no particular time. The Inspector came in and we made a search of the bath and discovered this man in the room.

BY MR. LE BARBIER:

Q Did you make a search of the baths after the raid?

A No; at the same time.

Q Did you not say that they were all corralled in these two parlors, and that then you went around and made a final search? A Yes, sir.

Q Yes. You said that only, yesterday? A Yes, sir.

Q Didn't you? A Yes, sir.

Q After you went around to make this final search, you went to the door of the defendant's room, did you not?

A We went to the door of every room.

Q Did you? A Of every room.

Q Eh? A Of every room.

Q Did you knock at the defendant's door? A Yes, sir, we banged at it; knocked at it very hard.

Q Knocked at it? A Yes, sir.

Q And he came out of the room? A No, sir, he did not.

Q What did you do? A Why, we told him to open the door or we would break it down.

Q Did you break it down? A No, sir.

Q Well, then he came out of the room? A No, sir, he did not.

Q Is it not a fact that, when he came out of the room--- when he came out of the room, what did he say? A Why, he didn't come out of the room.

MR. ELY: I object to that question as assuming something not in the testimony.

THE COURT: Yes. I sustain the objection to the form of the question.

BY MR. LE BARBIER:

Q Did you go into his room? A Yes, sir.

Q Did you bring him out of the room? A Yes, sir.

Q Was he dressed at the time? A Yes, sir, partly.

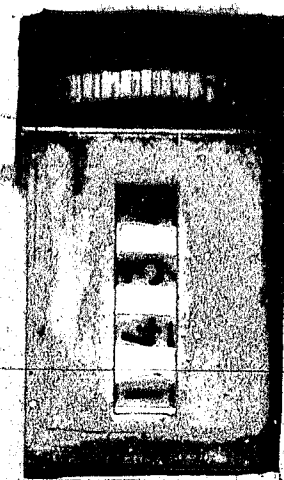
Q Partly? A Yes, sir.

Q Did you have a conversation with him? A Yes, sir; I told him he was under arrest.

Q Now, I didn't ask you that. Did you have a conversation with him? A Yes, sir.

Q You visited these premises, last night, did you not, or this morning? A No, sir.

Q Have you been up there since this trial? A No, sir.



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Q Have you read the testimony of Galbert? A No, sir.

Q Was it read to you? A No, sir.

Q Were you in Court when he testified here, the other day? A Yes, sir.

Q Did you hear his testimony? A part of it.

Q Did you hear him say he saw you about nine o'clock, in the weighing room? A Yes, sir; I believe he did testify to that.

Q You said yesterday, I think, that you met him about nine o'clock? A Shortly after nine o'clock, about 9:20 or 9:30; something around there.

Q About 9:20 or 9:30? A Yes, sir.

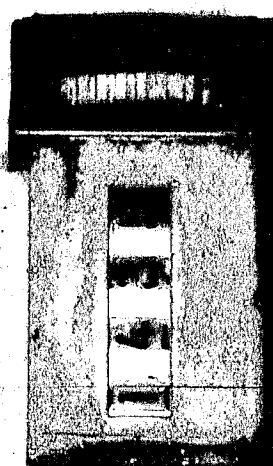
Q And that was the first time, that evening, that you had seen him? A Yes, sir.

Q You testified, did you not, upon the examination in the Police Court in this case? A Yes, sir, I did.

Q Have you, at any time since the trial in the Police Court, or at the trial in the Police Court said anything, in any case, about meeting the defendant at nine or nine thirty or about that time?

MR. ELY: I object to that, as immaterial, irrelevant and incompetent.

THE COURT: I sustain the objection, to the form of the question.



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MR. LE BARBIER: Sir?

THE COURT: To the form of the question.

MR. LE BARBIER: Well, I agree with your Honor.

The form is probably objectionable.

BY MR. LE BARBIER:

Q Have you, at any time, before yesterday, stated that you had seen the defendant about nine or nine thirty o'clock?

MR. ELY: I object to that.

THE COURT: I overrule the objection.

BY MR. LE BARBIER:

Q Now, answer the question? A I don't think I have.

Q Well, don't you know, officer? A No, sir.

Q You don't know? A No, sir.

Q Well, I will take that answer. In the Police Court, on the hearing held before Magistrate Pool, on February 24th, did you not testify as follows:

"Q You recognize this defendant? A Yes, sir.

"Q This defendant, George Galbert? A Yes, sir.

"Q Have you seen him before? A Not previous to that night.

"Q Did you see him on that night? A Yes, sir.

"Q About what time? A About 1:30."

A That is the--

Q Now, wait. Did you testify that way? A In that room.



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Q Did you testify that way? A Exactly, yes.

Q You did? A Yes, sir.

Q Now, I ask you whether-- now you say it was in that room; was it? A Yes, sir.

MR. ELY: Now just read the other two questions.

MR. LE BARBIER: Now, Mr. Ely, I object to any interruption on your part.

THE COURT: Yes. You have your opportunity on the re direct examination to correct anything that you desire to correct.

BY MR. LE BARBIER:

Q In that same hearing, before the Magistrate, did you testify as follows:

"Q Was the defendant, when you saw him, naked?

A Yes, sir; with the exception of a sheet thrown about his shoulders.

"Q And a number of other people, to the number of 20, whom you saw, did they have sheets about them? A Yes, sir. I didn't see this man at nine o'clock." Did you so testify before the Magistrate? A That's right. I didn't see him at nine o'clock.

Q Now you make the distinction of between nine and nine thirty? A Yes, sir.

Q I understood you to say yesterday that the identifica-

tion-- at the time you gave your testimony yesterday, in speaking of the identification of the defendant, when he was called down, when he was with the others there, with reference to the action of Officer Fitzsimmons and yourself, I understood that you said, "We had another good look at him, to be sure we had the right man". Is that correct? A Yes, sir, that is correct.

Q Now then, we will get down to the situation on that night. Now you proceeded through the baths, officer? A Yes, sir.

Q And reached this northwesterly room about what time?

A About 1:25.

Q Are you accurate as to the time? A No, sir.

Q No. A No, sir.

Q Was there any timepiece there to look at? A There was a clock in the hallway.

Q Is that the corridor? A Yes, sir.

Q Don't you know, as matter of fact, that there was and is no clock there? A There was that night a clock there; I am positive of it.

Q Very well. You went into the room about 1:28? A I said about 1:25.

Q About 1:25? A Yes, sir.

Q And did you go into the room with anybody? A Yes, sir.

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Q Who went in with you? A Officer Fitzsimmons was with me.

Q When you entered that room was it full of people?

A No, sir.

Q How many people in there? A Why, there was about 15-- 10 or 15-- about that.

Q What was the size of this room?

MR. ELY: I presume, if your Honor please, that the counsel is speaking of the extreme northwesterly room?

MR. LE BARBIER: Mr. Ely knows perfectly well what room I am speaking about. Now, may it please the Court I humbly submit that I ought not to be interrupted in this way in the trial of this case.

THE COURT: Yes. Let counsel proceed with his cross examination.

MR. ELY: But the question was indefinite.

THE COURT: Yes. But, if the witness does not understand what room the counsel refers to, it is his privilege to be informed as to what room he refers to.

MR. LE BARBIER: But he knows what room I am talking about, and Mr. Ely knows what room I am talking about; and, notwithstanding that, he ven-



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tures to interrupt my cross examination. I can't say anything plainer than that it is the northwesterly room, and the witness knows it.

BY MR. LE BARBIER:

Q Now, officer, I have asked you what was the size of this room? A Why, it was about 15 by 20.

Q 15 by 20? A I don't know. It was about that size, I should judge.

Q How many feet, more or less? Just to give us some idea, if your observation was not too faulty? A I don't know how many feet, more or less.

Q Can you state the length of the room? A I said about 20 feet.

Q And the width of the room? A About 15.

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

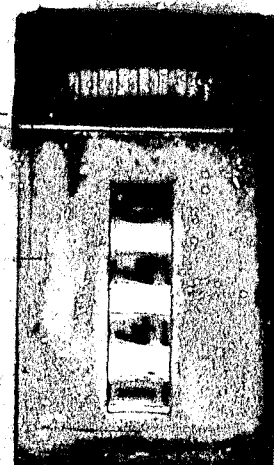
Q How many couches were in that room? A There were four couches in the room that night.

Q Four couches in the room, that night? A Yes, sir.

Q And what was the width of them; were they single or double couches? A I don't know.

Q You don't know? A No, sir.

Q Was the first house, as you went in, a double couch or a single couch? A I don't know whether it was a single or double couch.



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Q One moment. Was there one single couch there, or was it up against another single couch? A They were altogether.

Q They were all together? A Yes, sir.

Q Well, don't you know, when you entered that room, whether the couches were single or double couches? A No, sir.

MR. ELY: I object. He has answered the question already several times.

BY MR. LE BARBIER:

Q Do you know how many couches, just as you entered the room, were together, how many were bunched in together?

A I said that there were four together.

Q Well, all in a line? A They were all placed close together.

Q They were all placed close together? A Yes, sir.

Q And did you observe the height of these couches?

A Yes, sir.

Q What was it? The height? A About two foot and a half or three feet.

Q From two feet and a half to three feet high? A Yes, sir.

Q pardon me. Did you say how many people were in the room? A There were about ten or fifteen.

Q Were there this number when you and Officer Fitz-

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simmons went into the room? A Yes, sir.

Q Was the defendant, Galbert, in the room when you went in? A Yes, sir.

Q How far inside of that room were you? A I was about five or six feet from the doorway.

Q On the southerly side? A Yes, sir.

Q With Officer Fitzsimmons? A Yes, sir.

Q On the southerly side? A Yes, sir.

Q Now, how many doors are there leading into that room?
A There is only one.

Q Only one door? A Yes, sir.

Q And you are quite positive that Galbert was in the room when you entered? A Yes, sir.

Q Did you not testify as follows, in the Bennett case, at page 15:

"Q About how far from the entrance of the cooling room were you standing, this cooling room? A I should judge five or six feet.

"Q And do you say Fitzsimmons was with you? A He was.

"Q And what happened when you were standing there? A This defendant was lying on the couch, and a man, who I have since found out to be George Galbert---

"Q Now, wait a minute. Is that George Galbert (indicating a man at the bar? A That's the man; yes.

"Q The man who now approaches the bar? A Yes, sir.

"Q That is the man? A Yes, sir.

Q The person that came into the cooling room, where you were with the defendant and Officer Fitzsimmons on the morning of the 21st of February, 1903? A Yes, sir."

Now, did you testify to that? A He was in the room when I came in.

Q Did you testify to that? A I don't remember.

Q And this testimony, which I read to you, was taken--

THE COURT: There is no proof, Mr. Le Barbier---

MR. LE BARBIER: On some date recently I was about to say.

MR. ELY: I object.

THE COURT: I sustain the objection.

MR. LE BARBIER: To the last question?

THE COURT: Yes.

MR. LE BARBIER: I withdraw that last question.

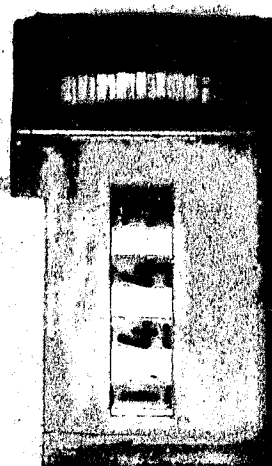
BY MR. LE BARBIER:

Q I repeat the question before that. Was it true?

A Well, you had better repeat the question.

Q Well, the person that came into the cooling room where you were with Officer Fitzsimmons was the defendant?

A No, sir; he was in there when I got in there.



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Q That is all. I only want the answer. You say no?

A Yes, sir.

Q Did I understand you to say, Officer, that it was a very wide doorway, the whole width of the room? A Yes, sir.

MR. ELY: I object to the form of the question, because whether counsel understood or not is immaterial.

MR. LE BARBIER: Before your Honor rules, I will admit that it is immaterial whether I understood or not.

THE COURT: proceed.

BY MR. LE BARBIER:

Q Was that a very wide doorway? A Going into the north-westerly room?

Q Yes; the cooling room? A Yes, sir.

Q The whole width of the room? A Yes, sir.

Q And about how wide do you say it was? A Well, I have testified that the door was about 15 feet wide.

Q You have testified hat the door was about 15 feet wide? A Yes, sir. But there was a jamb on each side. The space was a little short of 15 feet.

Q Well, between 14 and 15 feet? A Yes, sir.

Q Were there any portieres over the door? A Yes, sir.

Q How were they? A Thrown back.

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Q The whole width of the door? A Yes, sir.

MR. ELY: I object. There is no testimony
that there is a door there. It is a space.

BY MR. LE BARBIER:

Q The space rather? A Yes, sir.

Q The whole width of the space? A Yes, sir.

Q Were the portieres drawn back? A Yes, sir.

Q Was there any light in the northwest room, the cooling room? A Yes, sir.

Q Where these couches were? A Yes, sir.

Q Where did that light come from? A The room right outside, adjoining it.

Q The adjoining room? A Yes, sir.

Q How was the adjoining room lighted? A Very brilliantly lighted.

Q Brilliantly lit? A Yes, sir.

Q You say that a stream of light came into the cooling off room? A Yes, sir, I do; right straight in, right into that couch.

Q A flood of light? A Yes, sir.

Q And this flood of light came in while you and Officer Fitzsimmons were on the southerly side of the room, with about ten or fifteen people in it? A Yes, sir.

Q All brilliantly lit up? A No, sir; it was not all

brilliantly lit up. The sides were not so well lighted as the center of the room.

Q Yes. But the center of the room where the couches were, was brilliantly lit up? A Yes, sir.

Q Well, were the sides of the cooling off room also lighted? A Well, not as light as the center.

Q It was plainly visible in there; was it not? A Yes, sir.

Q Officer, when you say-- question withdrawn.
How low down, if low down, did these portieres fall? A I didn't look at that at all.

Q You didn't notice; did you? A No, sir.

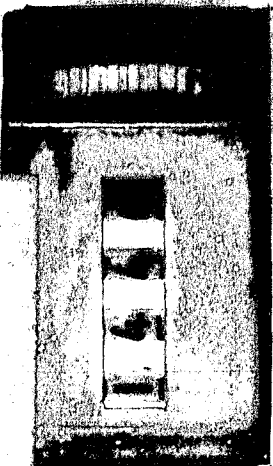
Q But there is no doubt in your mind that these portieres were drawn the full width of that space? A They were drawn back.

Q They were drawn back? A Yes, sir.

Q Did you not testify, on the examination in the Police Court--- page 9-- as follows:

"Q How far distant from that light"-- you need not laugh at me, Officer. A I am not laughing at you at all, counsellor.

Q "That shed its light into the room you were in, with Galbert and Bennett, were you? A About five feet. But the rooms were curtained off, and a number of inches



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from the top and side and bottom allowed plenty of light to come in." Did you make that answer? A Yes, sir, that is correct.

"Q This was the vapor room? A No, sir; the reclining room.

"Q But it was quite dark; was it not? A Yes, sir; dark."

Did you testify to that? A No.

Q You didn't testify to that, you say? A No, sir.

Q That is what I wanted to know? A No, sir.

Q You and Fitzsimmons were standing on the southerly side of the room? A Yes, sir.

Q Where was Bennett lying. How far from you two officers? On the couch? A About four or five feet.

Q You were standing with Officer Fitzsimmons, within four or five feet from the couch on which Bennett was?

A Yes, sir.

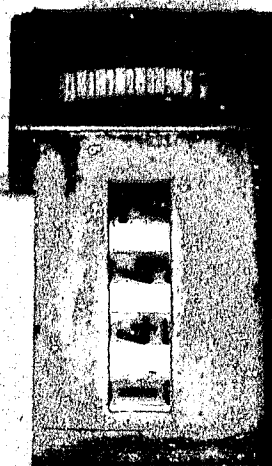
Q Facing him? A Yes, sir.

Q Was he facing you? A Yes, sir.

Q In what position was his head? North or south or east or west? A West.

Q West? A Yes, sir.

Q His legs being toward the opening space, through which you came? A Yes, sir.



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Q Was he lying down at full length? A Yes, sir.

Q Did he see you? A I don't know.

MR. ELY: Oh, I object to that.

BY MR. LE BARBIER:

Q If you know? A I don't know.

Q Did you see him looking at you? A No, sir.

Q Did you see him with his eyes open? A No, sir; I don't know whether he had his eyes open or not.

Q Now, officer, don't fence with me, please.

MR. ELY: I object to this constant reflection upon the officer.

MR. LE BARBIER: Now, I object to these constant interruptions.

MR. ELY: The counsel has no business to criticise the witness all the time.

MR. LE BARBIER: I have that business, on cross examination.

THE COURT: Well, you have the right to ask questions, but not to criticise, that is for the jury not for counsel. Proceed.

BY MR. LE BARBIER:

Q Now, Officer, I am asking you, did you look at Bennett? A Yes, sir.

Q Now, did you see Bennett facing you? A Yes, sir.

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Q Do you know if he saw you? A No, sir.

MR. ELY: I object. He has been all over this.

MR. LE BARBIER: I have been objected to so much, I can't get my question in.

THE COURT: He has answered that question several times, Mr. Le Barbier.

MR. LE BARBIER: Very well. I don't want to weary your Honor at all.

BY MR. LE BARBIER:

Q Did you see Bennett's eyes open? A No, sir.

Q Or did you see them shut? A No, sir; I paid no attention to his eyes whatever. I don't know that he had any even.

Q Did you see the position of his arms? A Yes, sir.

Q Was he lying on his side? A Yes, sir.

Q Were his legs distended? A He was lying his full length.

Q His full length? A Yes, sir.

Q And these people were in the room at the time?

A Yes, sir.

Q And then Galbert walks in? A Yes, sir.

Q Walks in, with a sheet around him? A Yes, sir.

Q Did you see Galbert coming in? A He was in there, when I got into the room.

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Q Well, when you got into the room, what did you see?
Where did you see Galbert? A Standing against the southerly wall.

Q Near this open space? A Yes, sir.

Q Were you between this open space and Galbert? A Yes, sir.

Q And was Officer Fitzsimmons? A Yes, sir.

MR. LE BARBIER: Officer Fitzsimmons is not in Curt, is he?

MR. ELY: He is not.

BY MR. LE BARBIER:

Q How near were you to Galbert? A I was standing right alongside of him.

Q How near were you to Galbert? A A few inches.

Q A few inches? A Yes, sir.

Q Did Galbert get between you and the couch? A He walked over to the side of the couch on which this man, Bennett, was lying.

Q Did you hear him say anything to Bennett? A No, sir.

Q Was it then that his sheet dropped off? A He dropped it off his shoulders, yes.

Q Then did he lift Bennett's leg? A Yes, sir.

Q How high did he lift it? A Oh, he lifted it in under his arm.



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Q How high did he lift it? You know what you have testified to already? A About four feet.

MR. ELY: If your Honor please, it is improper for counsel to scold the witness all the time.

MR. LE BARBIER: I am not scolding the witness. I am trying to correct these lies that I hear.

MR. ELY: I object. That is absolutely improper.

THE COURT: Yes; that is manifestly improper.

MR. LE BARBIER: Well, I am not going to allow a conviction here on these general and wild statements.

MR. ELY: No, but you will get a conviction on the facts, if anything.

BY MR. LE BARBIER:

Q (The last question is repeated). A Well, he raised his leg from the couch.

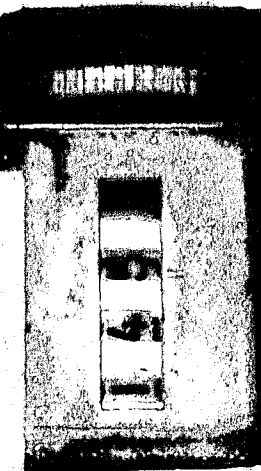
Q From the couch? A Yes, sir.

Q How high from the couch? A About two feet.

Q About four feet from the floor? A Yes, sir.

THE COURT: Now, gentlemen, this interchange of remarks between counsel must cease. I hope I will not be required to speak again. It must cease.

BY MR. LE BARBIER:



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Q Was it more than two feet that he raised it? Was it more than two feet, if you can so state, that Galbert raised Bennett's legs?

MR. ELY: Oh, I object. He has already said that it was about two feet.

MR. LE BARBIER: Well, I can ask him if it was more, can't I?

MR. ELY: It is immaterial as to that.

THE COURT: I think you may ask the witness if he can state more definitely than he has stated as to the distance.

MR. LE BARBIER: Then I will follow your Honor's suggestion.

BY MR. LE BARBIER:

Q State, witness. A I don't know whether it was any more than that or not. I said about two feet.

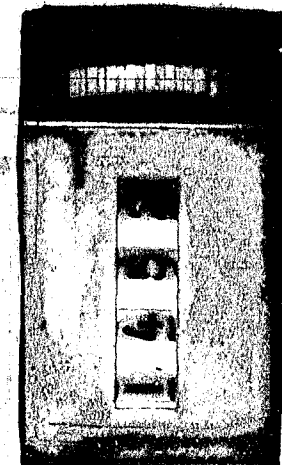
Q Well, show to the jury about how high you think it was? A Well, about two feet.

Q About two feet? A Yes, sir.

Q Now, I ask you--- no, before I get to that. Question withdrawn. Did he take hold-- did the defendant take hold of one leg only? A He turned him around.

Q He turned him around? A Yes, sir.

Q Have you stated, before yesterday, anything about turn-



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ing Bennett around? A I don't remember that I have.

Q You don't remember? That is sufficient? You don't remember? A No, sir.

Q Now, I will read you this question-- did you not testify as follows in the case of Bennett:

"Q How high did Galbert raise Bennett's legs, if you know? A I should judge about eight or nine inches or more."

MR. ELY: What page is that?

MR. LE BARBIER: page 68.

BY MR. LE BARBIER:

Q Is that true? A Possibly.

Q You will not say that it is true, will you? A No; I don't know what distance. As I said, I said about two feet.

Q very well. That will do me.

MR. ELY: That is Fitzsimmon's testimony that you have been examining about. You have been reading from his testimony, not this witness's testimony at all.

MR. LE BARBIER: Well, if I am in error, I will withdraw it.

MR. ELY: No. It was not this witness that testified to that. It was Fitzsimmons.

MR. LE BARBIER: very well, then.

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BY MR. LE BARBIER:

Q Now, when the defendant raised Bennett's leg, what was the position of the defendant? A Standing right alongside of him, with this man's legs to the west of him.

Q Yes. Was the defendant standing up? A Yes, sir; slightly bent forward.

Q Slightly bent forward? A Yes, sir.

Q Now, when this was being done, as you say, how close were you to the defendant and Bennett? A I was standing alongside of him. I walked over with him.

Q How close? A A few inches.

Q A few inches? A Yes, sir.

Q And I presume you leaned over to see? A Yes, sir.

Q And officer Fitzsimmons did the same thing? A I don't know what he done.

Q You don't know what he done? A No. He was standing alongside of me.

Q He was standing alongside of you? A Yes, sir.

Q And while you say this act was being committed, the first act was the penetration of the anus; was it? A Yes, sir.

Q You stood right there? A Yes, sir.

Q Then the act was performed as you state? A Yes, sir.

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Q Did the defendant let go of Bennett's leg? A No, sir; he held onto his legs in his arm.

Q He held one of his legs in his arm? A Yes, sir.

Q And then what did the defendant do? A When he withdrew his penis from this man's anus, he lied down alongside of him on the couch.

Q And you were still within two or three inches from him? A Well, I was not so near to him then, when he lied down.

Q And these other people were in the room? A What other people?

Q Well, were there any other people in the room? A Yes, sir.

Q How many? A Well, I have said about ten or fifteen.

Q Also, at the time of the act? A Yes, sir.

Q And then the defendant laid down on the couch? A Yes, sir.

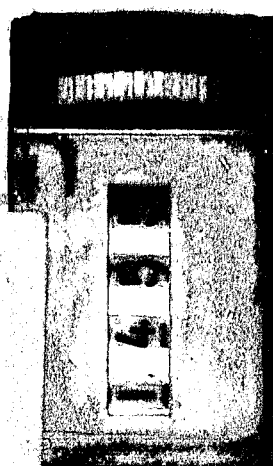
Q And committed the second act, which you speak of?

A Yes, sir.

Q And, all this time, you stood right there? A Yes, sir.

Q And the other people were in the room? A Yes, sir.

Q After-- did you notice, at this time, whether the other couches were all occupied? A Yes, sir; they were.



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Q They were occupied? A There was two of them occupied.

Q Were all these couches in the room occupied? A No, sir.

Q Which one was not occupied? A I think the one next to the first one was not occupied.

Q Now, after the second act which you have stated you saw take place, what did the defendant do? A Why, he left the room shortly afterwards.

Q And how long did you remain in the room? A About five or ten minutes.

Q Did Fitzsimmons remain in the room with you? A He remained there after me. I left before he did.

Q But, at all events, the defendant had left the room before you two did? A Yes, sir.

Q Did you see where he went? A He walked out into the next room.

Q Did you follow him? A I watched him, yes.

Q Did you see where he went? A Yes, sir.

Q Did you see him go in his room? A He walked into the next---

Q (Question repeated). A No, sir, I did not.

Q Did you see him go into any room? A The next room, he went into.

Q Eh? A The next room.

Q Well, the next room was large room, and there were dressing rooms there? A Yes, sir.

Q Did you see him go into a dressing room in that next room? A Yes, sir.

Q Where was it you lost sight of the defendant?
A Why, I took my eyes from him when he entered the next room. I didn't watch him any longer.

Q You didn't watch him any longer? A No, sir.

Q And that is all that you did? A Yes, sir.

Q And you didn't see him again, until he was arrested in his room? A Yes, sir.

RE DIRECT EXAMINATION BY MR. ELY:

MR. ELY: Walter Bennett. Bring in Walter Bennett.

MR. LE BARBIER: Oh, I have one more question to ask before you begin.

MR. ELY: Well, then, keep Bennett outside for a minute.

MR. LE BARBIER: Will your Honor permit me? Just one more question?

THE COURT: Yes.

BY MR. LE BARBIER:

Q Did you not state in the Police Court, in regard to the identification of the man:



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"Q What is it that aids you particularly in remembering that it was Galbert that was in the room that you speak of?

A The different personality of the man, the baldness of his head mostly."

Did you not say that? A Yes, sir. And there are a number of other marks on him.

Q Did you say that? A Yes, sir.

Q "Q The main remarkable feature about him? A Yes, sir."

Did you say that? A Yes, sir; that's right.

BY MR. ELY:

Q Well, what, if any other marks of identity, did you notice? A Well, his personality, and he has got an impression on the back of his head.

Q What do you mean by an impression? A Why, a mark.

Q A mark on the back of his head? A Yes, sir.

BY MR. LE BARBIER:

Q And you have been sitting in the back of the Court room? A Yes, sir, and I was sitting back of him that night, too.

MR. ELY: Never mind. Don't pay any attention to those interruptions. Walter Bennett.

(The District Attorney called for Walter Bennett, and a man approaches the bar, and stands

at the rail).

BY MR. ELY:

Q Is that the individual-- A That is the man, yes.

Q That you describe as Walter Bennett? A Yes, sir.

Q The person whom you saw in the northwest cooling room?

A Yes, sir.

Q On the morning of the 22nd of February, 1903? A Yes, sir; that's the man.

Q At the Ariston baths in the county of New York?

A Yes, sir; that is the man.

Q With whom you have testified this defendant performed certain acts that you have described? A Yes, sir; that is the man.

THE COURT: What acts do you refer to, Mr.

District Attorney?

BY MR. ELY:

Q The two acts of sodomy, one being the insertion of the penis of the defendant into the anus of the person named Walter Bennett, now at the bar; and the second act being the taking of the penis of the said Walter Bennett, now at the bar in a state of erection, into his mouth, his, the said Galbert's, mouth? A Yes, sir.

Q And performing certain motions with ^{the} said penis of said Bennett? A Yes, sir.

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Q In the mouth of the said defendant? A Yes, sir.

Q And in what state of dress or undress was this person who has just been here at the bar, Walter Bennett, at the time that the defendant performed those acts with him?

A He had a sheet-- he was naked with the exception of a sheet, up about his shoulders.

Q Now, some questions have been asked you relative to the number of persons that were in the bath, on the evening of the-- on the morning of the 22nd of February, 1903, at the time of the raid, and your attention has been directed to testimony given at a proceeding-- upon the preceding trial, where you said that there were from 75 to 100, and you have here testified that there were 78 who were arrested at that time. How do you happen to know the number 78? So that you can testify to it now? A Why, I have subsequently learned that there were 78 there.

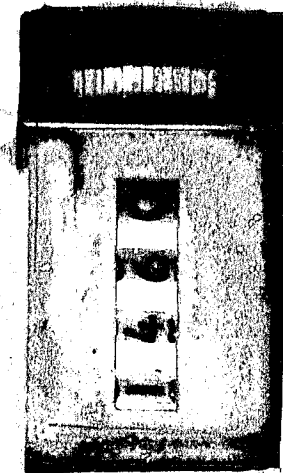
Q At my direct request? A Yes, sir.

Q Now, your attention has been directed to certain testimony that you gave at the Police Court, with reference to the identification of this defendant:

"Q Did you recognize this defendant? A Yes, sir.

"Q This defendant, George Galbert? A Yes, sir.

"Q Have you seen him before? A Not previous to that night.



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"Q Did you see him on that night? A Yes, sir.

"Q About what time? A About 1:30.

"Q Where-- " was this question asked you-- "where?"

And did you make this reply "A In the westerly room of the baths, toward Broadway"? A Yes, sir, I did.

Q Had you seen the defendant prior to that? A Yes, sir.

Q On that same evening? A Yes, sir.

Q Now you say this northwesterly room, in which these acts that you have testified to, as taking place between this defendant and this man Bennett, was lighted from a reflected light from the adjoining room, the westerly room?

A Yes, sir.

Q And that shone in on these couches that were situated in front of the space? A Yes, sir.

Q Between the two rooms? A Yes, sir.

Q And the depth of that room was about, as you estimate, twenty feet, and in its width about 15 feet? A Yes, sir.

Q Its width about 15 feet? A yes, sir, about that.

Q And this room, of course, is the extreme northwesterly room that we are speaking of now? A Yes, sir.

Q Now, the light was shed in on these couches from this westerly room? A Yes, sir.

Q And what, if anything, I ask you again, what light, individual light was there in this extreme northwesterly room?

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A There was absolutely none.

Q yes. And did you look over towards the extreme westerly wall? A Yes, sir.

Q And was it light at the extreme westerly wall? A No, sir.

Q What was it? A It was quite dark.

Q Are you sure that this is the person, that this defendant is the person who performed the acts that you have described, namely, the acts of sodomy, one through the anus and one on the genital organ of Bennett, on the 22nd day of February, 1903, at about 1:30 in the morning? A I am positive that that is the man.

MR. LE BARBIER: I object to that as incompetent, and as calling for the conclusion of the witness as to a matter which is the issue in this case for the jury.

THE COURT: I sustain the objection, as to the form of the question.

MR. LE BARBIER: And I move that the question and answer be stricken out.

THE COURT: Strike out the answer.

MR. LE BARBIER: Yes. You strike out the answer?

THE COURT: Yes.

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BY MR. ELY:

Q Have you any doubt that the person at the bar is the person whom you have described as performing the two acts of sodomy heretofore testified to by you, on the person of Walter Bennett, on the morning of the 22nd day of February, 1903, at the same place?

MR. LE BARBIER: Objected to.

THE COURT: I sustain the objection. Mr. District Attorney, you are drawing, in your question, a conclusion of law. You may ask the witness if he has any doubt, in his own mind, that this man, the defendant at the bar, is the man who did so and so without characterizing it in the language of the law.

MR. ELY: Yes, sir, I know. That is true.

BY MR. ELY:

Q Now, are you certain that the defendant at the bar is the person whom you have described as performing certain acts, heretofore described by you?

THE COURT: No, no. Ask him the plain question: Is he certain or has he any doubt in his mind that the defendant is the man who he saw insert his penis into the anus of the other man?

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That is what he has testified to.

BY MR. ELY:

Q Are you certain that the defendant at the bar is the person who you saw insert his penis into the anus of Walter Bennett, and also took---

THE COURT: No, that will do. I am positive that this is the man.

MR. LE BARBIER: Objected to, as incompetent, and as calling for a conclusion.

THE COURT: I overrule the objection.

MR. LE BARBIER: Exception.

N O R M A N J. F I T Z S I M M O N S, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ELY:

Q You are an officer connected with the Municipal Police Force of the City of New York, and were so connected on the 21st day of February, 1903? A Yes, sir, I was.

Q For how long a time prior? A With Inspector Walsh?

Q What? A With Inspector Walsh, from the 16th of January.

Q Now, you are still an officer connected with the Municipal Police Force? A Yes, sir.



Q On the 21st-- on the evening of the 21st day of February, 1903, did you go anywhere? A Yes, sir.

Q Where did you go? A To the premises 1730 Broadway.

Q What are the premises 1730 Broadway-- hat is in the County of New York? A Yes, sir.

Q What are the premises 1730 Broadway? A A Turkish and Russian bath, known as the Ariston Baths.

Q Known as the Ariston Baths? A Yes, sir.

Q About what hour did you go there, on that day or evening? A About nine thirty P. M.

Q And when you arrived, did you see anybody there that you knew? A I seen---

MR. LE BARBIER: Objected to as incompetent.

THE COURT: Objection overruled.

MR. LE BARBIER: Exception.

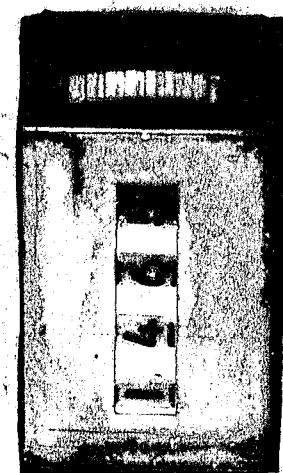
A I seen Officer Phelan but not immediately after entering the bath.

Q Well, just say what you did when you first got there, Fitzsimmons, please? A Well, I paid a dollar and was assigned to a room, and undressed and was supplied with a sheet, and took a bath.

Q Yes. And then you say that you saw Officer Phelan?

A Yes, sir.

Q There? A Yes, sir.



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Q And who else, if anybody, did you see whom you knew, prior to going there on the 21st day of February, 1903, on that evening, to the Ariston baths? A I seen officer Hibbard, McCutcheon, Connolly, Ward and Phelan; also Abbott.

Q Well, now, Inshow you this paper People's Exhibit 1 for identification, and ask you if you know what that is?

A Well, it is a diagram of the bath.

Q I ask you if you know whether--- if you know who made that diagram? A I believe officer Hibbard made that.

Q Did you make that officer? A No, sir, I did not.

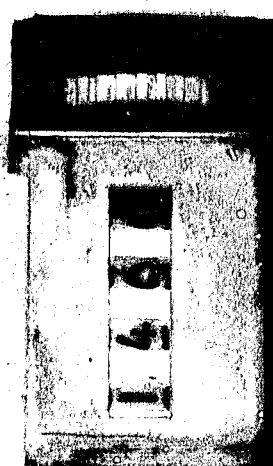
Q Well, I ask you if, after an examination of that diagram, and from your knowledge of the premises at 55th street, the northwest corner of Broadway, the Ariston baths, whether you know whether or not what is substantially a correct diagram of the Ariston bath establishment, in so far as the location of the rooms is concerned? A Yes, sir. That is on the northeast corner, not the northwest.

Q Well, the northeast corner? A Yes, sir.

MR. ELY: Now, I offer that in evidence, if your Honor please, simply for the purpose of showing the relative location of the rooms at the bath establishment in question, and not as showing the dimensions of the various rooms there.

BY MR. LE BARBIER:

Q This is not made to any scale; is it?



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MR. ELY: No; I don't claim that it is made on any scale at all, but I only claim that it is a rough sketch of the premises, which shows the location of the various rooms in the Ariston Bath establishment.

MR. LE BARBIER: Well, I submit---

THE COURT: Well, it may be used merely for the convenience of reference.

MR. ELY: yes, sir; that is all.

MR. LE BARBIER: yes, sir. But it is erroneous in some respects. Those rooms are substantially shown here, and I think, for that purpose, and for that purpose only, as showing the location, substantially, I do not know that I will object to it.

MR. ELY: And that is all I offer it for.

THE COURT: I do not see how it can prejudice your client. It is simply an aid to the jury.

MR. LE BARBIER: Then I make no objection to that.

(It is admitted in evidence and marked People's Exhibit 1 in evidence.)

MR. ELY: That is 55th street and that is Broadway (indicating), gentlemen of the jury. You may look at this exhibit.

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BY MR. ELY:

Q Just mark "Broadway" on that diagram, where it is?

A Yes, sir.

Q Now, Fitzsimmons, did you see this defendant, on the night of the 21st day of, or the morning of the 22nd day of February, 1903? A The morning of the 22nd of February, 1903, I seen him.

Q Where did you see him Fitzsimmons? Whereabouts, first, and in what premises, if any? A In the premises 1730 Broadway.

Q Known as what? A As the Ariston baths.

Q That is, in the county of New York? A Yes, sir.

Q And where was this defendant when you saw him? A I seen him first in the northwesterly room of this bath.

Q Now on this-- my question is, with respect to that diagram, People's Exhibit 1, mark the room in which you say that you saw the defendant, Galbert, on the morning of the 22nd day of February, 1903, in the Ariston Bath establishment in the county of New York, at the northeast corner of 55th street and Broadway? A I will.

Q How have you marked it? With a D? A With a "D".

Q Who, if anybody was with you when you first saw the defendant, in the northwest room, in the premises known as the Ariston baths, located, as I have stated, on the morning of the 22nd day of February, 1903? A Officer Phelan.

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Q How were you and Officer Phelan attired? A Naked, except for a sheet about us.

Q And did you observe how the defendant, Galbert, was attired? A Naked, with the exception of a sheet about his person.

Q Who, if anybody, went into the room, this extreme northwest room of the Turkish bath establishment, at the hour that you saw this defendant there? A Officer Phelan.

Q And what did you and Phelan do when you went in there? A Just stood there, towards the southerly wall of the room.

Q And what, if anything was there in the room that you observed? A Four cooling couches.

Q And who, if anybody, did you know, or have you subsequently learned was, on any of the cooling couches? A A man that I have subsequently learned was Walter Bennett.

MR. ELY: Walter Bennett. Please bring him in.

Q How was this person whom you have stated you saw or a cooling couch in this northwesterly room, on the morning in question, as you have stated, attired? A Naked, with the exception of a sheet about his person.

Q And how was the couch-- there is an aperture or an open space, between this extreme northwesterly room and the westerly room adjoining; is there not? A Yes, sir; a large

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doorway.

Q And is there any door there? A No, sir.

Q And how was the couch upon which you state that you saw Walter Bennett, naked, except for a sheet, situated, with respect to this open space connecting ~~with~~ the extreme northwesterly room with the westerly room of those premises? A They were running east and west, these couches were, and the foot of the couch was at the-- towards the entrance of the room.

(Pursuant to the call of the District Attorney for Walter Bennett, a man approaches the bar and stands there).

BY MR. ELY:

Q Is this the man that you refer to as the Walter Bennett that you saw lying on a cooling couch in the extreme northwesterly room, on the morning of the 22nd of February, 1903, in the Ariston Baths, at the northeast corner of Broadway and 55th street, naked, with the exception of a sheet?

A Yes, sir.

Q Now you say that these couches were situated easterly and westerly? A Yes, sir.

Q With the foot-- A Towards the entrance of the door.

Q Towards the entrance-- A Of the room.

Q And how many couches do you say were in that room?



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A Four.

Q And how were the couches placed? A Close together.

Q All together? A Yes, sir.

Q And on what couch did this man Bennett, who has just been here at the bar lie, or was he on, on the occasion that you have said you saw him lying there? A He was on the couch at the entrance to the room, towards the southerly wall.

Q And you and Phelan were standing at the southerly side of this extreme northwesterly room? A Yes, sir.

Q And how were you facing? A Facing towards the north of the room.

Q And how was this man--

MR. LE BARBIER: Now, pardon me. I object to any leading questions.

MR. ELY: Is that a leading question, how are you facing?

MR. LE BARBIER: Yes. You are bringing it out by asking, "How was this and how was that."

THE COURT: Oh, I think the District Attorney is within his rights, so far. Proceed, Mr. District Attorney.

BY MR. ELY:

Q Did you see how this man Bennett was facing? A Towards us.

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Q And in which direction would that be? A Towards the south.

Q And how was he situated on the couch? A Reclining on the couch.

Q Lying on the couch? A Yes, sir.

Q And when did you first observe the defendant? Where was he? A Standing against the southerly wall of the room.

Q Yes. Nearer to the door or further from--- I mean near to the space connecting the extreme northwesterly room and the westerly room, or further from that space than you were? A Further from the door than where officer Phelan and I were standing.

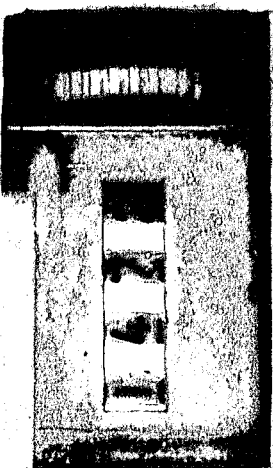
Q What did you notice the defendant do? A He walked over to the couch that the man Walter Bennett was lying on.

Q The person that has just been identified here, at the rail, by you, as Bennett? A Yes, sir. And placed his penis in the anus of the man Walter Bennett, and kept it there for a very short time.

Q Now, did you notice the state of the defendant's genital organ or penis, at the time that, as you say, he placed it in the anus of the man Walter Bennett? A Yes, sir.

Q In what state was it? A In a state of erection.

Q And what, if anything, did he do to Bennett other



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than that act? A Oh, he laid down, after he withdrew his penis from--

Q Well, after he withdrew his penis, did you notice the penis of the defendant? A Yes, sir.

Q After he withdrew his penis from the anus of Bennett, did you notice the defendant's penis? A Yes, sir.

Q And in what condition was the penis of the defendant, after he had withdrawn it from the anus of Bennett? A In a state of collapse.

MR. LE BARBIER: This is objected to, as incompetent.

THE COURT: Objection overruled.

MR. LE BARBIER: Exception.

BY MR. ELY:

Q And then what next did you observe the defendant do, after he had done the act that you have just described? A Laid down on one of the couches, alongside of Bennett, and embraced him.

Q Well, what do you mean by that? A Put his arms around him. They were there for a very short time, and the defendant placed his mouth over the penis of the man Bennett.

Q Well, did you notice the penis of Bennett before the defendant had placed his mouth over it? A Yes, sir.

Q And in what condition was Bennett's penis at that

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time? A In a state of erection.

Q And what did the defendant do, after he had placed his mouth over the penis of the man Bennett?

A Made motions, backward and forward, with his head.



Q And what did he do after that? What did he, the defendant, do after he had made the motions with his head, back and forth, over the penis of the man Bennett? A Oh, he laid back on the couch.

Q And he took it out; didn't he? A He withdrew his head from the penis of Bennett.

Q And did you notice the penis of Bennett, after the defendant had taken it out of his mouth? A Yes, sir.

Q In what condition was it? A In a state of collapse.

Q What happened after that? A He laid back on the couch.

Q Who is "he"? A The defendant at the bar.

Q He laid back on the couch? A Yes, sir.

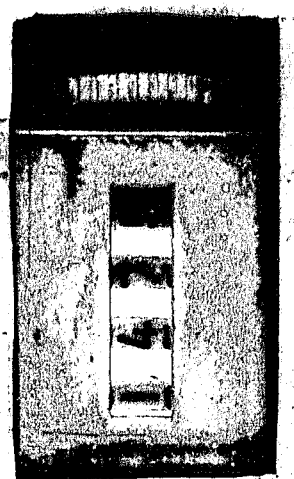
Q What couch? A The couch that this act was committed on.

Q And who else was there? A Bennett.

Q And then what happened after that? A The defendant laid there a short time, and then got up and left the room.

Q And then what did you do? A I remained in the room.

Q Now, Fitzsimmons, how is this room, the northwest room of the turkish bath establishment, situated, as you have described, in New York, lighted? A It was dark, except for the light that shone in from the adjoining room, through the doorway. The adjoining room was a brilliantly lighted room.



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Q Well then I will ask you the specific question. Was this extreme northwesterly room lighted by its own light, from any light in the room that was lighted? A No, sir.

Q Then all the light that came into the room came from the adjoining room, which, as you say, was brilliantly lighted? A Yes, sir.

Q And, otherwise -- how far in did that light shine brightly? A Oh, it shone in every part of the room. You could readily distinguish anything in any portion or part of the room.

Q And you saw the defendant? A Yes, sir.

Q And you are sure that that defendant is the man who, you say, introduced his penis in the anus of Walter Bennett? A Yes, sir.

MR. LeBARBIER: Objected to, as incompetent, and as calling for a conclusion as to a subject matter in issue here before the jury.

THE COURT: Objection overruled.

MR. LeBARBIER: Exception.

BY MR. ELY:

Q And you are sure that this is the defendant who performed that further act with the witness Bennett, namely, to take the penis of the said Bennett into his mouth, perform certain motions with his head, and eventually take it out of his

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mouth? A Yes, sir.

MR. LeBARBIER: Objected to, as incompetent, and as calling for a conclusion as to the subject matter before the jury.

THE COURT: Objection overruled.

MR. LeBARBIER: Exception.

BY MR. ELY:

Q Now, Fitzsimmons, after, as you say, these acts had occurred, the defendant left this northwesterly room?

A Yes, sir.

Q And what became of you and Phelan? A Well, Phelan followed him directly into the room, into the next room. I walked in as far as the threshold of the door, and then came back.

Q When you say you came back, what do you mean by came back? A Into that room; remained in that room.

Q Well, what room was that? A The northwesterly room.

Q And how long did you remain in the extreme northwesterly room, as you say, after the defendant had left -- after you had walked to the threshold, and seen the defendant go out?

A Oh, a very short time.

Q Yes. And about what hour was it, Fitzsimmons, that these acts that you have described took place, as near as you can say? A I should say about 1:30 A. M.

Q You went through-- well what happened after these acts

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had been performed, about 1:45, if anything? A About 1:45, Inspector Walsh came, with a squad of officers, and raided the place. The men were all --

BY THE COURT:

Q One moment. What do you mean by raided, Witness?

A Well entered the place and placed everybody in the place under arrest.

BY MR. ELY:

Q Yes; entered the place and placed everybody in the place under arrest? A Yes, sir.

Q And at any time after you saw this defendant in the extreme northwesterly room of the Ariston Baths, situated as you have described, did you see him again, on the morning of the 22nd of February, 1903? A With Inspector Walsh and Officer Phelan, I found him in his room.

Q Do you know where his room is, or was? A His room is situated about five feet or less from that room, from the northwesterly room, on the south side of the wall of the connecting rooms.

Q Yes; in the westerly room, then? A Yes, sir.

Q And there is where you and Inspector Walsh and Phelan found him? A Yes, sir.

Q And what happened when you found him? A Why, we knocked at his door, and the door was opened and Officer Phelan



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BY MR. LeBARBIER:

Q The door was open?

MR. ELY: He said the door was opened.

A (Answer continued) And Officer Pheland and I said to Inspector Walsh, "We want that man."

BY THE COURT:

Q In the presence of the defendant? A Yes, sir; in the presence of the defendant.

BY MR. ELY:

Q And how was the defendant attired, when you saw him?

A I believe he had his underwear on.

Q And, after that -- A He may have had his shirt on, his outside shirt. I don't recollect very well.

Q And, after that, you took him out? A Yes, sir; took him out, and placed him in a room where the other inmates of the baths were.

Q Now just, on this diagram, for the purpose of enlightening the jury, mark with a large X, in blue pencil, the room in which you saw the defendant in, and placed him under arrest in, after finding him in the westerly room of the Ariston Baths, adjoining the extreme northwesterly room that we have been discussing? A This is it (the witness marks).

Q And that is the room where all the various people were corralled? A Yes, sir.

Q Or placed? A Yes, sir.



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Q Were you present at the Police Court when this defendant was arraigned? A I --

Q I do not mean the Police Court. I mean the station house. When this defendant was arraigned? A Not at the station house, I wasn't.

Q You didn't hear his pedigree taken?

A No, sir.

Q And the name he gave? A No, sir.

CROSS EXAMINATION BY MR. LeBARBIER:

Q Were the people in the northwest room -- question withdrawn. What were the people in the northwest room doing, when you and Officer Phelan entered there? A Some were lying down and some were standing up and walking around.

Q Yes. Did any of them walk out, through this space, into the other room? A They were continually going out and coming in.

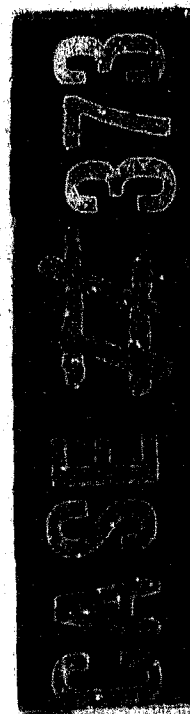
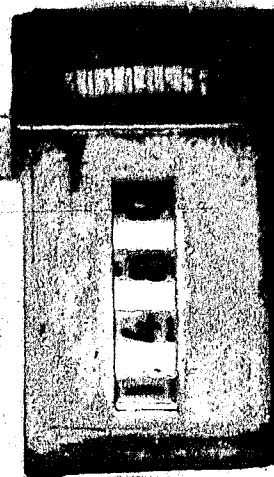
Q And others, from the outside, were entering the room?

A Yes, sir.

Q So that there was virtually a procession, going in and out?

MR. ELY: I object to the characterization.

A Oh, not a procession.



BY MR. LeBARBIER:

Q Well there was a constant current of people, backward and forward, in and out of the room? A Yes, sir. There were patrons of the bath going in and out all the time; yes.

Q And these acts that you have stated took place while these people were walking in and out? A Yes, sir.

Q Now what were you doing just at that moment? A Standing there.

Q With Phelan? A With Phelan, yes.

Q Watching Bennett? A And Galbert, also.

Q Both facing you? A What do you mean? Both facing?

Q Well, was Galbert facing you? A He was facing Bennett. Bennett was facing me.

Q Did Galbert, in your hearing, do you know, say anything to Bennett? A No, sir.

Q Did Bennett say anything to Galbert? A No; I don't believe any conversation passed between them at all.

Q Well, were they in the room when you entered?
A Yes, sir.

Q And Galbert was standing against the wall, or at the wall? A Yes, sir.

Q At the southerly wall? A Yes, sir.

Q With a sheet on? A Yes, sir; and with his back towards the wall.

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Q And did he walk over, with the sheet? A Yes, sir.

Q And did he place the sheet over Bennett, in any way?

A No, sir; I believe the sheet fell to the floor.

Q You believe the sheet fell to the floor? A Yes, sir.

Q Do you know whether it did or not? A Yes, sir; I will state so, that it did.

Q And then he was naked? A Yes, sir; thoroughly naked.

Q Well, when he went over to Bennett, and took hold of Bennett, how close were you to Galbert, the defendant?

A I was alongside of Officer Phelan.

Q How close were you to the defendant? A About two feet, or more.

Q About two feet? A Yes, sir, or more, probably.

Q What did Galbert do? Did he just then insert his penis? A Oh, no. He took hold of the leg of the man Bennett, and raised it.

Q Well, did he raise it high at all? A Quite high.

Q Well, how high? A Well I should judge eight or nine inches. I had no means of measuring it.

Q No. But that is your best judgment?

A Yes, sir.

Q And then he inserted his penis into the anus of Bennett? A Yes, sir.

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Q You continued to watch the whole act? A Yes, sir.

Q And then the other act took place? A Yes, sir.

Q With all these people there in that room?

A Yes, sir.

Q And were the other couches full, at the time; do you know? A I believe they were.

Q Were you watching them? A No, sir.

Q Which one, after this alleged act, went out first?

A Officer Phelan.

Q Did he go out before Galbert? A After him. I won't say after him. They probably went out of the doorway together. The door is a wide door.

Q Well, that is what I want to get at. Phelan left with the defendant? A Yes, sir.

Q Didn't stay behind at all? Look at me and not at the District Attorney?

MR. ELY: I object, if your Honor please.

He is continually lecturing the witness in this way.

THE COURT: Yes.

BY MR. LeBARBIER:

Q He didn't stay behind at all? A No, sir.

Q Did they walk out side by side? A Yes, sir. I can't say about side by side.

Q You are positive about that? A Yes, sir, I am positive about that.

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Q You recollect it now just as well as you did on the night of the occurrence?

MR. ELY: I object, sir. It is immaterial.

That question.

THE COURT: Oh, he may answer.

A I recollect very well.

BY MR. LeBARBIER:

Q Yes. Now, Officer Fitzsimmons, how long did Bennett remain in the room, after Galbert left, with Phelan? A A short time.

Q Did you remain in while he was there? A For a short time.

Q Did you leave before Bennett did? A I left the room before Bennett, and remained in the next room.

Q Did you go out there for any purpose? A To the next room?

Q Yes. A To wait until Bennett come out.

Q The next room was this brilliantly lighted room?

A Yes, sir.

Q Didn't you go out there for the purpose of identification? A Well, of waiting for Bennett.

Q (Question repeated) A Not of this defendant.

Q Sure about that? A I am sure about that. At that time, I am speaking of, after the defendant left the room.

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Q Yes; after the defendant left the room? A Yes, sir.

Q Now how long was it that you followed, after Phelan left the room? A A very short time.

Q Well how long? A I don't know. I had no means of telling the time.

Q Can you state what the time was? A Very short time.

Q Can you state what that very short time is?

A No, sir.

Q Did you not testify, in the case of the People against Bennett, as follows: "Q Then you followed Officer Phelan, ten minutes after? A About that time."? A Yes, sir; I testified to that.

Q And then what do you mean by testifying now, before this Court and jury, that you can't place any time, and don't know any time?

MR. ELY: Objected to, what he means by doing that. He may have forgotten.

THE COURT: The witness may answer.

A Well, I probably judged it at about ten minutes.

BY MR. LeBARBIER:

Q Then why didn't you say so, a few minutes ago, when I asked you positively for the time? A Well, I have forgotten the time since.

Q Now I read you this question: "Q Did Bennett or

Galbert at any time leave that room? A Galbert did. Q Galbert did? A Yes. Q Before or after Phelan left? A I couldn't say, sir?"

MR. ELY: Now read some more.

BY MR. LeBARBIER:

Q Now, is that true? A That's true.

Q Then what you said here, a moment ago -- I will withdraw that question. "Q Don't you know? A I was not paying any particular attention". Is that true? A Yes, sir, that's true. I have recollected since, though.

Q Oh, you have recollected it since? A Yes, sir.

Q Was it some effort on your part to recollect it?

A No, sir.

Q Now in regard to the open space-way from the big room to the little room, that is to the northwesterly room, the cooling off room, are you able -- did you observe the space way there? A Yes, sir.

Q Particularly? A No, sir, not particularly. I remember it well.

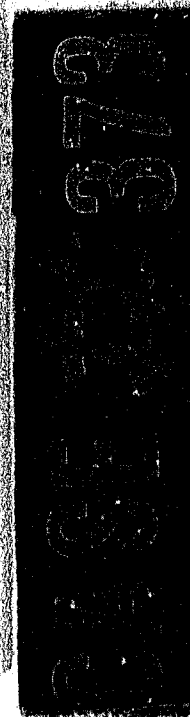
Q You remember it well? A Yes, sir.

Q And will you state what that space-way was?

MR. ELY: What do you mean?

BY MR. LeBARBIER:

Q That is, the entrance or passage-way into the north-



westerly room, which was the cooling off room? A What do you mean by the space-way?

Q The door-way? A You mean the width or the height of it?

Q The width? A About eight feet.

Q And was it the length of the room? A No, no.

Q It was not fifteen feet open, then; was it? A I don't think so.

Q Did you observe any portiers there? A Yes, sir.

Q What was their condition at this time, when you went into that room? A Drawn aside.

Q Up against either side of the wall? A Yes, sir; of the entrance.

Q Then the northwesterly room was lighted up from the adjoining room? A Yes, sir.

Q What was the condition of the light in the room adjoining that northwesterly room? Brilliant or otherwise?

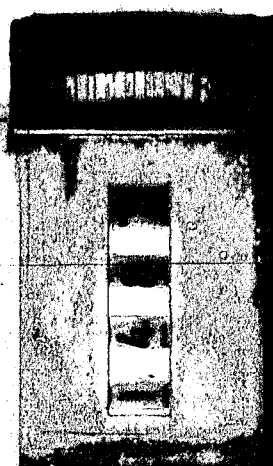
A Very brilliant.

Q With no light in the northwesterly room? A No light in the northwesterly room.

Q Was it lighted from any source, that northwesterly room? A Yes, sir; from the adjoining room.

Q Did the light from the adjoining room stream in full there, through that open space? A Yes, sir.

Q Did you see any bald men there, that night? A I didn't



take any particular notice of them. I believe there was.

Q You don't know; eh? A I will say there was.

Q There were? A Yes, sir.

Q Any bald men, with moustaches, there, that night?

A I don't remember.

Q You merely can't say, can you? A I can't say.

Q You can't say? A No, sir.

Q Now was it dark in that northwesterly room?

A No, sir.

Q Now you say you went out of the room to wait for Bennett, you went out of the northwesterly room?

A I went out of that room before Bennett.

Q Was that the only purpose you went out there for?

MR. ELY: Oh, I object to that, as immaterial.

A What purpose.

BY MR. LeBARBIER:

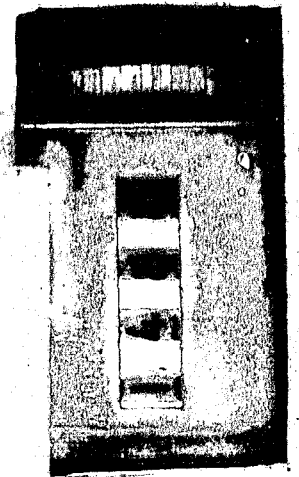
Q Is that the only purpose for which you went out into that other room, which was brilliantly lighted?

A Yes, sir; to wait for him.

Q And to identify him? A Yes, sir.

Q But you had identified him? A That is very true. But so that I might be able to state that I positively identified him.

Q Then you went out into the big room, in order to be more positive as to identification? A Yes, sir; where it was



lit.

Q Brilliantly lit? A Yes, sir.

Q But Galbert had gone out of this room, before you had gone out? A Yes, sir.

Q And you had not seen him in the brilliantly lighted room? A Oh, yes.

Q In the brilliantly lighted room? A Oh yes.

Q And did you go out there, also, for the purpose of more perfectly identifying Galbert? A Yes, sir.

Q So that we have it as a fact, that, after you saw these men in that northwesterly room, for the purpose of better identification, you went out into the brilliantly lighted room?

A I didn't go out into the room. I went as far as the threshold, or entrance.

Q And looked into the room? A Yes, sir.

Q Now I read you this question, in the Police Court:

"Q Did you look at the defendant carefully? A I remained in that room, until the defendant, and, also, this Walter Bennett left the room, and went into a brilliantly lighted room, for the purpose of better identification." Now did you go into the room? A No, sir; not into the room.

Q Then that is not true, what you stated in the Police Court? A No; not the way it is worded.

Q No, not the way it is worded? A No, sir.

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MR. LeBARBIER: I thought you said, a moment ago, Mr. Ely, that I was quoting from Fitzsimmons's testimony, when I was asking Mr. Phelan questions about his testimony?

MR. ELY: You were.

MR. LeBARBIER: Well, then, I may have been in error.

BY MR. LeBARBIER:

Q Now, on page 9 -- did you give this testimony in the Police Court, speaking of the -- did you state this in the Police Court: "The rooms were curtained off, and a number of inches from the top and side and bottom allowed plenty of light to come in"? A I did.

Q Now what did you mean by from the top and bottom and side, when you said, a moment ago that the light came in a stream or flood through that open spaceway? A There was a pole at the top of this doorway that held the portiers, and the light came in above, below and under it, and between the portiers.

Q But the portiers were open, you say? A Most positively.

Q And drawn to the wall? A Drawn to the wall, to one side.

Q "Q This was the vapor room? A No, sir; the--"

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MR. ELY: I object to this.

THE COURT: No. I cannot permit this reading from the Police Court testimony, or from what you state is testimony. That is not, properly, cross examination.

MR. ELY: Yes, sir; and it is Phelan's testimony, and not Fitzsimmons's testimony at all.

MR. LeBARBIER: Then I was right as to Phelan, after all.

MR. ELY: No. Before, you quoted from Fitzsimmons, and you are doing so again, reading the same testimony, as when you examined Phelan.

BY MR. LeBARBIER:

Q Now, when the arrests were made there what became of the men?

MR. ELY: I object. What men, sir? It is too indefinite.

BY MR. LeBARBIER:

Q What was done with the men?

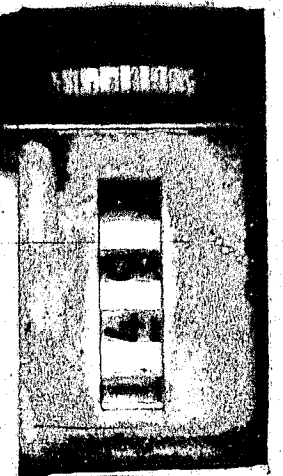
MR. ELY: Objected to as before.

THE COURT: It is very vague.

MR. LeBARBIER: Then I will put it so that my friend will not object.

BY MR. LeBARBIER:

Q At the time the raid was made, the men who were arrested



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ed, do you know where they were put? A Everybody was corralled into a large room.

Q One room or two rooms? A Well there was a room adjoining. Some of them were in there. There was quite a large crowd. We couldn't get them all into one room.

Q Well how large a crowd? A Oh, I should judge about 75.

Q Were they dressed or undressed? A Some were dressed, and some were naked.

Q And some were allowed, then, to go and get dressed?
A Yes, sir.

Q Well, at the time of the arrest, was the defendant in this crowd that was corralled in those rooms? A No, sir.

Q You subsequently went to his room? A We subsequently made a thorough search of the premises, and found the defendant in his room.

Q You knocked at the door? A Yes, sir.

Q And did he answer? A I believe he did. He opened it.

Q Oh, he opened the door? A I believe he did; or else --

Q Well what did you see? Just indicate? A I didn't knock at all.

Q Well who knocked? A Well I don't know whether it was Officer Phelan or Inspector Walsh.

Q Well was anything said to the defendant there?

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A Nothing more than Officer Pheland and myself said, "We want that man."

Q And then the door was opened? A That was after the door was opened, after we had seen him.

Q And then the defendant opened the door; didn't he?

A Previous to the remark I am after making.

Q Well, then, where was he identified? A In that room, first.

Q And you and Phelan were there together? A With Inspector Walsh.

Q And that is all that took place, then, in regard to what occurred in the defendant's room, at that time, or about his room? A As far as I can remember, yes.

Q Well, that is your best memory on the subject; is it not?

MR. ELY: I object. He has said it was.

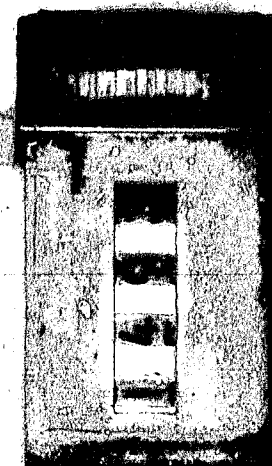
A Yes, sir.

RE-DIRECT EXAMINATION BY MR. ELY:

Q And, after that, he was taken to the parlor, was he, the defendant? A Yes, sir.

Q And was reidentified there; was he? A Yes, sir.

Q Now, Fitzsimmons, you have been interrogated about when Bennett and Galbert left the room, and certain questions and answers have been read to you, with respect to certain



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testimony that you gave, in a proceeding in which the people were prosecuting Walter Bennett, and your attention was directed to page 75, and you were interrogated on this testimony that I am about to read, which you admitted you gave: "Q. Who went out of the room first? You or Officer Phelan? A. If I remember rightly, Officer Phelan did. Q. Then you followed Officer Phelan in about ten minutes after that? A. About that time. Q. Did either Bennett or Galbert leave that room? A. Galbert did. Q. Before or after Phelan did? A. I don't know. Q. Don't you know? A. I wasn't paying any particular attention. Q. Didn't you have your eyes on these two people all the time that you were in that room? A. Yes, sir."? A. Yes, sir, that's my testimony.

Q. Now was this question asked you: "Q. And now you want to say you don't know whether Galbert left that room before Phelan, or not? A. Well, I would say they both left the room together, passed out. Q. Now can't you say whether Galbert or Phelan left the room first? A. They both left the room together. Q. Side by side? A. Yes, sir; it is a doorway, eight or nine feet wide. Q. And they were side by side when they left? A. Yes, sir."?

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

THE COURT: I think you are transgressing the



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rule, Mr. Ely, in reading this testimony continuously in that form.

MR. ELY: Well, perhaps the technical objection is correct.

THE COURT: Well I know it is.

MR. ELY: Pardon me. I did not refer to your Honor, as to the correctness of it, but to my learned friend. But, if your Honor please, it saves time, and is in contradiction of something that was brought out by counsel for the defendant.

THE COURT: Well, then, you must draw the attention of the witness to the matter that you seek to contradict or correct.

MR. ELY: I thought that I did call his attention to it, by calling his attention to the very testimony that had been given.

BY MR. ELY:

Q Well then bearing in mind the testimony that you were interrogated about, with respect to the time that Galbert and Phelan left the room, which testimony was adduced on your cross examination, by the defendant's counsel, was this question asked you: "Q And now you want to say that you don't know whether Galbert left that room before Phelan or not?" Was that

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question asked you? A Yes, sir.

Q And did you give this answer: "A Well, I would say that they both left the room together, passed out"?

A Yes, sir.

Q And was this question then asked you: "Q Now can you say whether Galbert or Phelan left the room together?"

Was that question asked you? A Yes, sir.

Q And did you make this answer: "A They both left the room together"? A Yes, sir.

R I C H A R D W A L S H , a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ELY:

Q What is your business, Mr. Walsh? A Acting Inspector of Police.

Q Connected with the Municipal Police Force of the City of New York? A I am.

Q And were you so connected prior to and on the 21st day of February, 1903? A I was.

Q And where did you go, on the morning of the 22nd of February, say, about one o'clock or 1:45, or around there? Did you go anywhere, at that time? A I did.

Q And about what hour did you go somewhere? A Between the hours of one and two.

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Q And where did you go, Inspector? A To the northwest-- northeast corner of 55th Street and Broadway.

Q What was there, Inspector? A The Ariston Bath establishment.

Q A Turkish bath establishment? A Yes, sir.

Q And did you go alone? A No, sir; I went with several officers.

Q You don't remember, of course, how many you had; do you? A Not exactly.

Q Well, about how many did you have? A Well, there were probably eight or ten of us, altogether.

Q And did you find any officers in the Ariston Baths when you got there? A I did.

Q And do you remember about how many you found there? A Yes, sir. There was Phelan, Fitzsimmons, Hibbard, Connolly, Ward and another officer of the 22nd -- and Abbot -- I don't recollect the other officer's name from the 22nd. He is outside now.

Q McCutcheon? A Yes, sir, McCutcheon.

Q And what did you do, when you got to the Ariston Baths?

MR. LeBARBIER: Objected to, as incompetent and immaterial.

THE COURT: I overrule the objection.

MR. LeBARBIER: Exception.

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BY MR. ELY:

Q Well, of course, the Ariston Baths are in New York County? A Yes, sir. They are at the northeast corner of 55th Street and Broadway.

Q Well, what did you do, when you went in the place?

A Well, when I entered the place, I ordered the officers there to get --

MR. LeBARBIER: That is objected to, as immaterial.

BY THE COURT:

Q State what was done there, Inspector, in your presence?

A Well I immediately closed the outer door, and then began to gather together the men that were pointed out as having committed acts of sodomy.

BY MR. ELY:

Q Well, certain acts. Don't describe them? A Yes, sir. Well, certain acts. And placed them in the room on the left of the entrance, on the north side of the building. And, after all the men were picked out by my officers --

MR. LeBARBIER: I object to the words "picked out."

THE COURT: Objection sustained.

THE WITNESS: Well, were identified.

MR. LeBARBIER: I object to this testimony.

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There is but one specific act before the jury, if your Honor please. I object.

THE COURT: I understand, but there may be a question as to the identity of certain persons.

THE WITNESS: Well, all of the men that were identified by my officers.

MR. LeBARBIER: Now I object to that.

THE COURT: Yes. That is a conclusion. Men that were pointed out or selected. Leave out the word "identified", Captain.

A (Answer continued) The men that were pointed out were placed in this room, and then we made a search of all the premises, and we found, in one room on the southerly wall, a door locked, and I knocked on that door, and there was a voice within that asked what we wanted, and I said we wanted him to come out. After a few moments the door was opened. I found a man in the room.

BY MR. ELLY:

Q Who was the man that you found in the room? A The defendant.

Q The defendant there (indicating the defendant)?

A Yes, sir.

Q Well who, if anybody was with you, when you knocked at this door, in which you heard the voice? A Fitzsimmons and Phelan. They immediately identified this defendant.

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THE COURT: No. That will not do.

MR. ELY: Oh no. Don't use the word "identified".

MR. LeBARBIER: And I move that the word "identified" be stricken out.

THE COURT: Yes.

A (Answer continued) Well they said "This is one of the men that we want."

MR. LeBARBIER: That is objected to.

BY THE COURT:

Q Did they say that in the presence of the defendant?

A Yes, sir; in the presence of the defendant. The door was open. He heard it.

THE COURT: Objection overruled.

MR. LeBARBIER: Exception.

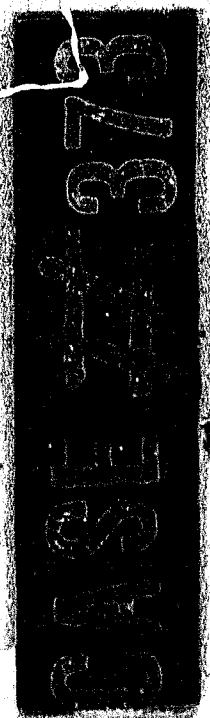
BY MR. ELY:

Q And then what happened? A We took him to this room, where we had placed several othermen, before that.

Q This parlor? A This parlor, yes.

Q To the right of the entrance? A To the left of the entrance, as we entered, if I remember right.

Q There is the entrance (indicating). There is 55th Street? A Oh yes. Well this is the entrance and this is the



room we placed them in (indicating). This parlor here-- there were men selected from that also, but the men that we really confined, until we took them away, were put in this room (indicating).

Q They were put in here, and then in here, afterwards (indicating)? A Yes, sir.

Q The parlor and the room to the left? A Yes, sir.

Q And is that all you know about this matter? Were you at the police station house, when this defendant was arraigned? A I was.

Q Did you hear what name he gave? A I did. I don't recall the name now; I don't recall the name.

Q Galbert? A Yes, sir, Galbert. That is the name.

MR. LeBARBIER: Objected to, as incompetent, immaterial and irrelevant. We are not standing on the name at all, your Honor.

THE COURT: Well, he says he simply heard the defendant give that name.

BY MR. FLY:

Q Well, do you know whether or not that is the defendant's true name?

MR. LeBARBIER: Objected to.

THE COURT: Objection sustained.

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CROSS EXAMINATION BY MR. LeBARBIER:

Q Did you find anybody else in any other rooms?

A I don't recall that I did.

Q Well, don't you know whether you did or not, Inspector?

A I did not, that I remember.

Q Well, then why did you answer, a moment ago, that you didn't know whether you did or not? A Well, I don't know whether I understand you. Do you refer to the small rooms?

Q Yes. A Well, that's the only room that was locked, where the defendant was in.

MR. ELY: The People rest.

THE COURT: The case is with you, Mr. LeBarbier.

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OPENING ADDRESS FOR THE DEFENSE

of

CHARLES E. LeBARBIER, ESQ.

May it please the Court:

And you, gentlemen of the jury:

There is not much, at this moment, while I feel like telling you a whole lot of things, that I need state.

You all realize, just as much as anybody realizes, within the sound of my voice, what a horrible crime, what an infamous practice, what a to be severely punished charge, the defendant is up against; and I do not propose, at this moment, to discuss the evidence before you gentlemen.

The defendant is charged, as I say, with a monstrous crime. I can imagine, and I guess every one can imagine, nothing more dirty or more low or more bestial than this horrible crime with which we are charged. Now, there is no getting away from that at all.

But, by the Eternal, gentlemen, notwithstanding we are here charged with that fearful crime, thinking, possibly, that, through representations that we might

have made, there could have been some abandonment of this case, we are here to place ourselves in the custody and in the keeping of twelve fair minded, honest men; and that is what we are, also, now up against.

If there ever was an infamous charge predicated against a man --

MR. ELY: Well, if your Honor please, this is not an opening.

MR. LeBARBIER: That is the charge alleged against the defendant.

MR. ELY: But he does not state what his evidence is, at all.

MR. LeBARBIER: He is indicted for the crime of sodomy. An indictment is nothing more or less than an accusation. Every presumption of innocence in his favor goes with him, when you go into your room, to consider this case.

We were there, that night; and the only possible defense that a reputable man may have against such an infamous charge is the fact that he will take that stand there, and say to this Court and to you twelve men, "I did not do it."

And, not only that, but I will support him by



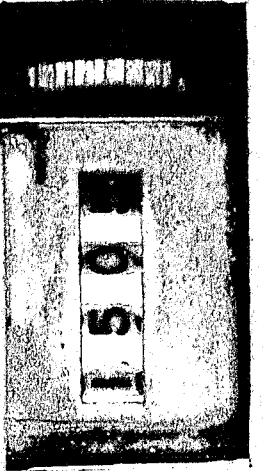
a galaxy of weighty, prominent, important business men of New York, on the question of character, and that will make his word go, and must be acceptable, as I think, to you twelve gentlemen.

Now, we were there, that night, for the first time.

We will meet this case fairly and assume, for the sake of the argument, that an act of sodomy was done there, but we will prove it here mathematically to you twelve gentlemen's minds that it was a physical impossibility, on the testimony of the People, as they have given it. Now we will meet their evidence, and that is the evidence that you go by.

So that we interpose here the defense, gentlemen, that we did not do this act; and that it is just as reprehensible to us as it is to you; and we will bring here, as part of our defense, men who will take that stand and say, "This man could not have done it, because we know his character."

And then we will show the actual measurements, no slick, sharp piece of paper thrown in here, to go with such a fearful accusation as sodomy, but we will show you how physically impossible it is that any twelve fair minded men can believe these officers.



THE DEFENSE.

O R R E L A . P A R K E R , a witness called on behalf of
the defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. LeBARBIER:

Q Mr. Parker, what is your profession? A I am a lawyer.

Q Are you a draughtsman? A I am.

Q Have you visited the premises known as the Ariston
Baths in the City of New York? A I did.

Q Did you make a diagram of those premises? A I did.

Q Do you know of your own knowledge -- I show you a
paper, a diagram, and ask you what it is? A The drawing
which I made of the bath establishment.

Q Is it made to a scale? A It is drawn to the scale,
accurately.

MR. LeBARBIER: I offer it in evidence.

MR. HLY: Well, I object to it, on the ground,
if your Honor please, that it is not correct in
certain respects, to wit, the --

THE COURT: Ask the witness your questions, on
the voirdire. You may examine the witness on the
voirdire, as to the correctness of the drawing.

We will suspend here.

Gentlemen of the jury, you remember my caution to you, last night, and you will consider the same as administered to you now.

The Court will take a recess until twenty minutes to three o'clock.

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A F T E R R E C E S S .

O R R E L A . P A R K E R , his direct examination being continued, testified as follows:

MR. LeBARBIER: I offer this diagram in evidence.

MR. ELY: If your Honor please, as far as the diagram goes, it seems to me, substantially correct, and I do not make any objection to it, except with respect to a number of a dressing room there, and that counsel says he will change. That is No. 20, Mr. LeBarbier.

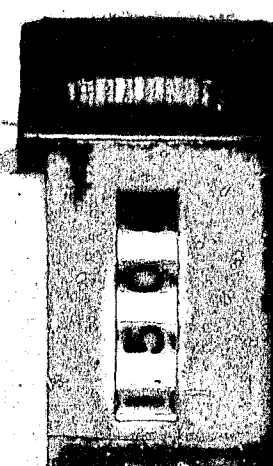
(It is admitted in evidence and marked Defendant's Exhibit 1.)

MR. ELY: Of course, Mr. LeBarbier, I do not admit that, on the night in question, these curtains that you have got marked there extended across that aperture, and I do not suppose you intend to show that they did.

MR. LeBARBIER: No.

MR. ELY: Only a place for curtains?

MR. LeBARBIER: Yes.



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BY MR. LeBARBIER:

Q Will you please look at Defendant's Exhibit 1 and state the measurements of the northwesterly room, the extreme northwesterly room, as well as the space of admittance from the westerly room? A The extreme northwesterly room is exactly 15 feet, 6 inches from the doors or place where the doors might be to the other wall. The extreme length is 15 feet 6 inches.

MR. ELY: I object to the answer, "Where the doors might be," The door space, it is.

THE WITNESS: That's right. By 10 feet 6.

BY MR. LeBARBIER:

Q Now what is the door space there? A The space where the curtains hang?

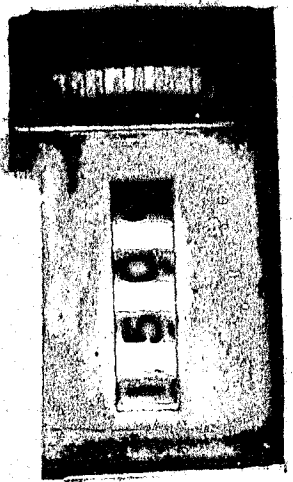
Q No, the space of entrance? A The only place of entrance is a space which is exactly 3 feet 9 3/8 inches from jamb to jamb.

Q Is there a row of dressing rooms on either side of the northwesterly room? A There is a row of dressing rooms on each side of that room, as well as the westerly room.

MR. ELY: I will admit that, that there are dressing rooms in both rooms, except that room No. 20 is not placed right.

MR. LeBARBIER: Place it where you like.

MR. ELY: It is there, gentlemen, instead of



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there (indicating).

MR. LeBARBIER: It is the second room, gentlemen of the jury.

MR. ELY: Yes; that is right.

Cross examination: None.

THE FOURTH JUROR: What are the points of the compass there, Mr. District Attorney?

MR. ELY: Just let your witness put the points of the compass on this diagram.

THE WITNESS: The street is marked there, Mr. Ely (indicating).

MR. ELY: I know that, but the juror has just asked to have the points of the compass put there. Just write "Broadway" here (indicating).

THE WITNESS: It is there already, sir. This is west, this is east and this is south and this is north (indicating).

RE-DIRECT EXAMINATION BY MR. LeBARBIER:

Q What is the scale of the diagram? A One quarter of an inch on this diagram represents one foot of the building, four feet to the inch.

Q Did you go into that extreme northwesterly room?

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A I visited every room in the premises, including--

Q Did you go into that room? A Yes, sir, I did.

Q Did you see the couches there, in that room?

A yes, sir.

Q Did you measure the height of the couches?

A I did.

MR. ELY: I object to that, as immaterial,
irrelevant and incompetent.

THE COURT: I sustain the objection.

MR. LeBARBIER: Will your Honor, then, permit
me to recall him, on that point, later? I have
the witness outside to connect it?

THE COURT: Yes; I will permit you.

MR. ELY: Gentlemen of the jury, while you are
examining Defendant's Exhibit 1, at the request
of counsel for the defendant, please look at our
diagram, also, People's Exhibit 1. It is equally
correct, only on a smaller scale.

BERTHA FIEDLER, a witness called on behalf of
the Defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. LeBARBIER:

Q Where do you reside, Madam? A I live at 773 Ninth
Avenue.

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Q What is your occupation? A My occupation is manicure and chiropodist.

Q Where are you employed? A I am employed in the Ariston Bath.

Q How long have you been employed there? A 12 years.

Q 12 years? A Yes, sir.

Q Continuously you have been employed there? A Yes, sir.

Q Are you familiar with the rooms in those baths?

A Yes, sir; I am familiar with them, during the ladies' hours.

Q Do you know what is the northwesterly room of those baths? A Yes, sir.

Q You have been in there frequently; have you not?

A Yes, sir.

Q Have you seen the couches in those rooms there?

A Yes, sir.

Q Are you able to state that the couches there, to-day, are the same ones that were there in February, 1903?

MR. LEY: I object, if your Honor please.

A Yes, sir.

MR. LEY: Don't answer, when I am objecting, please. I object. How can the witness testify or possibly know whether they are the same couches, when she testifies, sir, that she is only there during

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the ladies' hours?

THE COURT: Well, that goes to the extent of her credibility. The witness may state whether or not she knows, as a fact, that the couches that are in a particular room, to-day, were in that particular room, on the 22nd of February, 1903.

BY MR. LeBARBIER:

Q Were they, Madam? A Yes, sir.

THE COURT: I think you had better state, in that particular room.

BY MR. LeBARBIER:

Q In that particular room? A Yes, sir.

Q Are you able to state what the height of those couches in that room is? A They are a little over a foot.

Cross examination: None.

O R R E L L A . P A R K E R ; being recalled by counsel

for the Defendant, testified as follows:

DIRECT EXAMINATION BY MR. LeBARBIER:

Q Mr. Parker, did you measure the couches in the extreme northwesterly room? A Yes, sir, I did.

Q What is their height?

MR. ELY: Objected to.

THE COURT: Objection sustained.

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BY MR. LeBARBIER:

Q When did you visit those premises? A On last Sunday.

Q Of the current month? A On June 14th.

Q Did you see the couches in that extreme northwesterly room? A I did.

MR. ELY: Objected to.

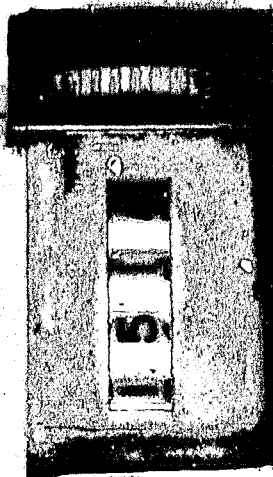
THE COURT: Objection sustained. There is nothing to show that the couches, which Mr. Parker saw there, were the couches which were in that room, on the night of the 22nd, or the morning of that day.

MR. LeBARBIER: Well, the other witness says that they are there continuously, and are without change.

THE COURT: No. When evidence of that character is to be introduced, it must be made very definite and certain.

MR. LeBARBIER: If your Honor please, I was under the impression that, with the last witness, I had proved those couches down to today.

THE COURT: You can prove it, if you can show by the last witness or by any other witness, that the couches were the identical couches that Mr. Parker saw, and were the couches that were there on the night in question. Does that constitute such



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a material question, that it is worth while to spend any more time on it? You have the height from the testimony of the woman. That is her estimate.

MR. ELY: Yes, sir, that is her estimate.

And I consider it entirely immaterial, anyway, sir.

MR. LeBARBIER: Very well, sir. That is sufficient on that point I think.

W I L L I A M J . H A R V E Y , a witness called on behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. LeBARBIER:

Q What is your occupation, Mr. Harvey? A A stenographer in the Seventh District Police Court.

Q were you the stenographer at the examination of the case, before Magistrate Poole, in March, of Galbert? A I was.

Q Well, on february 24th? A Yes, sir; February 24th is right.

Q Did you take these minutes down stenographically?

A I did.

Q Did you transcribe any testimony from those minutes?

A I did.

Q Was what you transcribed a true and correct transcription of your stenographic notes? A It was.

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Q what is the paper which I now show you?

BY MR. ELY:

Q Do you recognize it? A I do. That is the transcript of the testimony taken at the examination in the case of the people against Galbert, transcribed by me.

Cross examination none.

G E O R G E A L F R E D C A L D W E L L, the defendant, being duly sworn, testified as follows:

MR. LE BARBIER: I offer the minutes now in evidence.

MR. ELY: I object.

THE COURT: I sustain the objection. There is no competent proof.

MR. LE BARBIER: I take an exception.

DIRECT EXAMINATION BY MR. LE BARBIER:

Q Mr. Caldwell, how old are you? A 38.

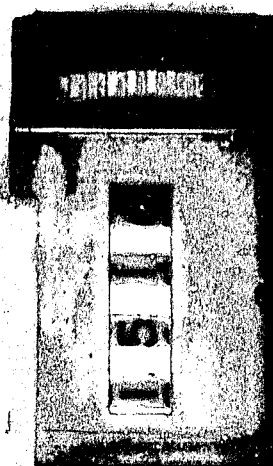
Q Where do you live? A I live 105 East 82nd street.

Q Are you married? A I am not.

Q What is your occupation? A I am an architect.

Q With whom are you employed? A Carrere & Hastings.

Q What is their business? A They are architects.



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Q Where is their office? A 28 East 41st street.

Q How long have you been employed there? A Three years last february.

Q On the night of february 21, 1903, did you visit the Ariston Baths? A I did.

Q About what time did you get there? A Sometime between half past nine and ten o'clock.

Q Had you been in those baths before? A I had not.

Q After you arrived there, what did you do? A I was assigned to room 20. I took off my clothes and came out of my room, and started in the wrong direction, from the hot room; got into the northwesterly room; saw there was no exit, and came around and started in the other direction.

Q Yes. A I had my bath, my steam bath--- I didn't go into the steam room-- I had a bath. I came back to my room and laid down, for sometime, how long, I don't know. It was very warm, oppressive, and I got up to see if I could not find a cooler place. Went to the northwesterly room again--

Q Well, when you went to the northwesterly room, was it through an open space? A There were curtains over the opening.

Q What was the condition of the curtains? A They were drawn very close together.

Q What did you do? A I turned around and went into



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the-- all over the baths.

Q No. But, speaking of the northwesterly room there, when you came to the curtains, what did you do? A Why, nothing at that time. I simply went there,, and saw that it was the same room that I had been to before.

Q Did you look into the room? A Yes, sir.

Q Did you draw the curtains? A Yes, sir; I drew the curtains.

MR. ELY: I object to his leading the witness, sir.

BY MR. LE BARBIER:

Q Did you go into the room?

MR. ELY: Objected to.

THE COURT: I sustain the objection.

BY MR. LE BARBIER:

Q What did you do, please, Mr. Caldwell? A I went to the door of the room, looked into the room, turned around and went out into the other part of the house--- I should say, the other part of the bath. Then, not finding another couch there anywhere that was cooler, I came back again to this northwesterly room, lifted up the curtains and went into the room.

Q And how long did you remain in the room? A I couldn't say to the minute.

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Q What did you do? A I wasn't in that northwesterly room more than three or four minutes during the whole evening, during my three visits to it.

Q And what did you do after that? A After that I went back to my own room.

Q What was there in your own room? A A couch and a chair.

Q Did you lie down on your couch? A I did.

Q And what did you do then? A I dropped to sleep, then.

Q Do you know how long you remained asleep? A No, I don't .

Q What was the next thing that happened, as far as you know? A The next thing I heard was this noise, outside of my door. Do you want me to continue?

Q Yes. Please state what it was? A It was a great deal of noise, outside of my door. I asked, "What is the matter?" Somebody yelled, "Well, come out here, Maude, and you will see what is the matter."

Q "Come out here, Maude?" A Yes, sir. And I said, "Well, I will go out there." And I jumped up and put on my trousers-- my drawers and my undershirt---

Q Yes. A And in the meantime, there was a great deal of confusion and noise and calling back and forth, and I opened the door and went out.

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Q And, when you got out, what did you do? A There was a man along a line of couches that stands all down the middle of the room, and he said, "Oh, here is the indignant lady", and I said "Who are you talking to?" And he said, "To you." And I cursed him, and started across the couches, and I was detained by a man behind me and I understood that the place was raided.

MR. ELY: That is objected to, what he understood.

THE COURT: Objection sustained.

BY MR. LE BARBIER:

Q What do you mean to say, that you started to fight?

MR. ELY: I object to the counsel leading, sir.

THE COURT: Yes. Let the witness state what he did.

BY MR. LE BARBIER:

Q Now, Mr. Caldwell, do you know a person by the name of Walter Bennett? A I have seen him.

Q Did you see him there that night? A I did not.

Q Did you insert your penis into the anus of Bennett?
A I did not.

Q After which, did you take the penis of Bennett and put it in your mouth? A No, sir.

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Q When was it you first saw Bennett? A The first time I remember of seeing him was Sunday morning, in the 54th street station.

Q That is the very---

MR. ELY: The Police Court, I suppose he means.

BY MR. ELY:

Q Or the 47th street station? A No; not the 47th street station.

Q The 54th street Police Court? A Yes, sir; the 54th street Police Court.

BY MR. LE BARBIER:

Q Is that the first time you ever saw Bennett? A It is, to my knowledge.

Q While you were going through the baths, did you meet anybody that you knew? A No; nobody that I knew.

Q Did you meet anybody who you subsequently found out that you had met? A I met Officer Phelan. He was in a room brilliantly lighted, where there were no couches, a sort of gymnasium room, where they had dumb bells and Indian clubs there, and he was standing on a pair of scales, and the light was so that he seemed to be in trouble with it and I asked him if I could weigh him, and he said he would be very much obliged, and I weighed him.

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Q Did you put your arm around him?

A No, sir.

CROSS EXAMINATION BY MR. ELY:

MR. ELY: McCutcheon, Officer McCutcheon.

Call him in. Come up to the bar here, McCutcheon.

BY MR. ELY:

Q Did you see-- oh, wait a minute.

(In response to the District Attorney's call for officer McCutcheon, an officer approaches the bar and stands at the rail.)

BY MR. ELY:

Q Did you see that man, Officer McCutcheon, on the 14th day of February, 1903, at the Ariston Baths? At the northeast corner of 55th street and Broadway in New York County?

A I did not.

Q Did you ever have any trouble with that man in your life?

A No, sir.

Q Didn't you see that man, on the 14th day of February, 1903, in the steam and the Turkish rooms of the Ariston Baths?

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A I did not.

Q Did you see that man on the 21st day of February, 1903, in the Ariston Baths?

A I saw him, sometime during the morning, the Sunday morning after the raid.

MR. ELY: Connolly. Call him in. Come here Connolly.

(In response to the District Attorney's call for a man by the name of Connolly, George Connolly, a person approaches the bar and stands at the rail.)

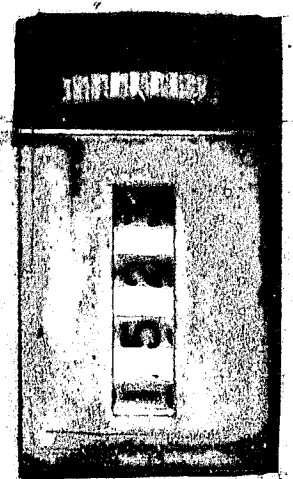
BY MR. ELY:

Q Did you ever see that man before today?

A I have.

Q Did you see him on the 21st day of February, 1903, at the Ariston Baths in the City and County of New York?

A I did.



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Q And had you seen that man, from time to time, prior to the 21st day of February, 1903, for about a year, at the same place? A I had not.

Q The same place being the Ariston Baths? A Yes, sir.

Q The northeast corner of 55th Street and Broadway in New York County? A Yes, sir.

MR. ELY: Call in O'Keefe, John O'Keefe.

(In response to the District Attorney's call for John O'Keefe, a man comes into court, and approaches the rail, and stands there.)

BY MR. ELY:

Q Did you ever see that man, O'Keefe, before, in your life? A Yes, sir.

Q Did you see him on the 21st day of February, 1903, in the night or morning of that day -- on the night of the 21st or the morning of the 22nd day of February, 1903, in the Ariston Baths, at the northeast corner of 55th Street and Broadway in New York County? A I saw him somewhere about that time and place.

Q Somewhere? A Yes, sir.

Q What do you mean by somewhere? Do you mean to say that you did or did not see him, in the Ariston Baths?
A I don't know whether I identify him as being at the Ariston Baths, or whether I first saw him in the Police Court.



Q Haven't you seen that man there, O'Keefe, who is standing at the bar, from time to time, at the Ariston Baths, in the City and County of New York, for a period covering a year? A No, sir.

MR. LeBARBIER: Objected to.

THE COURT: Objection overruled.

MR. LeBARBIER: Exception.

BY MR. ELY:

Q You are sure of that?

MR. LeBARBIER: He has answered it.

A I am.

BY MR. ELY:

Q Now, when you were arraigned in the Police Court, what name did you give?

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

THE COURT: Objection overruled.

MR. LeBARBIER: Exception.

A George Galbert.

Q George Albert Galbert? A George Alfred Galbert, is the name I gave.

Q And is that your true name? A No, sir.

Q And when you were arraigned in the Police Court what address did you give? A I think I gave 187 West 84th Street.

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Q Didn't you give the number, 187 East 87th Street?
Isn't that the address that you gave? A It wasn't my right
address. I think it was 187 West 84th Street.

Q You think it was 187 West 84th Street? A Yes, sir,

Q That you gave in the Police Court? A Yes, sir.

Q Now what is your right address, or, rather, excuse me,
what was your real address? A At that time?

Q On the 22nd day of February, 1903? A 105 East 82nd
Street.

Q Do you know Officer Phelan? A I do.

Q And you testify that you saw him there, in the turkish
bath establishment, on the evening of the 21st of February,
1903, and offered to, and did weigh him? A Yes, sir.

Q Did you ever have any trouble in your life with Officer
Phelan? A Not the slightest.

Q Do you know Officer Fitzsimmons? A I know him now.

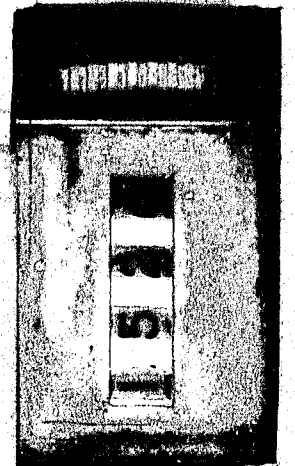
Q Did you see him that night? A I did not.

Q Well, you never had any trouble with Fitzsimmons in
your life; did you? A Not the slightest.

Q Did you ever have any trouble in the world with In-
spector Walsh? A Yes, sir.

MR. LeBARBIER: Objected to, as incompetent.

I withdraw the objection.



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BY MR. ELY:

Q Other than you have named, that you had a conversation?

A yes, sir. There was a later trouble, that same night.

Q Well, prior to the time that Walsh, as you say, knocked on the door of your room, No. 20, in the westerly room of the turkish baths, had you ever had any trouble with him?

A I didn't say that Walsh knocked on the door.

Q Well, prior to that night, had you ever had any trouble with him? A No; I had never seen him before.

Q Now you see Connolly here, George Connolly, this man that you identify, as having seen him in the turkish bath establishment, the Ariston, on the 21st of February, 1903-- you never had any trouble with him, did you? A Not the slightest.

Q Nor with O'Keefe? A Nor with O'Keefe.

Q Now you say here that you were in this extreme north westerly room of those turkish baths on the evening in question, namely, the 21st day of February, 1903? A Yes, sir.

Q Did you at any time enter that room? A Not to remain inside of that room.

Q But you did enter the room? A I entered the room.

Q And how long did you stay there? A I should say, three seconds.

Q And you went there how many times? A I was there

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three times, during the evening.

Q And you had never been there, to those baths, before, you say, in your life, except on this occasion? A Never before in my life.

Q Now you say that, when you left your room, after undressing, and prior to taking a bath, you turned in the wrong direction; did you? A Yes, sir.

Q Where did you go? A I went into the northwesterly room.

Q Oh, you went into the northwesterly room then?

A Yes, sir.

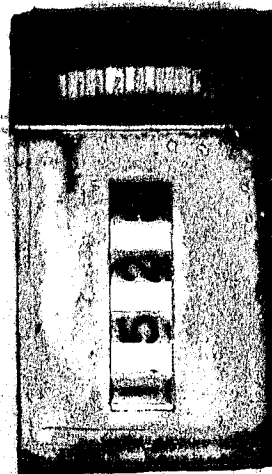
Q Through the space? A Through the space.

Q Into the room? A No, no. At that time, the room was brilliantly lighted, by a light of its own. The chandelier -- the gas was lit.

Q No. I didn't ask you that. I asked you if you went into that northwesterly room? A I don't think, at that time, I went into the room, because I saw that there was no exit.

MR. ELY: I object to the reason, sir, and ask that it be stricken out.

THE COURT: Yes.



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BY MR. ELY:

Q Then No. 20 is the next room but one to the entrance to the extreme northwesterly room; is it not? A It is.

Q And you turned in the direction, and went west then, did you, after issuing from your dressing room, immediately after having disrobed? A Yes, sir.

Q And you approached this dressing room, and then you went immediately to get your bath? A Yes, sir.

Q And then you saw Phelan? A Yes, sir. Oh no; it was sometime after that I saw Phelan. I had had my bath and been in my room, when I saw Phelan.

Q And what did you volunteer to help Phelan for? Did you know him? Had you ever known him before in your life? A No, I had not. I had never seen him before.

Q And, not knowing him, you went up and volunteered to weigh him? A Yes, sir, I did.

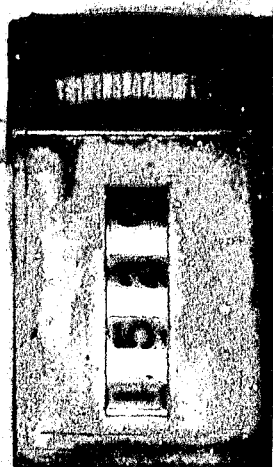
Q And that is all you did; is it? A Absolutely.

Q Now, as matter of fact, Bennett had been there, to those baths, from time to time, for a period of at least a year; hadn't he?

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

THE COURT: Objection overruled.

MR. LeBARBIER: Exception.



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A I don't know whether he had or not.

Q Hadn't you seen Bennett there on the 14th of February?

A I did not.

Q Hadn't you seen Bennett there before, in your life?

A I had never seen him before I saw him in jail.

Q And you never saw him then until you saw him in the Police Court? A No, sir, I never did.

Q You are sure of that? A Positive.

Q Well, as soon as you came out of this -- as soon as you opened the door, you were placed under arrest; were you?

A No; it was several moments after I had come out of my room that I was told that the place had been raided.

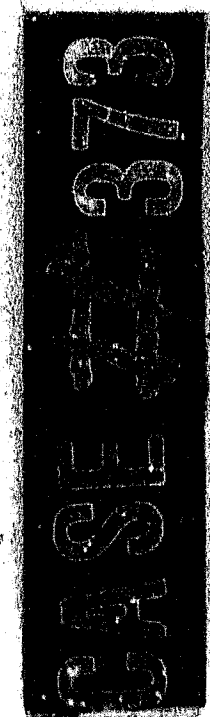
Q I asked you, when you were placed under arrest. I didn't ask you anything about a raid? A Yes, sir; placed under arrest.

Q You were placed under arrest almost immediately after you opened your door; were you? A Yes, sir.

RE-DIRECT EXAMINATION BY MR. LeBARBIER:

Q Mr. Caldwell, when you met Mr. Phelan there, at the weighing machine, was there anything that attracted your attention to the machine?

MR. ELY: Objected to, as leading, immaterial, irrelevant and incompetent, and as not proper re-



direct.

THE COURT: I think that should have been brought out on your direct examination, Mr. LeBarbier. I sustain the objection.

MR. LeBARBIER: Exception.

BY MR. LeBARBIER:

Q When you went into that northwesterly room, and pulled back that curtain -- question withdrawn. When you went into that northwesterly room for a few moments that you speak of, was it light or dark? A It was dark.

J O H N M . C A R R E R E , a witness called on behalf of the Defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. LeBARBIER:

Q Where do you reside, Mr. Carrere? A 101 East 65th Street.

Q What is your occupation? A I am an architect.

Q And what is the name of your firm? A Carrere & Hastings.

Q And where is your office? A 28 East 41st Street.

Q Do you know the defendant, Mr. George Caldwell?

A I do, sir.

Q Have you known him for some time? A About 3 years.

Q Do you know what his occupation is?

THE COURT: Well, it has been already stated, that he is an architect. There is no necessity for going further in that line.

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BY MR. LE BARBIER:

Q He is employed by your firm? A He is, sir.

Q When was he last employed by your firm?

MR. ELY: Objected to.

THE COURT: Objection sustained.

MR. LE BARBIER: Exception. Will the Court permit me to ask--- may I not show that he has been employed down to date?

THE COURT: No; that has nothing to do with it.

BY MR. LE BARBIER:

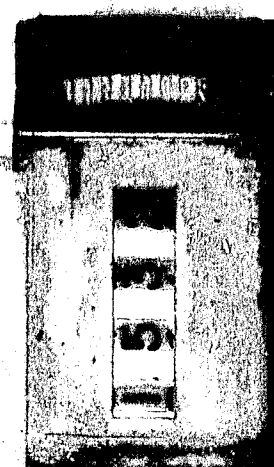
Q Do you know others who know him? A I do.

Q Do you know what his reputation is for morality and decency? A Good.

Q Do you know what his reputation is for truthfulness?
A Excellent.

CROSS EXAMINATION BY MR. ELY:

Q If you knew that Walter Bennett had been convicted by a jury for the crime of sodomy, for participating in two acts with this defendant, in which this defendant introduced his penis into the anus of the said Bennett, and in which the defendant took the penis of said Bennett into his mouth, would that change your testimony as to the reputation of the defen-



dant for morality and decency? A May I ask you to read the first part of the question, Mr. District Attorney?

(The question is repeated by the stenographer).

THE WITNESS: If I knew it?

BY MR. ELY:

Q (Question repeated) A Well, it would depend upon how I knew it.

Q Well, I am asking you that question. Can,t you answer that question? A The way it is put, no.

Q If you knew that a jury of twelve men had convicted a person by the name of Bennett for participating in two certain acts with this defendant here, in which this defendant introduced his penis into the anus of said Bennett, and in which the defendant took the penis of said Bennett into his mouth, and that the defendant had gone on the stand and testified, denying it, would that change your opinion as to the character of the defendant?

THE COURT: No.

A Not at all, sir.

THE COURT: No. Do not answer, Mr. Carrere.

I exclude the question, because it is incorrect in its assumption.

MR. LE BARBIER: I didn,t want to object, sir.

THE COURT: Then, on your statement, that

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you have no objection, Mr. Le Barbier, I will allow the question.

MR. LE BARBIER: No; I don't say that I have no objection, but I say that I agree with your Honor as to its being an improper and impertinent and unfair question.

THE COURT: No. I will not permit the characterization of the question by you.

MR. LE BARBIER: Then I object to it.

THE COURT: Objection sustained. I cannot, Mr. District Attorney sever my judicial knowledge of the case to which you have reference from my knowledge of this case in which I am now presiding. The jury did not convict Walter Bennett of the things that you incorporate in your question.

BY MR. ELY:

Q Well, then, I will ask you if you knew that one Walter Bennett had been---

THE COURT: I think, Mr. District Attorney, the basis of all questions touching reputation rests upon a given time and a fair interpretation of that time would be up to that time at which the defendant is accused of the crime for which he is on trial. I think that a witness to reputation should



not be required to testify to anything after the charge made against the defendant, whose good reputation he testifies to; and, inasmuch as the conviction of Bennett has resulted since the charge was made against the defendant, and as being a part of that charge, I do not think it is fair or competent to put that question to this witness.

MR. ELY: very well, sir. I will withdraw it.

THE COURT: I will exclude the question. I will sustain the objection.

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S A M U E L L. L O O K, a witness called on behalf of the defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. LE BARBIER:

Q Where do you reside, Mr. Look? A 128 East 34th street.

Q What is your business? A I haven't been in any active business for the past three months, except looking after some affairs of my own.

Q Except some affairs of your own? A Yes, sir.

Q Do you know the defendant at the bar? A Yes, sir.

Q For how long a time have you known him? A I have known him for 25 years.

Q Do you know other people who know him? A Yes, sir; a good many.

Q Do you know what his reputation is for morality and decency? A Good.

Q Do you know what his reputation is for honesty?

MR. ELY: I object.

THE COURT: Oh, that is not in question.

BY MR. LE BARBIER:

Q For truthfulness? A Unquestioned.

CROSS EXAMINATION BY MR. ELY:

Q How long have you known him? A For 25 years; since 1878.

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Q And he is a friend of yours? A Yes, sir.

A R T H U R C. J A C K S O N, a witness called on behalf
of the defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. LE BARBIER:

Q Mr. Jackson, where do you reside? A 65 West 33rd
street.

Q What is your occupation? A Architect.

Q Are you a member of the firm of Carrere & Hastings?

A I am.

Q Do you know the defendant at the bar? A I do.

Q How long have you known him? A Three years and a
half, or three years and five months, to be exact.

Q Do you know other people who know him? A I do.

Q Do you know what his reputation is for morality
and decency? A I do.

Q What is it? Good or bad? A Good.

Q Do you know what his reputation is for truthfulness?

A I do.

Q What is it? Good or bad? A Good.

CROSS EXAMINATION BY MR. ELY:

Q You are a friend of the defendant? A I am.

Q You are his bondsman? A I am.

Q You put up the bail? A I did.

RE DIRECT EXAMINATION BY MR. LE BARBIER:

Q And you put up the cash; didn't you? A I did.

Q What was the amount of cash which you put up?

MR. ELY: Objected to.

THE COURT: No, no. Objection sustained

MR. LE BARBIER: I take an exception.

O W E N B R A I N E R D, a witness called on behalf of the defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. LE BARBIER:

Q What is your business, r. Brainerd? A I am an architect.

Q Where do you reside? A 66 West 46th street, New York City.

Q Do you know Mr.-- do you know the defendant at the bar? A I do.

Q How long do you know him? A Since three years ago, last February.

Q Do you know other people who know him? A Many.

Q Do you know what his reputation is for morality and decency? A I do. It is very good.

Q Do you know what his reputation is for truthfulness?

A It is very good.

CROSS EXAMINATION BY MR. ELY:

Q Did you ever hear his reputation for morality, the defendant's reputation for morality and decency discussed, before the 21st day of February, 1903? A I have.

Q You have heard his reputation for morality and decency discussed before that date? A Yes, sir.

Q In what way? A It was discussed in connection with his application for employment by my firm, before he came into our employ.

Q His reputation for decency and morality? A Yes, sir.

Q And what is your firm? A Carrere & Hastings.

MR. LE BARBIER: The defense rests. No. I will put on one more witness as to character with your Honor's permission?

MR. ELY: I have no objection.

JOHN M. APPERTON, a witness called on behalf of the defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. LE BARBIER:

Q Mr. Atherton, where do you reside? A In the suburbs of Louisville, Kentucky.

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Q When did you get to town? A I came to town last Friday.

Q For the purposes of this case?

MR. ELY: Oh, I object to that.

THE COURT: I sustain the objection.

MR. LE BARBIER: Exception.

BY MR. LE BARBIER:

Q What is your business? A I sold out my active business about four years ago, and I am not in active business now.

Q Do you know the defendant at the bar? A I do.

Q Have you known him-- for how long a time have you known him? A Practically, for twenty-five years, 25 or 30, I couldn't state to the year, because he was born in the same town that I lived in.

Q Well, do you know other people who know him? A I do.

Q Do you know what his reputation is for morality and decency? A Good.

Q Do you know what his reputation is for truthfulness? A Good.



CROSS EXAMINATION BY MR. ELY:

Q Mr. Atherton, you have not seen the defendant for the last three years, or three and a half years to any extent; have you? A Quite often; oftener than previous to that time.

Q Well, during the last three years and a half where has the defendant been? On here? A He has been here; and I am here frequently, and when I am here I see a good deal of him.

Q Well, but you had been on here during the last three years, on an average how many times? A dozen times or twenty or ten times? A Well, I couldn't say. I come on and spend a month or six weeks at a time.

Q Well, three or four times a year, in that time have you been here? A Yes, sir, fully that; perhaps more.

MR. LE BARBIER: The defense rests.

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REBUTTAL.

G E O R G E C O N N O L L Y , a witness called by the
People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. LeBARBIER:

Q Connolly, prior to the 21st day of February, 1903,
where were you employed? A In the Ariston Bath, 55th Street
and Broadway.

Q And do you know this defendant here (indicating the
defendant)? A Yes, sir.

Q And for how long a time had you been employed, prior to
the 21st day of February, 1903 at the Ariston Baths? A About
three years.

Q And the Ariston Baths are situated at the northeast
corner of Broadway and 55th Street? A Yes, sir.

Q Are they? A Yes, sir.

Q And for how long a period, prior to the 21st day of
February, 1903 had you known this defendant?

MR. LeBARBIER: Objected to, as incompetent,
immaterial and irrelevant, and not the subject
at issue here, and not rebuttal.

THE COURT: Objection overruled.

MR. LeBARBIER: Exception.

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A For about a year.

BY MR. ELY:

Q And where, for about a year, have you known this defendant? A At the Ariston Baths.

Q And for a period of a year, how often should you say, on an average, have you seen this defendant?

MR. LeBARBIER: Objected to.

THE COURT: My recollection is, Mr. LeBarbier, that the defendant, on his direct examination, testified that he had never been to the Ariston Baths before the night of the 21st of February.

MR. LeBARBIER: That is right, sir.

THE COURT: In view of that testimony of the defendant, on his direct examination, I consider this testimony material and relevant; and the question may be asked.

MR. LeBARBIER: Exception.

BY MR. ELY:

Q (Question continued) At the Ariston Baths at the corner of 55th Street and Broadway, in New York County? A For about a year.

Q Well I know, but, on the average, how many times a week or a month? A About once a week.

Q About once a week? A Yes, sir.

Q Do you know one Walter Bennett? A Yes, sir.

Q And where, if ever, did you see Walter Bennett?

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

A I seen him in the --

MR. LeBARBIER: Objected to.

THE COURT: Objection overruled.

MR. LeBARBIER: Exception.

A I seen him in the Ariston Bath, 55th Street and Broadway.

BY MR. FLY:

Q And did you ever see, prior to the 21st day of
February, 1903, the defendant here and Walter Bennett in the
Ariston Baths, at the same time?

MR. LeBARBIER: Objected to, as incompetent.

THE COURT: Objection overruled.

MR. LeBARBIER: Exception.

A yes, sir.

CROSS EXAMINATION BY MR. LeBARBIER:

Q Have you ever been convicted of crime?

A Yes, sir.

MR. FLY: Objected to, unless he explains
what a conviction is. I will admit that the man has
been arrested for excise.

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THE COURT: No, no. We must presume that the witness understands the question.

MR. LeBARBIER: Then the question is answered and the answer is allowed to stand?

THE COURT: Yes.

BY MR. LeBARBIER:

Q Has sentence been pronounced upon that conviction?

MR. FLY: Objected to.

THE COURT: There cannot be a conviction without a sentence. He says he has been convicted. That implies that he has been sentenced. One involves the other.

MR. LeBARBIER: I differ with your Honor, very respectfully.

THE COURT: I sustain the objection.

MR. LeBARBIER: I now state the --

MR. FLY: I object.

THE COURT: You may put your question, Mr.

LeBarbier.

BY MR. LeBARBIER:

Q Is it not a fact that, in the month of March, 1903, you were duly convicted of crime; that sentence was not imposed upon you; that you are now in the custody of your counsel, awaiting a further disposition of your case?

MR. FLY: Objected to. I object. "Duly con-

victed of crime" is a legal conclusion.

THE COURT: I think it is simply a misapprehension of legal terms, and I think you are in error in your use of terms, Mr. LeBarbier.

MR. LeBARBIER: Well, I may be, your Honor.

THE COURT: I permit the question, in its substance. I think it will be proper for you to show that the witness was either found guilty, by a verdict of a jury, or the judicial pronouncement of a magistrate, or a plea of guilty by himself; and then you can show whether or not punishment or sentence has followed that conviction or plea. It is the same thing. Simply a transposition.

MR. LeBARBIER: Yes, sir.

THE COURT: And conviction in my opinion, embraces everything, that it is the finality.

BY MR. LeBARBIER:

Q were you tried in the Court of Special Sessions, in this county, in the month of March, 1903? A Yes, sir.

Q In a court of three judges? A Yes, sir.

Q And were you convicted?

MR. FLY: Objected to.

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BY MR. LeBARBIER:

Q Were you found guilty? A Yes, sir.

Q And was sentence imposed upon you?

A No, sir.

Q Eh? A No, sir.

Q What? A No, sir.

Q Talk out, and let me hear?

MR. ELY: Now, I object to his lecturing the witness.

THE COURT: Proceed, Mr. LeBarbier.

BY MR. LeBARBIER:

Q Are you now in the custody of your counsel?

A Yes, sir.

Q Are you awaiting the disposition of your case?

MR. ELY: Objected to, as irrelevant and incompetent.

A Yes, sir.

THE COURT: Well he answers.

BY MR. LeBARBIER:

Q By the District Attorney; is that right? A By the judges of the Court.

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RE-DIRECT EXAMINATION BY MR. ELY:

Q For what were you tried?

A I was tried on an excise violation.

Q For a violation of the Excise Law?

A yes, sir.

RE-CROSS EXAMINATION BY MR. LeBARBIER:

Q Up at this same place?

A Yes, sir.

Q Up at the Ariston Baths? A Yes, sir.

THE COURT: For a violation of the Sunday laws?

MR. ELY: For a violation of the Excise law.

Yes, it was Sunday, I believe, as matter of fact.

MR. LE BARBIER: I think, your Honor, that this man was convicted for selling and offering for sale liquor, without having having an Excise license certificate.

MR. ELY: Yes; that is it. I admit it. I don't make any question about it at all.

H A R R Y M c C U T C H E O N, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ELY:

Q McCutcheon, you are an officer connected with the Municipal Police Force of the City of New York? A I am.

Q And you were so connected on the 14th day of February 1903? A I was.

Q And have been since? A Yes, sir.

Q On the 14th day of February, 1903, where did you go, in the evening? A I went to 1730 Broadway.

Q What is that known as? A The Ariston Baths.

Q And did you see the defendant there? A I did.



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Q On the 14th day of February, 1903? A I did.

Q Where? A In the Bath, in the steam room.

Q In the steam room? A Yes, sir; the hot room and the reclining rooms.

Q And what was he doing?

MR. LE BARBIER: Objected to as incompetent, immaterial and irrelevant.

THE COURT: Well, in so far as his appearance, dress, conduct, with regard to the bathing establishment, are concerned, the question is proper.

MR. ELY: That is all it is asked for.

BY MR. ELY:

Q Go on.

MR. LE BARBIER: Exception.

A Well, in the hot room and vapor room---

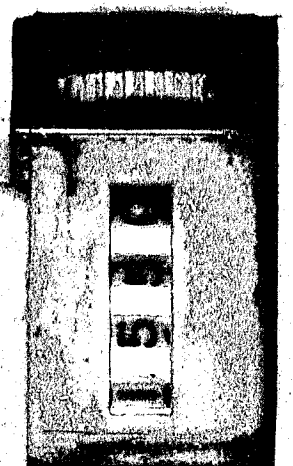
THE COURT: I shall not permit, of course, any reference to be made to any act of the defendant of a criminal nature or tendency, to be testified to if such an act took place.

MR. ELY: Question withdrawn...

BY MR. ELY:

Q You saw him on the 14th day of February, 1903 in the steam and vapor rooms of the Ariston baths? A Yes, sir.

Q And when did you next see him? A On the 21st of



February, 1903.

Q Where? A At 1730 Broadway, in the Ariston baths.

Q And where was he then?

MR. LE BARBIER: Objected to, on the ground that this question is not now in rebuttal, and is part of the People's case in chief.

MR. ELY: very well then. I will withdraw it. It makes no difference, if it is objected to.

J O H N O' K E E F E, a witness called on behalf of the defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ELY:

Q O'Keefe, prior to the 21st day of February, 1903, what was your business? A Turkish bath attendant.

Q Where? A At the Ariston baths.

Q 55th street and Broadway, New York County? A Yes, sir.

Q Do you know this defendant? A Yes, sir.

Q Did you see him on the 21st day of February, 1903, at the Ariston baths? A Yes, sir.

Q Had you ever seen this defendant at the Ariston baths prior to the 21st day of February, 1903? A Yes, sir.

Q For how long a period prior to the 21st day of February, 1903, had you been employed at the Ariston baths?

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A One year.

Q And for how long a period prior to the 21st day of February, 1903, had you seen this defendant? A Possibly once every two weeks.

Q For how long a period? A Whilst I was working; one year.

Q Once in one or two weeks? A Yes, sir.

Q During the whole time that you were working at the Ariston baths? A Yes, sir.

Q A year? A Yes, sir.

Q Do you know Walter Bennett? A I do; yes.

Q Raise your voice. Did you ever see Walter Bennett at the Ariston baths? A Yes, sir.

Q And did you ever see Walter Bennett at the Ariston baths before the 21st day of February, 1903, when this defendant was there? A Yes, sir.

MR. LE BARBIER: Objected to, as immaterial and irrelevant.

THE COURT: Objection overruled.

MR. LE BARBIER: Exception.

BY MR. ELY:

Q Now you have been arrested for a violation of the Excise law, haven't you?

MR. LE BARBIER: Objected to.

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THE COURT: Sustained.

CROSS EXAMINATION BY MR. LE BARBIER:

Q Have you ever been convicted of crime? A Yes, sir.

Q Were you tried on March 6, 1903, in the Court of Special Sessions of this city? A I guess I was.

Q And, upon trial, was found guilty? A Yes, sir.

Q Was sentence imposed upon you? A No.

Q Are you in the custody of your counsel? A Yes, sir.

Q Awaiting the further disposition of your case?

MR. ELY: Objected to.

THE COURT: Objection sustained.

MR. LE BARBIER: Exception.

BY MR. LE BARBIER:

Q What is your business? A Turkish bath attendant.

THE COURT: I did not rule out all of your question. part of your question is competent. You can show that he is in the custody of his counsel.

BY MR. LE BARBIER:

Q You are in the custody of your counsel? A Yes, sir.

Q Where are you working now? A I ain't working any place now.

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RE DIRECT EXAMINATION BY MR. ELY:

Q For what were you convicted? A Violation of excise.

MR. ELY: I expected to have one more witness, but he is not here now, your Honor, and I close the case for the People.

THE COURT: Any further evidence, Mr. Le Barbier?

MR. LE BARBIER: I will recall the defendant, Mr. Caldwell, in rebuttal, may it please your Honor.



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SUR-REBUTTAL.

GEORGE ALFRED CALDWELL , being recalled
by his counsel, testified as follows:

DIRECT EXAMINATION BY MR. LeBARBIER:

Q George Connolly a witness here has testified to seeing
you, off and on, at the Ariston Baths, for a period of about
a year. Is that true or false? A It is false.

THE COURT: Well, this is simply cumulative.

The defendant has stated, on his direct examination,
that he was never in those baths before the night
of the 21st, and additional denial will not add any
strength to his statement.

MR. LeBARBIER: Then that is the case for
the defendant.

THE COURT: Both sides close?

MR. LeBARBIER: yes, sir.

MR. FLY: Yes, sir.

THE COURT: Go to the jury.

MR. FLY: Can't we sum up this case in the
morning? I will be very brief?

THE COURT: Well, gentlemen, I am always very
solicitous, when a special jury is called, hurriedly,
away from their business, to have them get back to

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their business as soon as possible.

MR. LeBARBIER: I understand sir, but I think we could have an expression from the jury as to that. I think the majority prefer to go home now. I so understand.

THE COURT: However, I am not implacable in the matter. I will let it stand over until to-morrow morning. But, gentlemen, you must not occupy much time, in the morning.

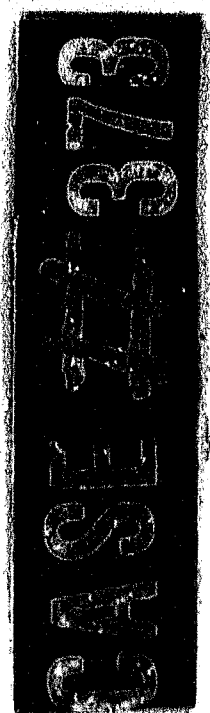
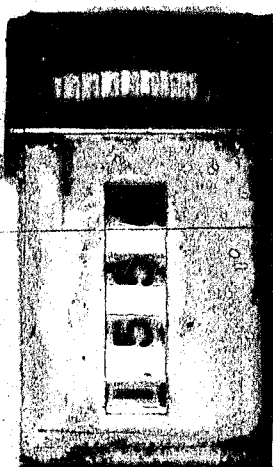
MR. LeBARBIER: All right sir.

MR. ELY: Very well, sir.

THE COURT: gentlemen of the jury, you remember my caution to you yesterday afternoon, not to talk about this case among yourselves or anyone else. Do not allow anyone, whomsoever, to speak to you about the case.

Adjourn court until to-morrow morning at half past ten o'clock.

(The trial was then adjourned until Thursday morning, June 18th, 1903, at 10:30 A. M.)



TRIAL RESUMED.

New York, June 18th, 1903.

THE COURT: Have you any requests to charge prepared, Mr LeBarbier?

MR. LeBARBIER: No, your Honor. You are familiar with these, with these that I may make.

SUMMING UP FOR THE DEFENSE

of

CHARLES E. LeBARBIER, ESQ.

May it please the Court:

Gentlemen of the Jury,

Of course, the little pleasantries between counsel, I take it, you gentlemen have listened to in the spirit that they were carried on. We paid our compliments to each other, pleasantly though and not like the case in which two lawyers were engaged, out West. After they had called each other scoundrels and liars, the Court said, "Well, now, gentlemen, that you have identified yourselves, let the case proceed".

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I am indebted to his Honor for his graciousness in this case; because, not only the Court, not only the District Attorney, but everybody realizes what a terrible, infamous, monstrous charge has been made under the accusation of the crime of sodomy, which is the charge in this case.

So much for the opinion of counsel, particularly counsel for the defendant, who in no way seeks to give any impression, or impress upon you his opinion. The Court may tell you that the opinion of counsel must be disregarded. The only thing that counsel tries to do is to submit the case upon the theory, from his point of view, borne out from the facts.

In our procedure, our legal procedure, the address of counsel is a necessary part of the law's proceedings; just as much as the address of the learned Assistant District Attorney; just as much, probably, not quite so much, as the learned charge which his Honor will deliver to you, in explaining the law upon the subject. So, that is the position of counsel.

Now, then, we come before you. We had hoped, before this case would have gone to the jury, and in the trial of this case, that the prosecution might have accepted the good character; we had hoped, it seems,

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vainly, that there would be an abandonment of this case; that it should not go to you twelve gentlemen, to pass upon the facts as the judges, because the part that you will perform is the most important part of every criminal case.

It is that you shall act as the judge upon the facts. It is for this that you have been carefully selected by both sides; and that you will true deliverance make only upon the evidence as it has been developed in the case.

I can hear my distinguished friend saying that he wants no innocent man convicted. Certainly it is better that ninety-nine guilty men should escape, than that one innocent man should suffer.

But he will ask you how, upon the testimony in this case, it is possible not to reach a verdict of guilty of sodomy; and that is the question I propose to meet him upon, and reason out with him. That is the question.

I propose to show here, upon the analysis of the evidence, that, of all the people here in the County of New York, of all the witnesses that they might have detained and held here, subject to coming before this jury, not a single disinterested witness has been

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brought forth. Nothing but the testimony of the two detectives. Nothing but the, I might say, testimony from corrupt sources, the testimony of two convicts, men convicted of crime.

What did Phelan testify to?

Is there any evidence in this case that, on this night in question any word was sent out to the Acting Inspector that there was going to be a raid?

Did he know, when he came there, with his officers, that people would be there, ready victims, to be sacrificed upon the altar of an alleged violation of law? Nothing of that kind occurred on the 14th.

But, when the raid takes place, when there are 75 or 100 men arrested, when there is commotion, then also is provided a victim.

If any corrupt, immoral practices have taken place there, have they emmeshed a gentleman, who went there for the first time, a man, unmarried, with all the future before him, with all that honor implies, still

safe here in the custody of his counsel, safe in his own position, until you gentlemen will have frustrated everything in the disastrous consequences that must flow from a conviction of guilt.

Now, what does Phelan say? Remembering, gentleman, that Phelan is the only witness, and asking you to



follow as quickly as you can, for I will endeavor to be short. Let us see the attitude of the complaining witness Phelan.

Everything that could be exaggerated, everything that could be made out stronger than the facts warranted, the physical facts, was set forth by Phelan. You remember that he testified that he saw the defendant at about nine o'clock. Never, at any time, from the Police Court investigation, down through the stream of time, until it has reached here, was anything said by Phelan that he had seen him at nine o'clock, 9:20 o'clock, or 9:30.

And Phelan himself said that never did he utter that until sitting here, in the court room, he heard Galbert state, in a case, that he had gone there about 9:30 o'clock, and had met Phelan; which I could not contradict, and which, we have conceded.

Well, now, if we were guilty, would we have said that we had seen Phelan? No. But the officer heard that, and he had never said it anywhere before.

And he takes the stand, and in order to make better this identification, upon which my learned friend will harp and harp, he makes this statement. And now my friend will say that the identification is

made complete.

But, gentlemen, I beg you to consider well such testimony.

Now, then, is that material? Is Phelan telling the truth, when he says that?

We confronted him with evidence, and asked him if it was not so, when he testified and said, "I didn't see this defendant at 9 o'clock."

Did he not fence with me when he said that, and said that he meant 9:20 or 9:30?

When asked before, when was the first time that he had seen the defendant, he said, at half past one o'clock.

Conceive, gentlemen, a detective, there for the purpose of a raid, there for the purpose of establishing that some crime had been committed, actuated by every motive, it may be an honest motive, to sustain what he thinks he saw there, to make the raid successful.

Now, weigh, his testimony.

And now let us see? He says, when he went around there, at half past one o'clock, he went into this northwesterly room, through the space, going in between the wide open, fifteen or twenty feet, fourteen or fifteen feet even, space.

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He is there and he knows how important it is, that question of identification.

Through that other room, the light streamed in brilliantly, a flood of light came through, and, through this space of fourteen or fifteen feet, he could identify everybody that was in that northwesterly room, and that he identified everybody and that he identified the defendant.

If he identified the defendant, he certainly must have identified others, and I say there, to the prosecuting attorney, "Give me some disinterested witness. Give me some testimony that twelve men of fair minds can say upon, 'This is interested testimony, this is the testimony of an officer. He may be mistaken or have a motive.'"

And the case is lacking in that respect.

But he says that that door was wide open, for fourteen or fifteen feet.

We have produced here the measurements, under a diagram, showing that that door was but 3 feet, 9 inches.

Now, gentlemen, is there any obtuseness of observation on the part of the officer? For that obtuseness of observation goes to the very root of

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the identification.

If that man can swear as he did, that it was fourteen or fifteen feet wide, that space, and swear to it positively, and if he is confronted by evidence wherein he must have been necessarily in error, wherein, if he were telling the truth, he could not have made that mistake, about the fact that that door was only 3 feet 9 inches wide.

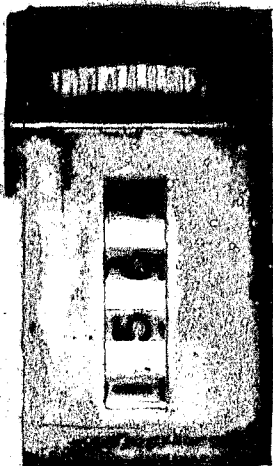
No light in that room, the northwesterly room. Lighted only from the outside. And the defendant swears that the curtains were hanging down.

Now what was it? What was the situation? That is a question for you to determine. Were the curtains down?

It is conceded here, it seems, by all the evidence in the case that ten or fifteen people were in this room, 18 by 20, and were constantly moving in and out, moving around, walking up and down. How could it be? These four couches being there, left a little space, of probably three feet on either side.

Imagine ten or fifteen men in there, walking in and out, going through that open spaceway; and yet not one produced here, to corroborate the officer.

They could have taken the name of some man. They could have said, "Come down to this court. Did you see



that?" Acting quickly as they did they could have said, "Did you see any act of sodomy?" It would not have imperiled them.

No one better knows than the District Attorney, in an important case, the necessity of corraling witnesses; nobody knows it better than he does.

In every important case that arises, the first thing to do is to take the name of a witness. If an accident happens on a trolley car, the conductor is off at once, taking down, with pencil and card, the names of the witnesses.

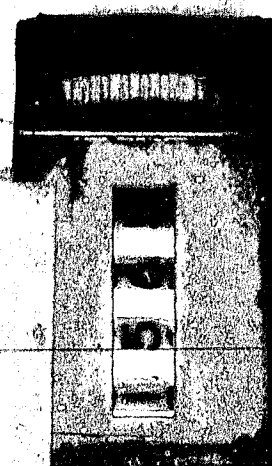
And how much more necessity was there for it in this case, on the part of the People, so as to enable the District Attorney to corroborate this officer, in his testimony, if he were telling the truth.

MR. ELY: I was not there. I couldn't do it.

MR. LeBARBIER: No; you were not there, Mr Ely. Of course, I didn't expect you to do it.

But the officers were there, and they could have taken down the names and have brought them down here, to help you out in this case, with all your vehemence.

And I say that it could have been done, in view of the enormity of the offense charged, and the disastrous consequences that were likely to arise.



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Well, was there any mistake on the part of the officer, or was it intentional; because those things you will have to reason out?

And how was this extreme northwesterly room connected with this westerly room?

By a very wide doorway, he says, the whole width of the room.

Now, it may pinch, as I go along, Mr Ely--

MR. ELY: Not at all.

MR. LeBARBIER: Then, if it does not, do not interrupt me. If you think I am getting in something that needs explanation, I will explain.

Now what was done, with all these men in that room, that small room there, with the light streaming in; with the officer two or three feet from the couch; and, when the act was committed, he went over within two or three inches.

He sees Galbert come in and yet, in another part of his testimony, he says that Galbert was in there when they went in. Is the officer telling the truth?

Is it possible that that act was committed as they say?

Bennett is facing the officer. The two officers are standing just as I am with relation to you, sir,

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looking at you. The defendant has his room within a few feet, where there is a couch.

Yet, shameless to everything, shameless to the witnesses there, to the officers, to everybody in that room, the defendant walks in, and the sheet comes off of him, and not a word is said about him before, as to any act of any kind or character that would reflect upon him; and he stands before those officers, watching him, with his penis erect.

Is it true? Is it credible? That is what I want to ask you.

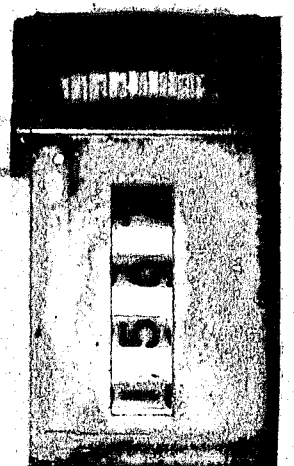
It was done, as this officer says, on a couch, two and a half or three feet high.

Was the officer's observation sufficiently accurate, in that respect?

We produced here the woman who has been there for twelve years, and who has seen those couches; and she says that they are but a little over a foot high.

Now what is the position?

The defendant comes in and does-- let me see, a foot high is about-- I have a measure here, a tape-- there is a foot high, a little over a foot high (illustrating). Well, say that it is a foot and a half high, that high (illustrating).



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Now, when you gentlemen go out into your room to deliberate, take that height.

You have seen Galbert. Could he come in there, and lift that fellow's leg up eight inches?

Now, let us get down to their story, and see whether it is even credible.

Could he lift Bennett's leg up eight inches, and insert his penis, unless he went right down on his knees (illustrating)?

Now take that physical act, and consider it.

Is it possible, is it physically possible, that such an act could be done as described by the officer? Now that is the question.

And other testimony is in this respect, that he leaned over a little, lifted up the leg eighteen inches, and did the act.

Now, when the raid took place, when they were all corralled, does Phelan say, or does Fitzsimmons say, "Where is that man we want?" Do they say, "There is a somebody that we haven't arrested"?

They have not any identification in their minds, then. They simply make a final search, to see if anybody was in the bath.

The defendant is not in their minds, at that time.

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They did not say, "We want a bald headed man, with a mustache." But they make a final search, to find if anybody is there.

They have not missed the defendant. Not one has said, as to the defendant, "We know a man who was caught in the act, and we must look for him". The record is silent as to that.

But, as they go around, in search, they come to Room 20, and knock on the door, and somebody comes to that door, Galbert, who says he was asleep.

Now, is that true?

Galbert had gone into his room, after his bath, and says he was asleep.

Now, let us see. Is Phelan mistaken? Is Fitzsimmons mistaken?

Phelan says, "We went to that door, and threatened to break it down, to break open the door".

Now, gentlemen, is that borne out by the evidence, in the case?

Does Fitzsimmons say that?

Fitzsimmons says he went there, with Inspector Walsh, and knocked at the door, and that the door was opened.

Is Phelan misled by his zeal, being a public



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officer, discharging his duty, as my distinguished friend would say? Lots of honest officers he will say, and I agree with him.

But do you gentlemen think that he may not have been overcome by a little too much zeal, exaggerating everything that he has done in this case?

And, if he has exaggerated anything, then, when it comes to the question of identification, you must treat it upon the same basis as the identification has been exaggerated.

Is he sure of his man?

He says, and here are his words: "They went out, one by one, to be identified. When the defendant came out, we had another good look at him, to make sure that he was the man".

Now, was there any necessity to look at him?

A bald headed man, with a mustache, and a sheet, with 75 or 100 others?

Fitzsimmons admitting that there were other men with bald heads there, and with mustaches?

First, he says that he doesn't know, but finally he says that he will say there were such men there that night.

Now, was that a fair identification, in view of



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the testimony as to what Phelan says?

Is Phelan exaggerating or is he correct, or is he swearing falsely, or is he mistaken, after they were arrested?

I asked, "Oh, Mr Phelan, how many were in the room?" "I don't know". "Fifty?" "I don't know". "Forty?" "I don't know. "Twenty?" "I don't know". "Five?" "I don't know".

Is that a recklessness of statement? Even as to five, he doesn't know.

He has learned now, he says, that 78 men were arrested.

He says they were put in two parlors, the men who were arrested, one a larger parlor than the other.

We put him on his oath, and he was there on his oath, to tell the truth; and, when we asked him how many men were in the room, he says he does not know.

Now, is he correct? Or, is he intentionally belittling matters? Or, intentionally reserving things that he knows, and will not tell?

And, again, gentlemen, we have this remarkable testimony. I asked, "How many men were in there?" Referring to either room in which the prisoners were, and he does not know whether there were even five in



one room, and he does not know how many there were in the other room, whether there were forty, fifty or ten or five.

Now, that is a police officer, there to follow out the instructions of his superior officer, knowing that a raid is to be made; and yet upon testimony which is regarded as important by the defense swearing recklessly to statements.

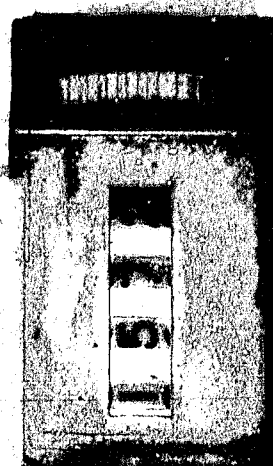
Another very important point that I make, gentlemen, is the identification.

Let us look at it. Because this whole case turns on the question of identification. That is our first defense in this case, the identification. We have others that I will comment upon, but that is the first.

How important it was for that officer to be accurate, gentlemen.

We asked him about the question of identification, where he stood, how it was done, all things that, we submit, are vitally important to the defendant.

"Q. Is it not a fact that they were marched around, for the purpose of identification? A. Yes, sir. Q. Now, at what end of the row of officers were you? A. Oh, I don't know; I don't just recollect. Q. Did you head the line of officers or were you at



the other end?"

Which was a very important point for us. Were we recognized at once, or did we go through the whole line? And then comes out again the answer, "I don't know".

"Q. Was Fitzsimmons right by you, right next to you? A. I don't remember that."

And then we came, after the raid, to the search.

Phelan says, "Why, we told him to open the door, or we would break it down".

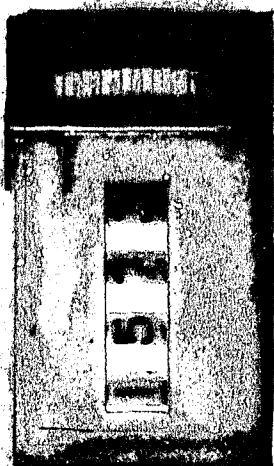
But Fitzsimmons says, "We knocked at the door, and he opened it".

Now, these are not little shreds and patches, gentlemen, but very substantial matters.

If you have gone through the City of New York, as you all undoubtedly have, and have gone up to somebody that you thought you knew, and you have hit that somebody on the back, and you have said, "Hello", and he says he does not know you, and you find you are mistaken, you must appreciate the difficulty of identification.

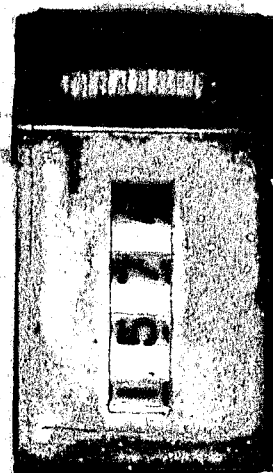
Now, we say that that same kind of identification took place here.

Now this matter which I referred to a moment ago



is very important. Phelan testified:

"Q. Did you hear him say he saw you, about 9 o'clock, in the weighing room? A. Yes, sir; I believe he did testify to that. Q. You said, yesterday, I think, that you met him about 9 o'clock? A. Shortly after 9 o'clock, about 9:20 or 9:30; something around there. Q. About 9:20 or 9:30? A. Yes, sir. Q. And that was the first time, that evening, that you had seen him? A. Yes, sir. Q. You testified, did you not, upon the examination in the Police Court, in this case? A. Yes, sir, I did. Q. Have you, at any time since the trial in the Police Court, or at the trial in the Police Court, said anything, in any case, about meeting the defendant at 9 or 9:30, or about that time? Mr Ely: I object to that, as immaterial, irrelevant and incompetent. The Court: I sustain the objection, to the form of the question. Mr LeBarbier: Sir? The Court: To the form of the question. Mr LeBarbier: Well, I agree with your Honor. The form is probably objectionable. By Mr LeBarbier: Q. Have you, at any time, before yesterday, stated that you had seen the defendant about 9 or 9:30 o'clock? Mr Ely: I object to that. The Court: I overrule the objection. By Mr LeBarbier: Q. Now answer the question. A. I



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don't think I have. Q. Well, don't you know, Officer? A. No, sir. Q. You don't know? A. No, sir".

Now then we recalled his former testimony in the Police Court examination to him, on page 109: "Q. And a number of other people, to the number of twenty, whom you saw, did they have sheets about them? A. Yes, sir. I didn't see this man at 9 o'clock."

Now, I can hear my distinguished friend, in his stentorian voice, walking up and down here, saying, "Of course, not at 9 o'clock, he didn't see him."

But was Phelan fencing with me? Was he misstating to you? What was it?

You must remember that he is a detective, bound to make his story good, no matter how the learned District Attorney will build him up.

"Q. I understood you to say, yesterday, that the identification-- at the time you gave your testimony, yesterday, speaking of the identification of the defendant, when he was called down, when he was with the others there, with reference to the action of Officer Fitzsimmons and yourself, I understood that you said, 'We had another good look at him, to be sure we had the right man.' Is that correct? A. Yes, sir; that



is correct."

Now, was there any need to do that, if he had recognized him, if he had seen him, even according to the contention of the People, at 9:20 o'clock, and then saw him in the northwesterly room, with all the other people, people coming in and out, standing within two inches, and watching him, and seeing those acts done? Was there any necessity for his going out into the lighter room, to take another look at him, and then, after the arrest, saying, "I must take another look at him, to be sure he is the right man?"

"Q. Now, Officer, I have asked you what was the size of this room? A. Why, it was about 15 by 20. Q. 15 by 20? A. I don't know. It was about that size, I should judge. Q. How many feet, more or less? Just give us some idea, if your observation was not too faulty? A. I don't know how many feet, more or less. Q. Can you state the length of the room? A. I said about 20 feet. Q. And the width of the room? A. About 15. Q. That is the best answer you can give? A. Yes, sir. Q. How many couches were in that room? A. There were four couches in the room, that night. Q. Four couches in the room, that night? A. Yes, sir. Q. And what was the width of them?



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Were they single or double couches? A. I don't know.

Q. You don't know? A. No, sir. Q. Was the first couch, as you went in, a double couch or single couch?

A. I don't know whether it was a single or double couch."

A very important question, as we consider. Were there two couches there, or was there but one?

MR. ELY: He said, double couches.

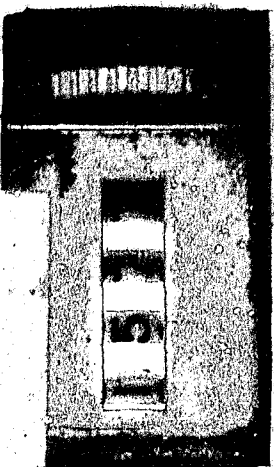
MR. LeBARBIER: All right. We will quote his testimony:

"Q. Was the first couch as you went in a double or single couch? A. I don't know whether it was a single or double couch."

Now, considering the position, considering the subsequent act that was done, were there two couches there, or was there one.

Is not that a point upon which the officer should have been somewhat correct? And yet he said, "I don't know."

"Q. Well, don't you know, when you entered that room, whether the couches were single or double couches? A. No, sir. Q. Do you know how many couches, just as you entered the room, were together, how many were bunched in together? A. I said that



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there were four together. Q. Well, all in a line?

A. They were all placed close together. Q. They were all placed close together? A. Yes, sir. Q. And did you observe the height of these couches? A. Yes, sir. Q. What was it? The height? A. About two foot and a half or three foot. Q. From two feet and a half to three feet high? A. Yes, sir."

Now, one of our defenses here is the impossibility of the physical act, at the height, as given; which you, gentlemen, can reason out, when you come to deliberate finally, with this defendant in your custody, surrounded with every presumption of innocence, not only guaranteed by the law, but guaranteed by his good character.

"Q. Are you quite positive that Galbert was in the room when you entered? A. Yes, sir."

Yet he had testified differently, gentlemen.

"Q. And what happened when you were standing there?

A. This defendant was lying on the couch, and a man, who I have since found out to be George Galbert--

Q. Now, wait a minute. Is that George Galbert (indicating a man at the bar)? A. That is the man;

yes. Q. The man who now approaches the bar? A. Yes,

sir. Q. That is the man? A. Yes, sir."



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Now we have, in a fearful case of this character, the officer saying, "Yes, sir; Fitzsimmons and myself were in the room".

We have him saying, in another part of the sworn testimony, "When we were in the room, the defendant came in."

Now which is true?

The learned Assistant here can say that it will please him to take the testimony that came out at this sitting of the case, and not the testimony taken at the Police Court examination or at the other trial.

Was the other testimony false; or is this testimony false?

You cannot reconcile the two, gentlemen; and I am free to say, and as you believe with me, a jury cannot juggle with the facts.

Now which was true?

If he is defective in that, do not treat it as a minor or material matter, because it is sworn testimony, and either one or the other must be true or false; and that is for you to settle.



Then comes this question about the doorway.

And he says that the room was very brilliantly lighted, and that the sides of the room were well lighted.

Now, if there had been no other time at which the officer had testified differently, that fact would go to you, gentlemen, as a positive fact.

Has he testified differently? Did he do it intentionally?

Let us see what he says.

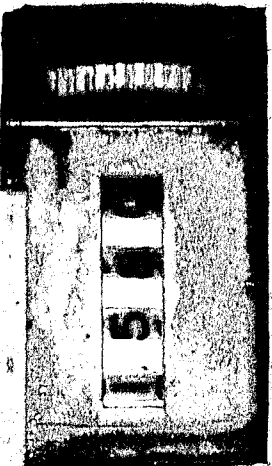
"Q. That shed light in the room you were in, with Galbert and Bennett; were you? A. About five feet. But the rooms were curtained off."

That was his testimony in the Police Court. Now, he did not use that word "curtained off" here. He said "drawn back" here. "Falling down", as the defendant says. Thick, opaque curtains taking up the width of the space, 3 feet nine inches.

"And a number of inches from the top and sides and bottom allowed plenty of light to come in", he said, at the Police Court examination.

Now, which is it?

So, we have the situation, at another hearing in this case.



He says here that these portiers were drawn and there he said that space was "curtained off".

Was he swearing truthfully then, when he said that the light came in from the top, the sides and the bottom or is he swearing falsely here, when he says that the curtains were drawn back?

It is a most important matter, we consider, in the presentation of this case to you, gentlemen.

Now which is true? Both cannot be true, gentlemen. Either one is true, and the other is false; either the first statement is false and the latter one is true; or the latter is false, and the first statement true.

And was he flippant with me? We asked him as follows, referring to Bennett lying on the couch:

"Q. Did he see you? A. I don't know. Q. If you know? A. I don't know."

Now, he is right there, looking, within three or four feet, with the other officer right by him; and we asked him that question, and in a case of this kind, he says, "I don't know".

"Q. Did you see him with his eyes open? A. No, sir; I don't know whether he had his eyes open or not".

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We submit that that is important.

"Q. Did you see his eyes shut? A. No, sir; I paid no attention to his eyes whatever. I don't know that he had any, even".

Just listen to that, such flippancy as that.

Now, if you are going to consign our defendant's future, the honor of his family, to the disastrous consequences that must follow a verdict of guilty, pause and consider that testimony.

"I don't know", the officer says, "that he even had eyes".

How near was he? A few inches. And he must have seen. Galbert was standing along the southerly side of the room. Galbert was right here (indicating). Bennett was right here (indicating). And these officers were about there (indicating).

And the defendant comes in, and he stands there (indicating). He does not say a word to Bennett. All these other people in the room, standing to the left, over here (indicating); and he would have to cross these officers, to get down to the couch, and would have to go up to the end of the couch, to take up Bennett's leg. And they were facing each other, and all these people were there, within a few inches.

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Is it credible? Can you believe it?

And he lifts up his leg.

Now, we have it, four feet, then two feet.

MR. ELY: Four feet from the floor, he said.

MR. LeBARBIER: And Fitzsimmons says, eight inches.

Now, take the couch at the height of a little over a foot, and try to study out the position.

Even the Court said there, "I think you may ask the witness if he can state more definitely than he has stated, as to the distance".

That certainly produced an impression upon his Honor, the Court. It certainly shows that the witness could have stated it more definitely.

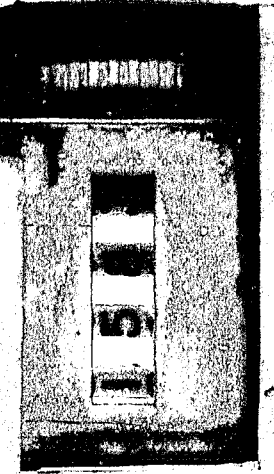
Now, was he correct?

Were the curtains down, with this constant coming in and going out? Was Galbert there?

He said here, that he turned him around. Phelan had never said that before.

Now, I do not want to dwell upon the situation, but it is so important to us, that I must.

He said, on the other trial, that the defendant Galbert came in, and took up the man Bennett's leg; and, in this case, before his Honor and you, gentlemen of the jury, he says that he turned him over.



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Now, has he concocted a story to substantiate the raid, with the other officer? Can you say that?

I do not know that I care to go so far, but the facts impress me most strongly. There is something rotten in the case, on the part of the prosecution.

"Q. Was the defendant standing up?"

If these officers had testified that he got right down on his knees, they might have had something to believe, there might be something.

"Q. Was the defendant standing up? A. Slightly bent forward."

Now that is the testimony, "slightly bent forward".

Is it possible that that could be done? Because, apart from the incredibility of the story, we have the impossibility, physically, of making that connection in the position which the officers state it was made.

And that is the testimony, "slightly bent forward"; not leaning over, or down on his knees, or anything else, but "slightly bent forward".

"Q. And I presume you leaned over to see?"

Now, imagine that situation. Why did he lean over to see? Were the curtains pulled down?

Was that room dark, as they seem to have said, in



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another court?

Was it for the purpose of identification?

Why does he lean over?

The defendant comes in there, and then leaves the room, and is gone ten minutes, before Phelan goes out.

Meanwhile people had gone in and come out. Was it the defendant?

"Officer Fitzsimmons was standing along side of me. Ten or fifteen people in the room. All the other couches occupied".

But, a moment before, he said that the second couch was not occupied.

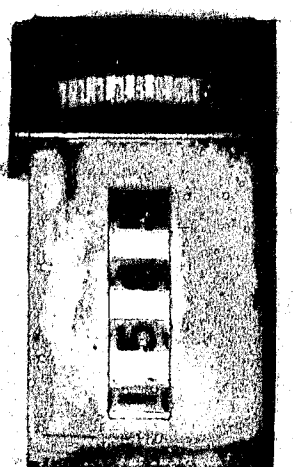
"Q. How long did you remain in that room, after Galbert went out? A. About five or ten minutes".

Then we came back at him upon this.

"Haven't you testified that one of the reasons for the identification was his bald head?" And he answered, "Yes".

"Q. The main remarkable feature about him?
A. Yes, sir; that is right".

Now Fitzsimmons took the stand, and tried to make out that there were no other bald headed men, with mustaches, there, that night. But, when pressed as to that, he admitted that there were.



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Now, was officer Phelan correct?

Is there any mark on the back of this man's head?

At no time has it come out in evidence in this case. But this man has been sitting in the back of the court room, looking at the back of his head.

Now, has Officer Phelan magnified, or has he told us the whole truth?

Is his testimony sufficient to make out a satisfactory identification, with the commotion that there was there, that night; or, necessarily, must he be mistaken?

Or, if I may venture to say so, must his zeal keep him up to the point that, having made the arrest, something must be done to sustain a conviction?

Now, I am not talking of police officers in general. I am talking of this one police officer here.

They have never seen him before, in any way at all, except as to a matter of rebuttal, that I will come to in a few moments.

"Q. And was it light at the extreme westerly wall?"

Now, we have heard Phelan say that it was light. But Fitzsimmons answers, "It was quite dark".

Now this is only a room 18 by 20 feet; and yet, according to Phelan, there was a flood of light stream-



ing in over the top of the curtain pole.

And I do not believe that any juror will believe that, in that small room, there was any dark spot in it, with 15 feet of light, a broad flood of light, pouring into that room.

In fact, that was the testimony of Phelan himself. After he said that the room was quite light, he says it was quite dark, at page 134.

He said that everything was brilliantly lit up from the room on the other side; and, when we press him down, he says here, "The end of the room was quite dark".

Is that sufficient to convict a man of the crime of sodomy? That is the question for you.

Now we come to Fitzsimmons. He took the stand, and virtually corroborated the act.

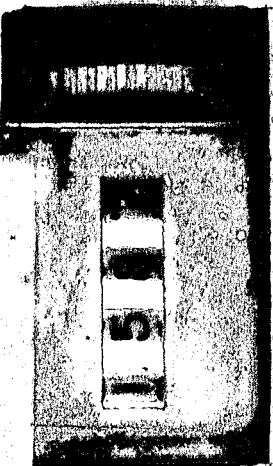
He says that he was there. I think he said he was there on the night of the 14th, too.

MR. ELY: No; he does not.

MR. LeBARBIER: I am not certain about that. Or, Phelan was there.

MR. ELY: No.

MR. LeBARBIER: I may be mistaken about that, too. But he had never seen the defendant before,



though there had been visits of the officers to that place before.

MR. ELY: Yes.

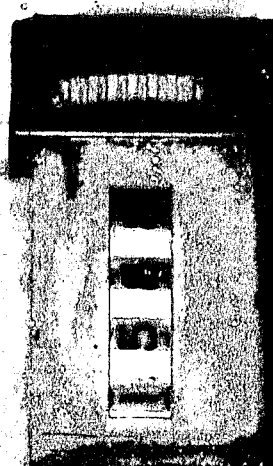
MR. LeBARBIER: Now, what does Fitzsimmons say?

"Q. Now, Fitzsimmons, how is this room, the northwest room of the Turkish bath establishment, situated, as you have described, in New York, lighted? A. It was dark, except for the light that shone in from the adjoining room, through the doorway. The adjoining room was a brilliantly lighted room. Q. Well, then, I will ask you the specific question. Was this extreme northwesterly room lighted by its own light, from any light in the room that was lighted? A. No, sir.

Q. Then all the light that came into the room came from the adjoining room, which, as you say, was brilliantly lighted? A. Yes, sir. Q. And, otherwise-- How far in did that light shine brightly?

A. Oh, it shone in every part of the room. You could readily distinguish anything in any portion or part of the room."

"Q. And what became of you and Phelan? A. Well, Phelan followed him directly into the room, into the next room. I walked in as far as the threshold of the door, and then came back."



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Now, on the question of identification, these points are of importance, gentlemen.

Did Phelan go out immediately? Phelan says he was in there five or ten minutes.

Fitzsimmons has said that the room was dark, except as it was lighted from the other room.

Phelan has said that the end of that room was dark, which sustains our contention that the room was dark, when the curtains were down.

Now, did Phelan follow this man out immediately? Phelan says that he did not.

Fitzsimmons, in order to try to make that identification complete, says that he did, and that they went out side by side.

Which one is telling the truth, gentlemen?

Nothing was said by Galbert to Bennett, or by either one to the other.

"Q. Did he go out before Galbert? A. After him. I won't say after him. They probably went out of the doorway together. The door is a wide door. Q. Well that is what I want to get at. Phelan left with the defendant? A. Yes, sir."

"Q. Did you not testify, in the case of the People against Bennett, as follows: 'Q. Then you

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followed Officer Phelan, ten minutes after? A. About that time'. A. Yes, sir, I testified to that."

Now, which was it, gentlemen, on this important question of identification?

Did Fitzsimmons go out, ten minutes after Phelan?

Did Fitzsimmons remain in, ten minutes after Galbert went out?

Or did they both go out together?

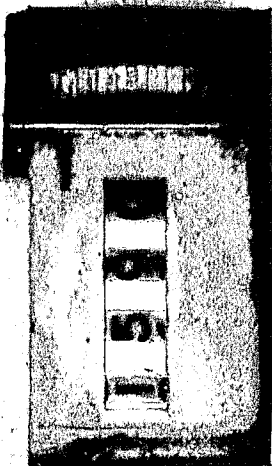
In all this commotion, and with men going in and out, and 78 men arrested there, that night, can you say that these officers were correct?

"Q. Then why didn't you say so, a few minutes ago, when I asked you positively for the time? A. Well, i have forgotten the time since."

This is not a case to forget in, gentlemen.

"Q. Then what you said here, a moment ago-- I will withdraw that question. 'Don't you know? A. I was not paying any particular attention.' Is that true? A Yes, sir; that is true. I have recollected since, though."

Now, if we can appeal, with any force, to the irreconcilable differences that we see in the testimony of the officers, we submit a strong claim, a strong defense, to you, on this testimony.



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"Now, it was all important to get the size of that door.

It was all important to determine upon the question of the light.

It was all important to determine who the man was in there, and if they could see him.

It was all important to them to keep him right in their minds eye.

And yet they remain in that dark room. The defendant goes out of that room. He is away ten minutes, according to their story.

And the defendant tells you a perfectly straight story of how he took his bath, and was asleep, in his room, when they knocked, after the raid was made.

Now we will get down a little closer on Fitzsimmons.

"Did you see any bald men there that night?

A. I didn't take any particular notice of them. I believe there was. Q. You don't know? A. I will say there was. Q. There were? A. Yes, sir. Q. Any bald men, with mustaches, there, that night?"

A most important question; and we get the answer from the witness, "I don't remember".

On the very vital point of identification, in

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this case, for, if there were others that possibly might there, there might be a mistake, we find the officer hedging, and saying, "I don't remember".

Gentlemen, bear that in mind.

He also went into that other room, for the purpose of a better identification.

But there is no proof, in this case, that, when the defendant went out there, into that other room, if he was there at all, according to the testimony of the officers, that either Phelan or Fitzsimmons followed him out.

"Q. Now did you go into that room?"

And Fitzsimmons himself says, "No, not into that room".

He also says, most positively, that the portiers were drawn to the wall.

I asked him if he had not testified differently before, about that reclining room, and whether he had said that it was curtained off in the manner he described.

Now, that is the testimony of the two officers, for the People.

If you are to disregard those differences, if you twelve gentlemen, fair minded as I believe each



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one of you is, go out into the room here, to deliberate, and can simply say, "Well, I think that is an immaterial point, in a case of this kind. I guess, after all, in the main, their testimony was correct. I guess that we don't consider a door fifteen feet, as they say it was, or fourteen feet, of any consequence, when it was only three feet nine inches, or that the testimony in the Police Court was absolutely different from the testimony given here;" if you are to say, gentlemen, that you do not consider those differences of any account, then you have to consider that the officers swore that they saw this act committed, this incredible act, done in a manner physically impossible to do; and then you have a right to reach the conclusion to destroy the defendant, for a verdict of guilty means destruction to him and to his family.

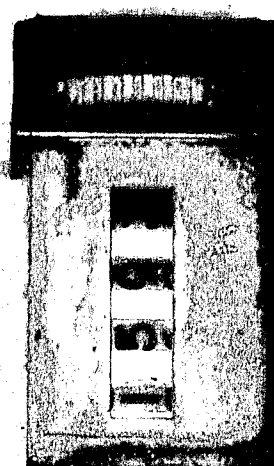
I can hear my learned friend say, "What motive have the officers?"

MR. ELY: You will hear it.

MR. LeBARBIER: Yes; I will hear it.

"Have they a motive? Has an officer ever been mistaken in his life, particularly a detective?"

Keeping to the record, in this case, forbids me from making reference to outside matters.



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Are we to place our life and honor in the keeping of officers, in a case of this kind, where there is every effort to make a conviction, upon the testimony of an officer like Phelan, upon the testimony of an officer like Fitzsimmons, who disagree entirely, one with the other?

It is up to you, gentlemen, to entirely destroy us, if you believe that.

It is up to you to say that this infamous practice was carried on by the defendant, and on such testimony as is reasonably defective, and to send him away.

I hardly think that that testimony carries with it reasonable conviction to your minds, beyond a reasonable doubt, that this defendant, with the commotion there, the differences in the testimony, the dark room, the curtain, the light, was the man that Officer Phelan and Officer Fitzsimmons endeavor to make him out.

Now, the next witness was Walsh, the Inspector.

He came there. The lines were laid. The fuse was lighted, the officers were surrounding the place; no word had been sent out, that night, that any raid was to take place, or communication made with the Inspector, except that he was to make that raid.



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Some one must suffer, some one must be offered up, as I say, on the altar of sacrifice, for a violation of the law.

If some one did it, if there were some people there who indulged in infamous practices, if they did succeed in getting a gentleman in with the rest, has the testimony brought home here that the defendant, Galbert, was the man; or was there a mistake?

If Phelan, in his eagerness, which he has manifested throughout this case, in almost every question that was put to him, if Phelan is to be believed, in regard to the smashing of that door, then we have Inspector Walsh and Fitzsimmons saying that they only went up there, and knocked.

MR. ELY: Threatened to smash it in.

MR. LeBARBIER: Is this hurting you?

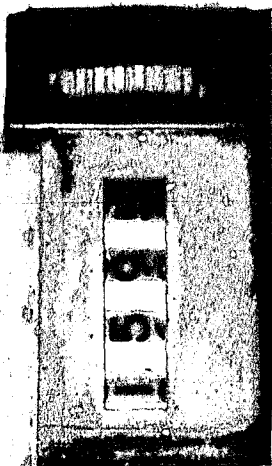
MR. ELY: Not at all. I am only correcting you.

MR. LeBARBIER: What is the fact?

"I knocked at the door, and there was a voice within, asking what we wanted, and I said we wanted him to come out, in a few moments, the door was opened; and he had a chance to dress."

Now, gentlemen, that is the case for the People.

We have shown here, and I have endeavored to



point it out as much as I have been able to, first, the identification as a defense, not being complete.

Second, if an act was committed there, as the officers testify it was committed, then, necessarily, their testimony is untrue, because it is physically impossible that that act could have been committed as they have testified to, under the evidence in this case.

The physical impossibility, we have pleaded, and do plead, with all the power that we can bring to ourselves in this case.

Now, for the third defense. If you reach the conclusion that it is physically impossible, then comes the question of the absolute incredibility of the officers.

Measure it. Try to find the truth.

That is where your solemn duty, as judges of the fact, comes into play, in the determination of this case.

We produced here Bertha Fiedler, who said that she has been there for twelve years.

She said that those couches are the same for the last twelve years, and that they are there today.

As to the height of them, does she say anything

like two feet and a half or only a little over a foot? Her testimony is not impeached in any way. She simply states the fact, a little over a foot.

MR. ELY: It is her opinion.

MR. LeBARBIER: That opinion was stated as a fact, and it is in the record as a fact, and we submit it to you, gentlemen, as a fact in the case.

Then we submitted this diagram here.

And then we came down to the story of Caldwell.

He tells where he lived.

He gave an alias name. Who would not? I do not regard that as having any importance bearing on this case.

If, unfortunately, any of us might possibly have been arrested, in any raid, it is only plausible to believe, I think, that we would not give away our name. I will let the District Attorney make the most of that. I do not attach any importance to it at all.

Now, he says that he is unmarried, an architect, and he describes what took place there.

He says he went there for the first time; that he went there for the first time, that night. He took his bath. He walked around. He went to the north-west room, and he pulled the curtain aside. It was

down. He looked in and went to his own room, and went to his own couch, and slept there.

And, if he was the immoral man that they endeavor to make him out to be, we might assume that, having a couch in his own room, he would have taken some man there, with him, upon whom to perpetrate these vile and villainous practices.

His own room was only a few feet away.

Now, he describes how he went there, and went in, and went to sleep.

"Going into that westerly room, did you draw the curtains? A. Yes, sir; I did."

"What is the matter? Well, come out here, Maude, and you will see what is the matter."

And did he go out as a Maude, simpering and afraid? Was he coming out in a cringing way, knowing that he had been caught in a vile act?

No, he came out of that room, ready to fight, and he was restrained from fighting by somebody, getting hold of him.

"Well, I will go out there, and I jumped up and put on my trousers-- my drawers and my undershirt--

Q. Yes? A. And, in the meantime, there was a great deal of confusion and noise, and calling back and

forth, and I opened the door and went out. Q. And when you got out, what did you do? A. There was a man along a line of couches that stands all down the middle of the room, and he said, 'Oh, here is the indignant lady', and I said, 'Who are you talking to?' And he said, 'To you', and I cursed him, and started across the couches and I was detained by a man behind me, and I understood that the place was raided".

Now, gentlemen, consider the feelings of Caldwell.

If his story is true, consider what an unfortunate position he is in, having gone there for the first time, that night, having taken his bath, as any ordinary gentleman would take it, and reclining in his own room, on a couch.

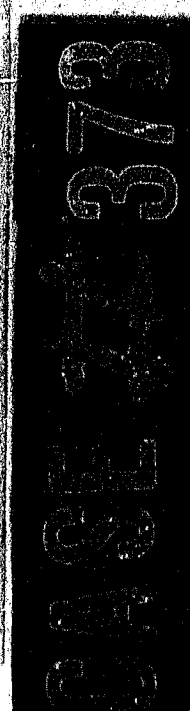
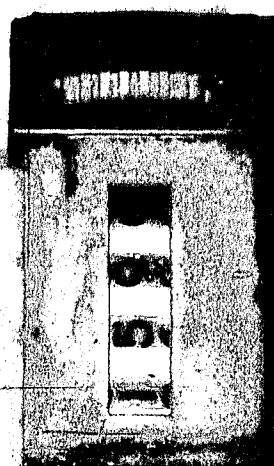
Consider, then, that these officers come forward and say, "Notwithstanding what you have said, you are the Maude that we are after".

And wonder if his heart and soul are not here pleading before you twelve men to say that it is absolutely impossible that he could do such a thing.

That is the feeling that he has here now.

The only defense that he could put in is the defense, "I did not do it".

If I am arrested, if, unfortunately, any of you



men are placed in a strange concatenation of circumstances to cast suspicion on you what do you do?

You come out, as he did, cursing and swearing, and saying, "I didn't do it. Do you believe me?"

Then let me bring in front of you that noble band of freinds, who testified to his character.

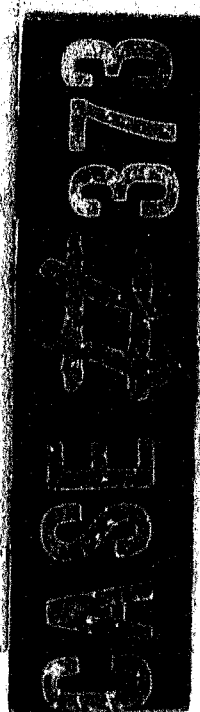
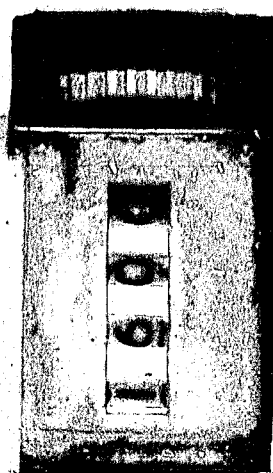
If I am in trouble, to whom do I go for relief?

If my word is doubted, or, like a note, you may say, unendorsed, what will make it negotiable?

If my own name will not go, then, for God's sake, gentlemen, you find men of distinguished position, of responsibility, prominent here in the City of New York, who have known him, some for twenty-five years, others closely and intimately for three years and a half, or more.

And, if that is not a certificate of good character, if those men, with whom he is working, cannot say to this Court and jury, "This man cannot be guilty", then what is the use of good character?

If the heavens fall upon Caldwell, if everything around us seems black and dark, then let me guard that ray of sunshine, produced here by those witnesses, well known in the City of New York, eminent men, prominent in business, social, financial and other



ways, and still say to Caldwell, "You cannot be guilty. We cannot believe the story that is told against you".

Now, good character must amount to something. Living with a man for years, working with him for years, must count for something, in the hour of his peril, when they all come forward, and take the stand.

And you have had occasion to know how they have known him, where they have known him, and you know what value to give to the testimony, when they say that they cannot be mistaken, from their close associations with him; and you have the right to say, from the proof of good character, which, like a mantle surrounds this defendant, "No matter what the prosecution has said, I cannot believe that Caldwell did this deed."

Who is Mr Carrere, of Carrere & Hastings?
Architects. Well known firm.

Who is Mr Jackson? The splendid gentleman who took the stand, and knows him intimately for a number of years.

Who is Mr Brainard? Of that firm.

Where can we go? Will the District Attorney want us to go to some absolute strangers to find out what

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his reputation is?

Tell me a man's friends, and I will tell you what he is.

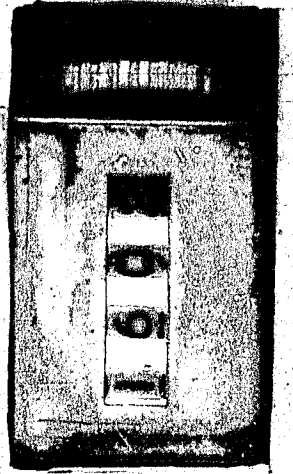
Then we have Mr Carrere, we have Mr Brainard, we have Mr Jackson, all certifying to the unquestioned good character of the defendant, for morality and decency and for trustworthiness and truthfulness.

Now, let us travel outside of that firm, for a moment. Mr Look, a splendid, noble fellow; a man engaged in his own business, in his own affairs; known him intimately for the last twenty-five years; sees him frequently; knows who he is, what his company is, where he goes, what he does.

All of them staunchly standing by the defendant, to say, "Gentlemen, you must have a reasonable doubt in this case".

And, if you pass over those five gentlemen, come with me to this other witness, who took the stand in his behalf, Mr Atherton, of Louisville, Kentucky, who has known him and his family; who comes on here, three or four times a year, and remains a month or so at a time.

He took the stand, and told you twelve gentlemen his character for morality and decency was good, and that his truthfulness was all right.



Have we satisfied you upon the identity of the man?

Now, these men would not come around here, and take that stand, for a million dollars, and say something that was not true. They would not go on that stand and say, "I am going to lie about Caldwell; because if that evidence as to his practices is correct, I will see myself damned, before I will testify to his character, but we know who he is, we know his character, and we will give him a certificate".

And that certificate must bear weight with it, with you, gentlemen, in your deliberations, as to the endorsement of Caldwell's word, when he says that he was not there, that night, and that he did not commit the deed. When I say not there, of course, I mean not in the room where this crime was committed.

Now, I come, finally, to this one point, and that is the rebuttal testimony in this case.

McCutcheon says that he saw him, on the 14th.

Not a single citizen, not a single disinterested witness, produced here, outside of the police. Nobody coming here who could have been brought by the District Attorney to testify disinterestedly to you, that he was there; nobody but a police officer, who says he saw him there.

Now, is he correct? Did he see him, gentlemen?

And Caldwell, backed up and surrounded by this good character, we have called as a witness, and he says he was not there.

Was he there? Did he see him?

Now let us get to the two rubbers.

Connelly says that he saw him there frequently, for a year.

O'Keefe says that he saw him there.

Both men convicted of crime.

MR. ELY: Of misdemeanor.

MR. LeBARBIER: A crime is a misdemeanor. Both of them. And a misdemeanor, not a state prison offense, but involving punishment as for a crime.

And we have the remarkable proceeding, in this case, that, on March 4th, 1903, these men were convicted of that crime; and the more than remarkable testimony that, since that time, sentence has not been imposed.

Connelly and O'Keefe, with the halter around their necks, bound to swear themselves out, must swear somebody else in.

Now, in a case of this kind, gentlemen, is it sufficient to satisfy you, beyond a reasonable doubt,

that their testimony is worthy of belief, sufficient to justify you in a conviction?

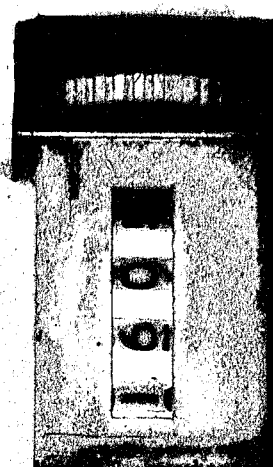
Those two men, who are now on their knees, begging the District Attorney, crying out for mercy, that they may have a suspended sentence, that they may go free, why shouldn't they come here, and in a general, glittering statement, pinning themselves down to no dates that we can fasten them to, say, "Oh, yes, we saw him there. This man has been there".

It was so easy to say, and difficult to disprove.

And then, when we get through with this case, with Mr Ely demanding a conviction here, and obtaining a conviction, as he thinks, and in a way he has been vindictive --- I have tried to keep him pleasant, but it has been hard work--but he is out for a conviction, and he will say, "Is that a sufficient motive for these rubbers to tell that?"

And I say, from my experience, that it is sufficient, and, when his soul has been gratified, and when the cockles of his heart have been warmed by a verdict, coming from the lips of the foreman, "We find the defendant guilty", he will say, "Mr Connelly and Mr O'Keefe, come up here. Discharged".

That is what will happen. That is the very thing



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that is on the program.

And so, where it is impossible for us to meet those general allegations, they have come forward here, and testified against us.

Now, gentlemen, I am about through.

The Court has been more than gracious in allowing me to talk as long as I have, but there have been these points that I have been wanting to bring to your attention:

First, was the identification.

Second, was the impossibility of the physical act.

Third, was the incredibility of the story.

Fourth, was our own plea that we did not do it.

Fifth, was good character. Good character which is a good name. It has been said, "Good name in man or woman is the immediate jewel of their souls". And we have built it up here, with all the force that we have been able to bring into this case.

Those are five of the points. There is one more: Reasonable doubt.

Reasonable doubt, as the Court will tell you, is not an unreasonable doubt, it is not a guess, it is not a surmise; but such a reasonable doubt as you have in this case, if you can reach that conclusion.

Now, with the prosecution, our character has counted for nothing. With you, gentlemen, it counts for everything.

It is our saving testimony in this case, good character; and good character, it has been said, may and of itself should raise a reasonable doubt.

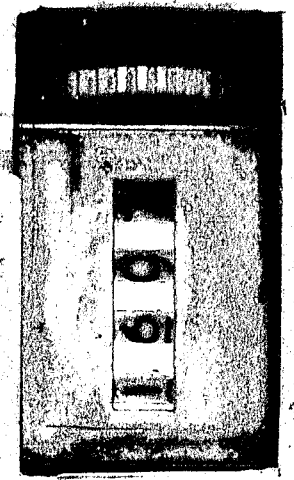
I do not say that I can go out, with a good character, and commit a crime, and be excused; but, as here, where it is pleaded to the very souls of each of you gentlemen, and when we come in here with such an array of character witnesses, I am sure you will say, "Caldwell could not have done that because his friends don't believe it, and I know it". You, gentlemen, will pause in your deliberations to say, "Is it reasonable to suppose that he could have committed that act?"

If you reach that conclusion, that reasonable doubt, in this case, the Court will instruct you that it belongs to the defendant, and you must acquit him.

So that our good character is with you.

We have sworn here, upon our oaths and upon our honor, that we are innocent.

We have sworn that there has been a gross miscarriage of justice in this case; that Caldwell,



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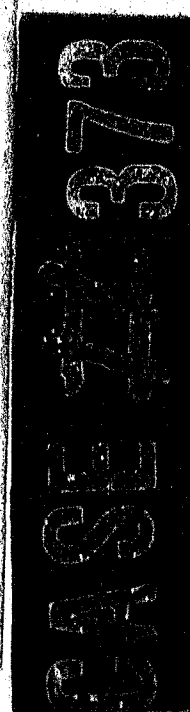
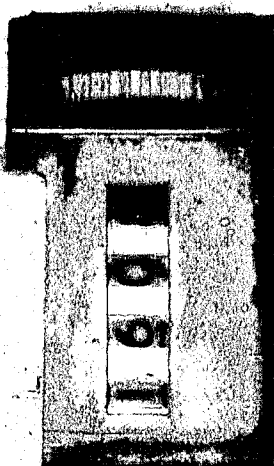
sitting here, is not the man, under all the strange conflict of testimony, on the part of the People; that he is not the man that could have committed that deed.

And, when you take into consideration all that I have said, as to the going in and out of that room, we plead with you, gentlemen, to consider the nature of this case, and its disastrous consequences.

What frightful agony, what frightful torture, if you were sitting here, or anybody else, we will say, who was innocent; what frightful torture to consider that we may be adjudged guilty of a crime, when we would rather have had our head cut off than have committed it, or have been charged with it.

And we would rather have sacrificed every dollar in our pockets, or that we could have controlled, to go anywhere, or everywhere, outside of the jurisdiction of this court, and away from the consequences that might be entailed, if we could have been apprehended. We would have gone to the end of the world to escape it. Did we do it?

We have addressed ourselves to you. We have said, through counsel, through the character witnesses, "No. I will go up to that witness chair, and I will say that I did not do it, and I will produce



men who will back me up in my statement. We will stand our ground."

Now, gentlemen, I importune you, speaking to you as men, I importune you, before you reach a conclusion, not to treat lightly the testimony of those men.

For God's sake, gentlemen, consider what we are up against. Consider the destruction. And, while I can hear my friend say, "No sympathy", we do not want sympathy. We want no outside consideration, only your oath. That is all we want.

Consider the evidence. We ask you, and beg of you to find this defendant innocent.

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SUMMING UP FOR THE PEOPLE
of

ASSISTANT DISTRICT ATTORNEY JAMES R. ELY:

If your Honor please:

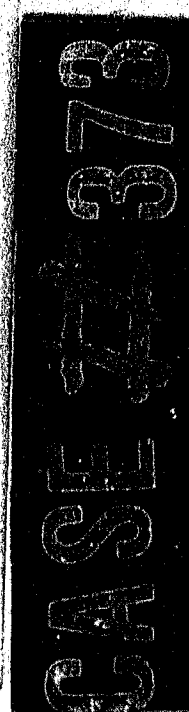
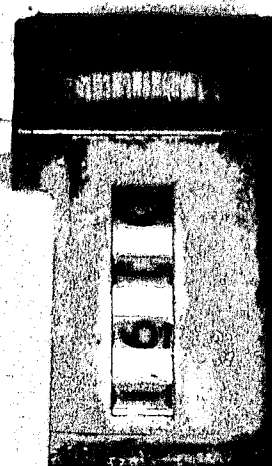
And you, Gentlemen of the Jury,

Before proceeding to an analysis of the testimony in this case, it is fitting for me to refer, for a moment, to certain facts here that are conceded.

It is admitted that, on the night of the 21st of February, 1903, or the morning of the 22nd of February, 1903, Inspector Walsh, accompanied by various officers, visited the Ariston Baths, situated at the northeast corner of 55th Street and Broadway, in the County of New York, and there placed under arrest some 78 men.

It is admitted that, prior to the time of the arrival of Inspector Walsh and his officers, there had been six or seven officers continuously in the Turkish and Russian Bath establishment, from about nine o'clock in the evening, up to the time that Inspector Walsh and his men arrived.

It is admitted that this defendant was there, on the premises in question, the Ariston Baths, on the evening in question.



That he arrived, as he says, between 9:30 and 10 o'clock, or 9:30 and 10 o'clock.

That he remained there continuously up to the time of the arrest.

That he was arrested, in his own dressing room, at about 1:45 o'clock in the morning.

Now, those facts are admitted. There is no dispute about them.

The People contend, and now maintain that they have proved that, between the time when the defendant entered those premises, on the evening of the 21st of February, 1903, and the time when he was arrested, he did commit an act of sodomy upon the person of one Walter Bennett; and they have offered the direct testimony of two witnesses, which is positive, to that effect.

If the testimony of those witnesses be true, gentlemen of the jury, you are bound to find the defendant guilty.

If the testimony of those witnesses be true, there is no reasonable doubt in the case whatsoever; and, under your oath, you are bound to bring in a verdict in accordance with the facts.

The attempt that the defendant has made to show a

good character will not help him here; for, if you believe the testimony, good character is no excuse for crime, it is no defense to crime.

Now, what is the defense of the defendant?

Simply a denial.

And who appears upon behalf of the defendant? The defendant himself, the man who, of all others on earth, has the most vital interest in the result of this case, the man who has more at stake here than any other individual whatsoever.

He has sufficient at stake here, we submit, to lead him to testify to any alleged state of facts, to anything that he might believe would be a defense to enable him to escape the result of his own act.

Aye, to commit perjury to escape.

Bear that in mind, that he is the person who is vitally interested in this case, and consider that, when you consider his testimony.

Now what does he say?

He says that he went to these premises, at 9:30, or thereabouts, on the evening of the 21st day of February, 1903; that he got his ticket; that he was assigned to dressing room 20, in the westerly room; that he went in there, and undressed; and that he

turned, by mistake, and went in the wrong direction, toward a cooling room, this extreme northwesterly room, that the People claim was the place where this act was committed; and that he found that he was wrong.

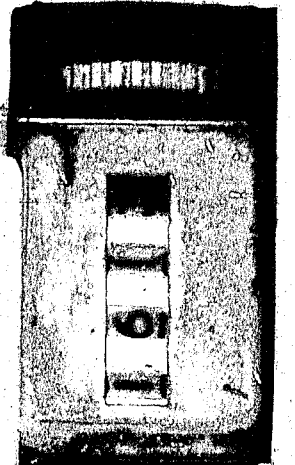
Why, now, does he say that, that he went there by mistake, at the start?

Why, simply and solely to try to make you believe that he was ignorant of the premises. That is the reason. That is the reason he tells you that. Otherwise, it has absolutely no bearing on the case.

But that, he thought, perhaps, might induce you to believe that he was unacquainted with the premises.

He says that he left this room, which was then brilliantly lighted, and went to take his bath; that he took his bath; and that then he wandered about the premises, going twice more to this extreme northwesterly room, and then going to his own room; but, first, accosting a stranger at the Turkish Baths and weighing him, and then wandering around, roaming about, until finally he goes into his own room, and is, as he says, awakened from his sleep by a rapping at the door.

He said that he was never in those baths before in his life.



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He says that he never saw Bennett in his life until after the raid had been made, in the Police Court. That is his whole story.

Does he tell you, or offer any explanation to you, as to why he was there on that night? Does he explain how he happened to go to these premises? Did he go with anybody? Was there any reason why he should have selected these premises to go to?

How did he happen to go to the northeast corner of 55th Street and Broadway, so far from home?

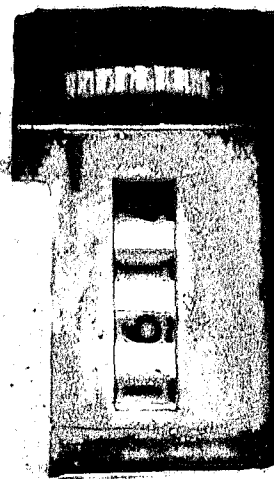
Recollect that he tells you that, at that time, he was living on East 82nd Street, at 105 East 82nd Street.

Do you believe that it was just by chance, on this night in question, that he first visited those premises, so far away from his residence?

What was he doing there, for those three and a half hours?

Do people usually hang around a Turkish bath for three and a half hours, if they go there simply for a legitimate and proper purpose?

What was he doing, making acquaintance with people that he saw, or attempting to make acquaintance with people that he saw, in the baths there, if it was



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not for the purpose of satisfying the appetites that the People claim that they have shown that he has, and which he satisfied there, on the person of Bennett?

Did he not show a marked familiarity with the premises, describing this room which was fitted up as a sort of gymnasium, with pulleys and weights, where these scales were?

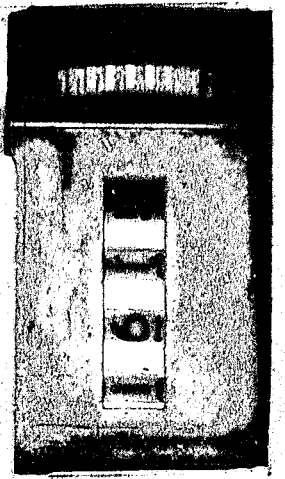
Was that familiarity with these premises simply bred of that one visit?

And he offered absolutely no explanation as to why he should have been in that neighborhood, or why he should have gone to that Turkish bath, on that occasion, remembering how far away he lived.

What was he loitering there for, for three hours and a half?

He says, forsooth, that he went there for a legitimate purpose, nay, a proper purpose, that of purifying and cleansing the body.

If he had gone there for that purpose, if he had gone there and conducted himself properly, and done nothing else than what would have been a perfectly proper and legitimate act, taking a Turkish bath, do you suppose for an instant, that, when he was rapped up, awakened, that he would have given a false name and



address?

Was it not conscience, that doth make cowards of us all, which said to him, in a voice that spoke so loud, "You are guilty. You must get out of this"? And so he gave a false name and address.

If he had been in any place and, mind you, he would have you believe that he was there properly and legitimately, and honestly believing that it was a respectable place-- if he had been in any place that was not respectable, where there had been trouble, why it is conceivable that he should have given an alias and a false address.

But wouldn't you, and each of you, under those circumstances, have said, "What do you mean by arresting me? I am so and so", giving your own name and address. "My position is such and such. What do you mean? I will prosecute you. You arrest me at your peril"?

If you were honest, that would be your feeling, and that would be the way you would act.

He, however, said nothing of the kind. He gave a false name and a false address.

Now, gentlemen, that is his story; and that is all of it.

I will ask you to consider his story from the standpoint of probability, with the testimony of O'Keefe and Connolly.

Here are two people who were employed there, at that Turkish Baths who say that they have seen this defendant there frequently, for a year, at periods of from a week to two weeks.

Why should they come here, and say that?

The defendant himself was interrogated as to whether or not he had ever had any trouble with either of them, and he said no; nor had they with him.

Why should they come here, and tell any such story as that, if it was not true?

Why should McCutcheon come here, and say to you that he had seen the defendant there before, on the 14th day of February, 1903, if that was not true?

None of those three witnesses was shaken on the stand. Their testimony was not weakened by one jot or tittle.

Did they not impress you as honest men, testifying truthfully?

Could you discover any bias against this defendant, or any reason why these men should come here, and deliberately commit perjury, for that is what it is?

Do you see any reason or bias which would be sufficiently strong to make them come here and commit perjury?

And, if their testimony is true, the defendant's testimony is absolutely false; and, if his testimony is false, in that particular, then it is false in every other particular.

If you find that any witness is testifying falsely in one particular, you may disregard the whole testimony of that witness.

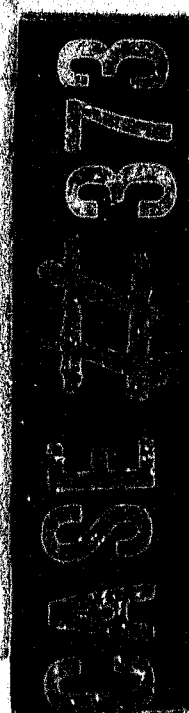
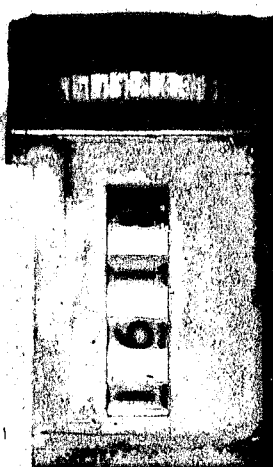
Now, gentlemen, we come to the testimony of Fitzsimmons and Phelan.

They are the principal witnesses for the People. You have seen them on the witness stand, and you have had an opportunity to judge, from their manner of testifying, from their appearance, and from the testimony that they have given, as to whether or not they are truthful and reputable and honest witnesses.

And I venture to say that you believe that they are truthful and honest witnesses.

Their testimony, as to the main facts in the case, has not been shaken one iota, not in the slightest degree, as to the main facts in the case.

The identification is complete, the identification.



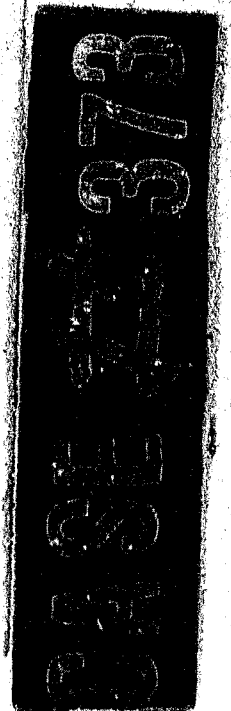
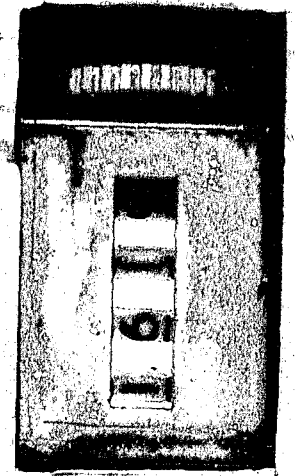
of that defendant as being the person who did, as matter of fact, perform the act of sodomy upon the person of Walter Bennett.

The very fact that they were so careful to see the defendant again, after having seen him in the northwesterly woom, when Fitzsimmons followed out to the threshold, and saw this defendant, in the westerly room, and when Phelan went out, practically, simultaneously with him, to see him further, that very fact only shows how careful they were, and how anxious they were to make absolutely no mistake.

It only shows that they knew how serious a charge this was, and what the effect of it might be upon this defendant, and how anxious they were that there should be absolutely no injustice done to anybody.

And, forsooth, because, when they were engaged in observing certain acts, they did not stop to measure the height of a couch, or to be perfectly certain that a doorway was a certain number of feet wide, or go up, for example, when Galbert raised Bennett's leg, with a tape-measure, and see just the angle at which his leg was raised, their testimony is no good, no good at all.

Why, do you suppose for an instant that anybody



would be taken up with such details as that, when such practices as we maintain our proof shows to have been engaged in there by the defendant, were going on?

Why, the very fact that there are, possibly, a few discrepancies between their testimony, in some immaterial details, shows that the testimony of those witnesses is true.

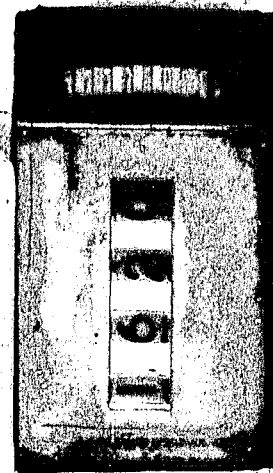
You know, Mr Foreman, and you, Mr Second Juror, if you both happen to look at a certain thing, you may get the distance somewhat different, although you may have both seen the same thing; and you may say, perhaps, that it was two feet, and the second juror may say it was three feet.

But that is a mere detail.

And, if those officers had corroborated each other absolutely, in every one of these small details, you would have been at liberty to say, "This is a concocted story, and they have gone over it together, and they know what each one is going to testify to, and we can't believe that they are truthful.

If they had corroborated each other in these unessential details, you would not have believed them.

What motive have they for testifying falsely? They never had had any trouble with this defendant. The defendant says so himself.



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Do you suppose that those two men had any motive in this world, which would be sufficiently strong to make them come here, and endeavor to railroad this man?

Do you suppose that they had any motive sufficiently strong to make them enter into a conspiracy, for that is all that it is, to enter into a conspiracy, one with the other, to railroad this man, whom they, Fitzsimmons and Phelan, never saw before in their life, before the 21st and 22nd days of February, 1903?

And you have got to find that these men, and all the witnesses for the People, are testifying falsely; and that the only person testifying truthfully, as to the facts, is the defendant himself, unless you find him guilty. That is what you have got to do.

Now, we had some testimony with respect to the character of this defendant.

Well, gentlemen, I will venture to say that a friends man's would be the very last persons on earth who would know of a tendency of this kind entertained by anybody.

He would know whether or not these people might be addicted to, or seduced into these practices, and he would be very careful to conceal his perverted

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appetite from them.

As for that, take Mr Carrere, a well known gentleman, who is an architect here, and an employer of this defendant. Do you suppose that the employer knows, or lives with this defendant, or knows his habits?

Do you suppose that this defendant would allow his employer to discover any such habit as this?

The same may be said of Mr Jackson, his employer. The same may be said of Mr Brainerd. So, the same may be said of all three members of the firm.

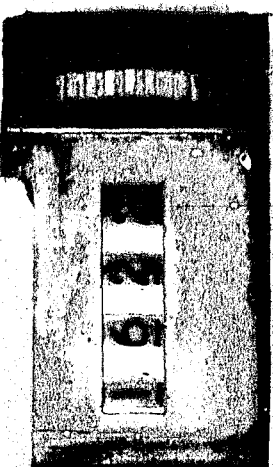
What one of you gentlemen, who employs people, has really any accurate knowledge as to what his employes are doing, out of business hours, when they are away from you?

You take them at a certain standard, or believe that they come up to a certain standard, when you engage them, and, after that, you do not know anything about them, and do not look them up.

why

And that is, perhaps, so many employes go wrong.

But that is the fact. These three gentlemen, forsooth, who, from the very nature of their situation, would be three of the last men on earth to know anything about the real habits of this defendant, have been brought here, and put on the stand, to give him a



certificate of character, and testify to his reputation.

That they are honest in their testimony, so far as they know what his character is, I have not the slightest doubt.

That they may believe what they say, as far as the defendant's character is concerned, I do not dispute, for a moment.

I am not impugning them, but I say that, from the very nature of the position that they occupy, they are not the people, who, in a case where the charge is what it is here, are the proper people to testify as to the character of this defendant.

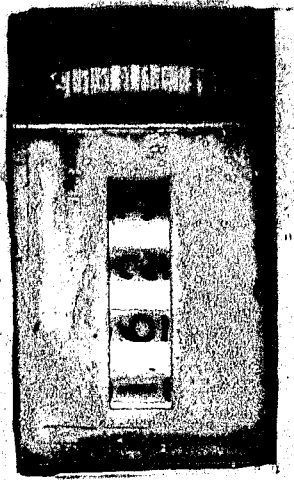
Where are those that he lives with, and that he associates with?

Is Bennett one of his witnesses?

We have had Mr Look. Mr Look says that he has known the defendant for some twenty-five years. That is all. He is a friend of his.

What I said before, respecting these three other gentlemen, might be applied to Mr Look.

And, as to Mr Atherton. Why, Mr Atherton said that he has been coming on here, for the last three years, and spending a few months; and that he has seen the defendant each time that he has come on, and



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during some of the time that he has been visiting here, during these three years.

Do you suppose that that man would let an estimable gentleman, like Mr Atherton, know what his morbid cravings were?

Do you suppose that Mr Atherton, under any circumstances, would ever have learned that?

Do you not suppose that, no matter how depraved the defendant might be, he could curb his appetites sufficiently to enable him to make an appearance before Mr Atherton, when he came here to New York from Louisville, from time to time.

And that, gentlemen, is the proof of character that the defendant has offered here, which, he says, should create a reasonable doubt in this case.

Proof of character, to create a reasonable doubt!

It is proof, perhaps, that a Court might take into consideration, as to the estimation in which a certain person had been held by certain estimable gentlemen, in passing sentence; but it is not such proof as should raise any reasonable doubt as to the facts that have been developed here, in this case.

I want you to bear in mind, gentlemen, that no adequate explanation has been offered by this defendant

as to his presence in the bath house, on the evening of the 21st and the morning of the 22nd of February, 1903.

I want you to remember that he has told you nothing about his movements there, during the three and a half hours that he remained there, from which you can gain any insight.

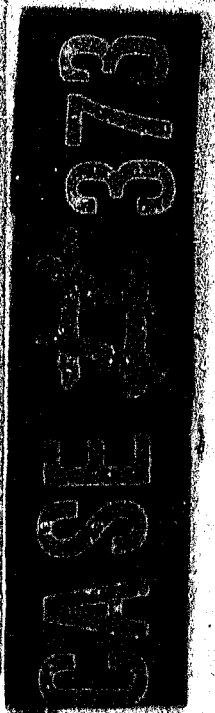
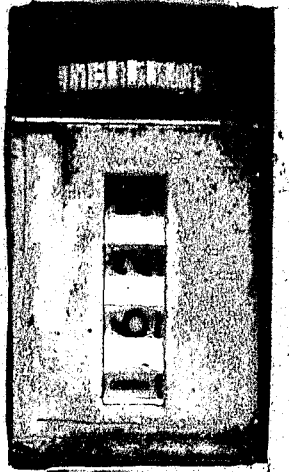
I want you to bear in mind the distance between the bath house that he was found in and his own home.

I want you to consider the testimony of Connolly, O'Keefe and McCutcheon, the former two testifying that the defendant was an habitue of those baths, and McCutcheon testifying that he saw him there on the 14th.

I want you to bear in mind the testimony of the two officers, Fitzsimmons and Phelan, that they did actually see this defendant performing the act of sodomy upon the body of one Walter Bennett, in that northwesterly room of those baths.

And I ask you if, on your oath, under that testimony, you can have any reasonable doubt as to the guilt of the defendant.

I ask for a verdict of guilty of sodomy.



(The Court then admonished the jury in accordance with Section 415 of the Code of Criminal Procedure, and took a recess until a quarter past two o'clock.)

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THE COURT'S CHARGE.

Gentlemen of the Jury,

It would be idle to deny that the testimony in this case relates to a very disgusting and revolting subject. At the very outset, the mere statement of the crime charged against the defendant is liable to carry with it a certain revulsion of feelings that may be reasonably entertained by every man who has a decent regard for the proprieties and manliness of his sex; and it is because of the revolting nature of the crime charged that I wish, at the outset, to caution you not to permit that, of itself, to prejudice you against the defendant, so that it would, in any manner, interfere with you in delivering a fair and an impartial and a just verdict upon the evidence.

You must, therefore, dissever from your consideration of this case that reprobation which you may naturally and justly entertain of the acts that constitute the crime of sodomy.

The law is never meaningless. Where it declares a certain act to be a crime, it does so for the preservation of society, and the maintenance of good morals and



order; and the law found it necessary to denounce the acts charged here as of a most heinous nature, and it declares such acts to constitute a crime.

You are the exclusive judges of the facts in the case. Upon you rests the responsibility of dealing with those facts, and of determining, upon those facts, whether the defendant committed the act that it has been charged that he did commit.

In its wise provision for the administration of criminal justice, the law declares that twelve men, constituting a jury, shall have the exclusive right to determine all questions of fact, in a criminal case; and, if a unanimity of those twelve minds be reached, upon those facts, it may be taken as the nearest approach to absolute and perfect justice that is known to mankind.

When the law casts upon you, gentlemen, that responsibility, it is to be taken just as seriously as the law contemplates it should. It is not to be taken and disposed of lightly. It is not to be relegated by you as a matter of no consequence, when you leave the jury box.

Verdicts of juries have a lasting and more permanent effect than is frequently thought. They declare

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the sense of men and their convictions upon questions of right and wrong, of truth and falsehood.

In passing upon the questions of fact submitted to you, I have before stated that you are the exclusive judges; and, being judges, you, no doubt, appreciate what qualities a judge should possess.

Those qualities, in brief, mean fairness, justice impartiality, freedom from bias, on the one hand, or prejudice, on the other; and, when a conviction of mind is produced by sworn testimony, and a conclusion is reached from that testimony, then the courage to declare the verdict, without regard to its consequences to the particular individuals charged with crime, or to any other person in existence; or, without regard to either criticism or praise. The sense of performing the highest duty that can be imposed upon a citizen should so govern the juror that nothing but the highest motives should prompt his actions, in the jury box.

As you are now aware that you are the judges of the facts, it is my duty to instruct you upon the law of the case; and, as you are the exclusive judges of the facts of the case, the Court is the exclusive judge of the law of the case; and you must accept the instruc-

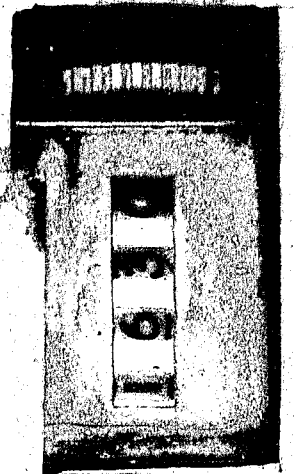
tions which are given to you upon the law, without question, and in good faith.

The defendant is indicted for the crime known to the law as sodomy; and it is charged that, on the 22nd day of February, 1903, in this county, he performed an act of carnal intercourse on the body or person of one Walter Bennett, by the insertion of his penis into the anus of Bennett.

That is the accusation contained in the indictment and upon the accusation the prosecution has introduced evidence which, it claims, supports the accusation, and proves the guilt of the defendant; and, upon that accusation, the defendant interposed his plea of not guilty, and he, on this trial, denies the act charged against him.

So that there is a clear-cut issue framed between the witnesses for the prosecution and the defendant.

It is not my purpose to comment upon the facts in the case, or upon the testimony of the several witnesses that have appeared before you, or to express any opinion whatever, as emanating from myself, upon such testimony, for the responsibility rests with you, and not with me.

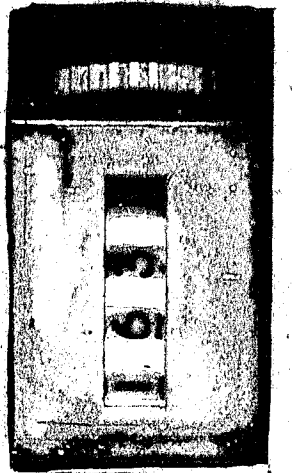


The prosecution claims that the defendant was found, with a number of other men, in a Turkish Bath establishment; that he was observed, in the course of the evening or night, from between 9 and 10 o'clock until about 2 o'clock in the morning, and that his movements these witnesses have described to you, and his acts which, they maintain, took place.

Two witnesses, particularly, on the part of the prosecution, have sworn to having seen the defendant do the actions which they have described.

They stated to you, in answers to the questions of the District Attorney, and in response to the questions of the learned counsel for the defendant, their observations, and described to you the place and its condition and characteristics. They have described to you not only what they claim this defendant did upon the body of Bennett, but what they claim Bennett, in turn, did upon the body of this defendant.

The precise offense charged against this defendant is for the act that it is claimed that he did upon the body of Walter Bennett, and not for what Bennett is claimed to have done upon his body, though you are entitled, as jurors, to know all that occurred there, so far as witnesses can swear, you are entitled to hear of



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everything that took place, because it rests with you to form your judgment upon all the testimony and upon all the circumstances and surrounding transactions.

You will naturally ask yourselves, in searching your conscience to reach a true decision: Have those witnesses sworn falsely, when they say that they saw this act committed?

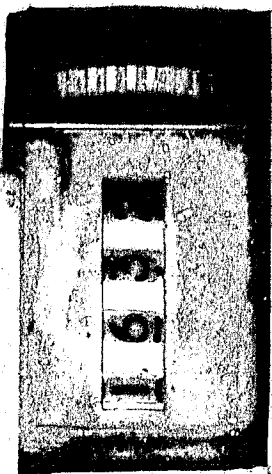
If, on the whole testimony, you should come to the conclusion that they did see an act of sodomy committed, you will then, naturally, ask the question: Are they mistaken in the identity of the person of the defendant, as to the commission of that act?

Upon the first question, you heard the witnesses describe all that took place.

It is not necessary, nor is it my purpose to refer to those things, in detail.

And, on the second question, if you are satisfied that they saw the act take place between two men, in that Turkish Bath establishment, then are they mistaken, or are they correct, in describing the defendant as one of the men?

With regard to describing the person of the defendant, you have a right to take into consideration the testimony in all its bearings, the answers of the wit-



nesses to the questions of counsel, on either side, as to the particular appearance or any peculiar characteristics of the man that they say committed the act upon Walter Bennett.

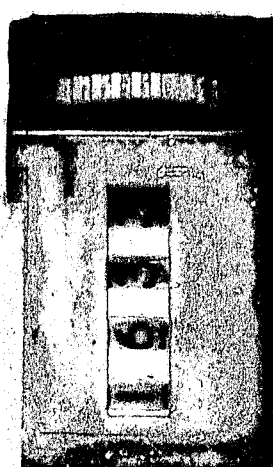
You heard the witnesses say that they noted the appearance of the defendant, his head, his face, and a particular mark upon the back of his head, which was described by one of the witnesses as an impression.

Are they mistaken? Or, have they got the actual, identical man that they saw do the act, and is that actual and identical man the prisoner at the bar?

In considering and analyzing the testimony, it is your duty to weigh every circumstance. It is your duty to ask yourselves: Is any witness actuated by a motive that would prompt him or induce him to testify to that which is false?

Have the witnesses for the prosecution manifested before you any such motive as would prompt them to testify to what is false? Can you perceive any?

Have these witnesses been mistaken as to the identity of the man that they saw commit the act or have they been committing a falsehood as to the commission of the act itself, or have they sworn to the truth, that they saw the act committed, and have they been accurate



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and correct in their identification of the defendant as the man who did the act?

These are questions which present themselves to you, in a most serious and grave aspect.

The law defining the crime is very brief. I will read that portion of the statute to you which is applicable, and it is as follows:

"A person who carnally knows any male person by the anus or by or with the mouth, or voluntarily submits to such carnal knowledge, is guilty of sodomy".

I am sure that you appreciate the clearness and conciseness of that law; and it is the violation of that law that the defendant is charged with

The District Attorney claims that the defendant was actuated by a motive that would prompt him to testify untruly. The learned counsel for the defendant has, if I recollect his eloquent address to you aright, claimed that the witnesses for the prosecution had a motive. It is for you to say whether or not any one of those witnesses had a motive; whether the witnesses for the prosecution had a motive that would prompt them to swear falsely against this defendant, whether they had a motive of gain, of revenge, of pecuniary or professional reward. Has their testimony disclosed to you any such motive?



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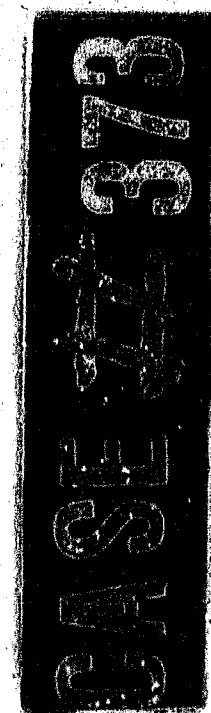
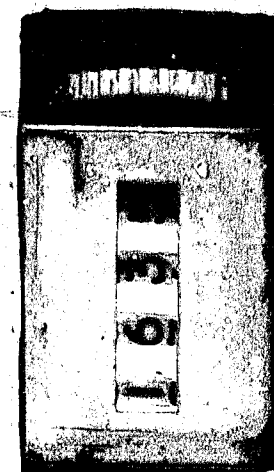
The District Attorney claims that the defendant has the very strongest of motives to testify falsely; that he is here accused of a heinous crime, and that nothing else can be expected from him but a denial of the commission of the act charged against him; that everything that is sacred to a man is pending in the balance, awaiting your verdict; and, that being so, he would have a sufficient motive to testify in such a manner as to escape adverse and disagreeable consequences.

These questions are all matters for your consideration and determination.

The defendant has introduced testimony of good character; and, in instructing you as to the attitude which you should observe towards such testimony, I cannot do better than to instruct you in the words of one of the requests to charge handed to me by the learned counsel for the defense.

This request which I have selected is numbered 4, the fourth request, and it is one of three treating on the same subject, this question of good character.

I select it, because, in my opinion, it embraces all of the three propositions, and it is broader and more comprehensive in its scope, and more favorable



to the defendant, than either of the other two requests, and includes all that the others state, and I, therefore, charge it to you, and I will read it:

"I ask your Honor to charge the jury that, no matter how conclusive the testimony may appear to be, the character of the accused may be such as to create a doubt in the minds of the jury, and lead them to believe, in view of the improbabilities that such a person, of such character, would not be guilty of the offense charged, that the other evidence in the case is false, or the witnesses mistaken."

While charging that request to you, gentlemen, which, I believe, embraces the rule of law as to the fullest extent that the defendant is entitled to, I deem it my duty to add to that charge, that testimony of good character, like all other testimony in the case, is solely for the consideration of the jury. You can attach to such testimony whatever value you think it entitled to. You can give it such weight as you think the circumstances of the case warrant.

Testimony of good character, does not, of itself, conclude a jury, no more than the testimony on any other point in the case. Nor does it, of itself, conclude a jury from finding upon all the testimony, it



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included, that the defendant committed the act charged against him.

Nor does testimony of good character, of itself, conclude, beyond question, that the defendant is incapable of committing a crime; for a jury must bear in mind that the law presumes every man has a good character, until the contrary be proven; and that it may be claimed of all men who have been convicted of crime that, before their first conviction of crime in the eye of the law, they bore a good character.

The whole question relating to that matter is solely for your determination. Give to the testimony of good character that weight that you think it entitled to, and if it creates reasonable doubt of the defendant's guilt, give him the benefit of it and acquit him.

The defendant is entitled to the benefit of a reasonable doubt, on the whole case, upon every material question in the case, upon the whole evidence, or the lack of evidence in the case.

If you entertain a reasonable doubt, it is your duty to give him the benefit of it, and to acquit him.

But if, on consideration of all the testimony in the case, you believe that, beyond a reasonable doubt,

the defendant committed the act charged against him, it will be your duty to so declare by your verdict.

I am sure, gentlemen, that you understand what a reasonable doubt is, and that you do not require from me any further definition of the phrase; for definitions frequently tend to confuse the mind, more than to enlighten it; and it has been well said that the phrase, reasonable doubt, carries with it its own best definition, and that is, that a reasonable doubt is a reasonable doubt.

I may say to you, however, that a reasonable doubt is not a guess, or a conjecture, or a surmise; nor is it a means or a refuge for a juror to have recourse to, for the purpose of escaping doing a duty that may be disagreeable to him to do.

Unless you have a reasonable doubt, then you cannot say that you have any doubt at all; and the reasonable doubt contemplated by the law is a reasonable doubt springing from the evidence in the case, and from no other cause or source.

The learned counsel for the defendant has handed up to me some requests to charge.

First--- The burden of proof never shifts in a criminal case.

I so charge.

Second-- The People must prove, beyond a reasonable doubt, the guilt of the defendant.

I have referred to that quite sufficiently, I think, but I charge you that, gentlemen.

Third-- It is not for the defendant to satisfy the jury of his innocence, but the burden of proof is upon the People, throughout the case, to prove the defendant guilty beyond a reasonable doubt.

I so charge.

The fifth and sixth requests, relating to the question of character, I have stated, I consider embraced in the fourth request, which I have charged; and I will, therefore, refuse to charge those requests, upon the ground stated.

MR. LE BARBIER: Exception.

THE COURT: Now, gentlemen, I think that I have addressed you upon the important questions in this case at a sufficient length, and I do not purpose to detain you any longer.

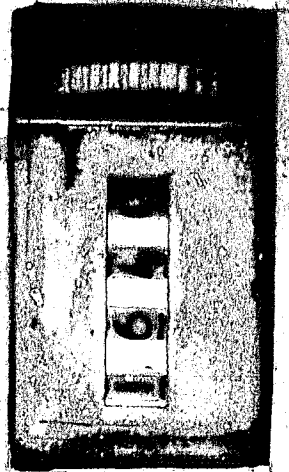
In submitting the case to you, I have this to say: If you have a reasonable doubt of the defendant's guilt, it is his right to receive from your hands a verdict of acquittal. If you have no reasonable doubt

but that he did the act charged against him, the People have a right to receive from you a verdict of guilty.

This prosecution rests between the People of the State and the defendant; and the law, in entrusting the question of the guilt or innocence of this defendant to you, is no respecter of persons, draws no distinctions with regard to grades of life or social conditions; it makes no excuse whatever for the commission of crime; that a man is well connected, in a business way or professional line or in social life. Every person is equal before the law, and the possession of a high order of intelligence, or the advantages of friendships of value, or of social connections or relations cannot be interposed as any excuse for the commission of crime.

You approach your verdict in a cool, calm and dispassionate frame of mind. If your conscience, unwarped or unmoved by any feelings of bias or prejudice, of animosity or of sympathy, convinces you, on the whole case, beyond a reasonable doubt, that the defendant committed the act described by the witnesses for the prosecution, it becomes your bounden duty to declare so by your verdict. If not, it is equally your bounden duty to declare him not guilty.

You have nothing to do with the consequences



of your verdict; whether those consequences be painful or shameful or destructive of hopes or ambitions; you have nothing whatever to do with those consequences. The law constitutes you as judges and as judges you must act, unmoved by any other motive or purpose except to do justice.

I submit the case to you.

MR. LE BARBIER: May it please your Honor, I except to that portion of your Honor's charge wherein your Honor states: Whether the witnesses for the prosecution had a motive to swear falsely against the defendant, have any motive; and whether the testimony has disclosed any such pecuniary motive.

THE COURT: Any such what, Mr. Le Barbier?

MR. LE BARBIER: Any such pecuniary motive.

THE COURT: I think you are in error.

MR. LE BARBIER: Well, whatever the word was.

I may be in error as to that.

THE COURT: I made use of no such description.

MR. LE BARBIER: Well, pardon the lapse of my memory. Whatever that word that your Honor used was. And I ask your Honor to charge---

THE COURT: before you ask me to charge, I repeat now that all these questions are for the jury to

determine. I have expressed no opinion. They have a right to ascertain whether any motive existed on the part of any witness.

MR. LE BARBIER: And I was about to ask your Honor to charge, that they have the right to consider, in that respect, whether there may not have been a mistake of identification.

THE COURT: Oh, yes. I so charge the jury, that it is a question for them to determine.

MR. LE BARBIER: Then that is all, sir.

(The jury retired at 3:50 P.M.)

(The jury returned to the court room at 6:30 P. M.)

THE COURT: Gentlemen of the jury, I have received a written communication from you, in which you ask that the testimony of the defendant be read to you. The stenographer will read the testimony.

(The stenographer then read the defendant's testimony.)

(The jury retired, and returned to the court room at 6.35, finding the defendant Guilty.)

THE COURT: Any application, Mr. Le Barbier?

MR. LE BARBIER: I would like to have him remanded, may it please your Honor, for a week, anyhow.

THE COURT: Tomorrow week?

MR. LE BARBIER: Yes, sir; the 26th.

THE COURT: I will grant your application.

THE DEFENDANT'S REQUESTS TO CHARGE.

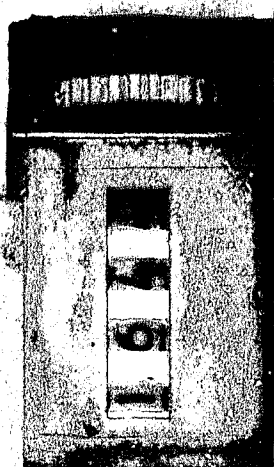
1-- The burden of proof never shifts, in a criminal case.

2-- The People must prove, beyond a reasonable doubt, the guilt of the defendant.

3-- It is not for the defendant to satisfy the jury of his innocence, but the burden of proof is upon the People, throughout the case, to prove the defendant guilty, beyond a reasonable doubt.

4-- I ask your Honor to charge the jury that, no matter how conclusive the testimony may appear to be, the character of the accused may be such as to create a doubt in the minds of the jury, and lead them to believe, in view of the improbabilities that such a person, of such a character, would not be guilty of the offense charged, that the other evidence in the case is false, or the witnesses mistaken. (Peo. vs. Remsen, 43, N. Y. 6.)

5-- I ask your Honor to charge the jury that evidence of good character may in and of itself raise a reasonable doubt, which would warrant a jury in acquitting the defendant, no matter how strong the evidence against him may be. (Peo. vs. Seldner; Golding;



20 App. Div., 444.)

6-- Evidence of good character is not only of value in doubtful cases, and in prosecution of minor offenses, but is entitled to be considered when the crime charged is atrocious; and, also, when the testimony tends very strongly to establish the guilt of the accused. It will, sometimes, of itself, create a doubt, when, without it, none would exist.

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THE SENTENCE.

New York, June 26th, 1903.

(The five defendants being arraigned together.)

MR. PENTECOST: As the case of Theodore Casson was called first, I suppose it is in order for me to address the Court first.

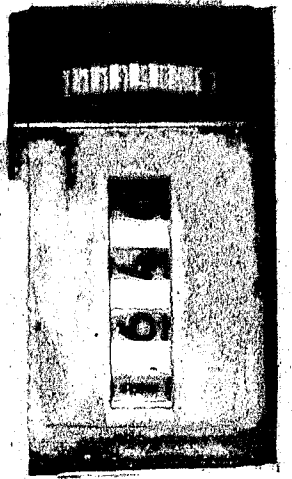
I cannot recall whether a motion was made in arrest of judgment and for a new trial, at the time of the conviction, but, if not, I now make such a motion, on all the grounds provided for in the Code of Criminal Procedure.

THE COURT: Motion denied.

MR. PENTECOST: Exception.

If your Honor please, the defendant, Casson, as appeared upon the trial, is a working confectioner, and was adjudged guilty of the crime of sodomy; and it was shown that he was a victim, a passive participant in the act, if there is a distinction to be made between one and another of these men, in the accomplishment of the act charged.

I think I shall be perfectly frank with the Court



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in expressing certain opinions that I have about a crime of this kind, in the hope that my sentiments may commend themselves to the Court, and tend to a merciful disposition of the defendant in this case.

The crime for which these men have been convicted has been declared to be a crime by the Legislature, and a crime that is -- at least by the penalty that has been attached to it -- one of the most serious character known to our law.

I am frank to say that I do not agree with the view of the Legislature, in determining that this kind of an act is an act deserving of such a severe punishment, by sending a man to state prison for such a long term of years as he might be sent for.

A man may be punished as though he were guilty of manslaughter in the first degree or highway robbery, both of which are crimes which affect society, by assaulting the person, resulting in grievous bodily harm or death, or by taking away from the person of the citizen his property.

While an act of this nature, it seems to me, on the contrary, is not a crime that affects the public welfare, but is, rather, to be classified as a vice; and I have a nervous question in my own mind whether it ought

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to be made a crime, at all.

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The most that can be said about it is that it affects two people, unless you wish to philosophize, to speculate, as to the moral effect of the act of two people, in secret; or, as in this case, the semi publicity, on the whole community. But, at all events, it seems to me to be a vice, rather than a crime; and, if the State wishes to take cognizance of it, there ought to be an institution where such men as these could be sent, if the State feels obliged to send these men away at all, or to care for their morals, where they can be treated by competent alienists.

But I am surprised that the State puts its hands on these men at all; and it seems to me that the punishment does not fit the crime; and the sending of men to State prison for a very long term, because they are guilty of a personal vice, does not commend itself to my judgment.

But, of course, I am not the Court, and the Court may differ with me very seriously in the view that I am now expressing; but it is an honest and sincere view that I am expressing, and I am bound to express it, in behalf of this unfortunate man.

The act of which these men have been adjudged guilty, of course, is one that most of us have nothing



but horror and disgust for; but there are many acts for which we have horror and disgust that do not seem to be crimes, to me, at least; and never ought to have been made crimes.

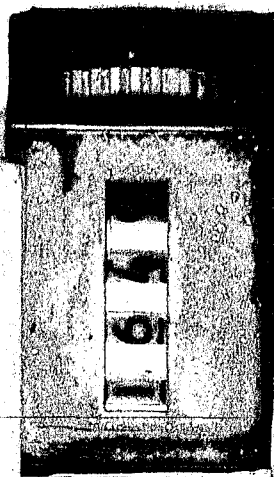
I feel that the making of this act into a crime is part and parcel of the activity of the State in meting out ~~severe~~ punishment for men who sell liquor, in prohibited hours, or men who bet on horse races, all of which, to my mind, are vices, rather than crimes.

That is about all I have to say, if your Honor please. The defendant here seems to have had nothing against his character, except this. He was an industrious, hardworking man, whose employer came to court, to testify in his behalf; and, so far as I am able to learn, he was a perfectly clean man, except as to this vice that he had.

I leave him in the hands of the Court, as I can do nothing else, except to submit to whatever sentence the Court chooses to impose upon him.

THE COURT: Does any other counsel desire to address the Court?

MR. BUTTS: In the matter of Schnittel, your Honor will recall that, when he was last before the Court, a motion for a new trial and in arrest of judgment was



made on all conceivable grounds, at least conceivable to me, upon all the grounds specified in the Code, and the motion was denied, and he was remanded for sentence.

Now, it seems to me that there are at least two occasions when the truth should be spoken. One is when a man is about to die, and another is when he is about to be sentenced for a crime.

There is not a friend, who knows Michael Schnittel, be that friend man or woman, who does not believe him to be innocent of the crime of which he stands convicted, at this bar. He himself says he is innocent. I, his counsel, believe in his innocence.

Your Honor, therefore, has only to do the duty which the law compels you to do, and that is, to pass the sentence, in accordance with the verdict of the jury.

And I make this statement, your Honor, in order that you may understand why I do not ask for mercy for this man; because asking for mercy would be, indirectly, at least, in the nature of a plea of guilty. That he cannot make.

But I do ask this, your Honor, in his behalf. Owing to the uncertainty of the day when he was to be up for

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sentence, I am not prepared, at the present time, to make such application in his behalf for a stay of proceedings, as I otherwise would have been, and I would ask that, in his case, the execution of his sentence be delayed until at least some day of next week, when I will have had time to prepare the papers, and make an application for a stay of proceedings and a certificate of reasonable doubt. For I state frankly, your Honor, that it is intended, of course, that the case shall be appealed, for the decision of a higher tribunal than this. That is all that I can say.

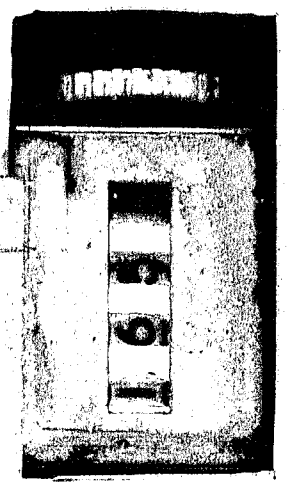
MR. LeBARBIER: May it please your Honor: In the case of the People against George Galbert, the defendant moves for a new trial, on the following grounds:

First -- that the verdict is contrary to the law, and clearly against the evidence.

Second -- that the verdict is contrary to the evidence, and against the weight of evidence.

Third- upon each of the exceptions taken by the defendant to the rulings of the Court upon the objections to the admission of evidence offered by the prosecution.

Fourth- upon each of the exceptions taken by the defendant to the rulings of the Court in excluding tes-



testimony offered by the defendant.

Fifth- Upon each and every exception taken to the ruling of the Court in admitting witnesses or testimony, and deciding any question of law, or in charging or instructing the Jury upon the law, upon the trial of the issue herein.

THE COURT: I deny your motion.

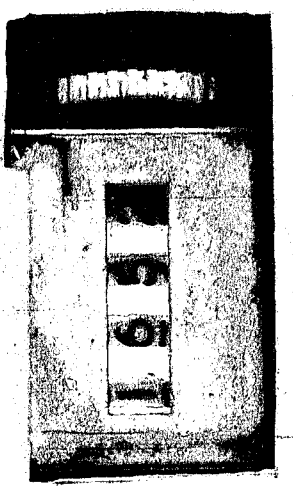
MR. LeBARBIER: Exception.

The defendant, George Galbert, further, respectfully moves in arrest of judgment herein, on the ground that no judgment can be rendered upon the verdict of guilty herein, upon the ground that the indictment was insufficient to confer jurisdiction upon the Court for the trial of this case, and that there are no facts alleged therein sufficient to constitute a crime.

And, before Your Honor denies that motion, I respectfully ask to be heard, for just one moment.

Now, in every crime prosecuted by information, before a magistrate, we are all aware that, under the sections in the Code of Criminal Procedure relating to such prosecutions, in a magistrate's court, under the sections therein provided, and more particularly under sections 194 and 208 of the Criminal Code, there must be facts set forth constituting the crime; and, in the present case, of Galbert, the affidavit by way of information

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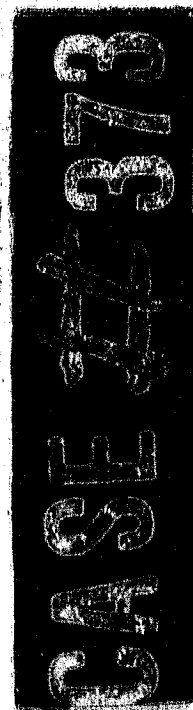
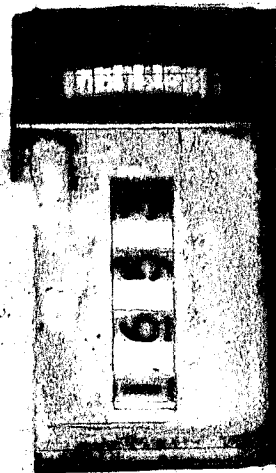
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to the magistrate set forth the facts, and he was held upon a probable cause by the magistrate to await the action of the Grand Jury.

So far, then, as that incident in the career of the case is concerned, it may be considered as closed.

But the case then proceeds to the Grand Jury, and there the written accusation of that Grand Jury, which results in the indictment, must, under the sections of the Code of Criminal Procedure, 278 and 275, set forth what the indictment is to contain, not only in the words of the Statute, but, under subdivision 2 of Section 275, a plain and concise statement of the act constituting the crime, without unnecessary repetition.

Your Honor will recall, when the defendant, Galbert, was arraigned for trial, and before any juror was sworn, I made the motion that there was not sufficient jurisdiction in this court for the trial of the defendant, Galbert, and I moved for his discharge. That motion was denied by your Honor. I now respectfully call your Honor's attention to the case of the People against Miller, in the 81st Appellate Division, of the Fourth Department; and, to my mind, it seems that it has a bearing upon the motion which I am now making, in arrest of judgment.



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In that case, which came up in the County of Chemung, and which was an appeal to the Appellate Division of the Fourth Department, from an order of the County Court of Chemung County, affirming a judgment of the Recorder's Court, given in the City of Elmira, convicting the defendant of keeping a disorderly house, Presiding Judge Parker, in that opinion, stated as follows -- and I will hand this to your Honor in a moment -- "There is another error claimed by the defendant, which is more serious in its results"-- and I beg leave to state to your Honor that this case was decided by the Third Department -- though I said the Fourth, before, by mistake -- at the March term of this year. I do not know yet whether it has been submitted to your Honor's consideration. If so, I am talking idly -- but, upon being arraigned for trial, the defendant moved to be discharged, on the ground that the information was not sufficient, under the sections 148 and 149 of the Code of Criminal Procedure, the charge being keeping a disorderly house, but, by the analogy of reading, I think it is applicable to this case-- "The information was sworn to by one Chipp, and charged, in general phrase, that the defendant, in the City of Elmira, has violated Section 322 of the Penal Code, in

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that she did unlawfully keep and maintain a disorderly house, or house of prostitution."

In the present case, it is alleged that the defendant committed the crime of sodomy, on the 22nd day of February, 1903, in the County mentioned, with force and arms, upon one Walter Bennett, and then and there feloniously did make an assault upon him, and did then and there carnally know by and with the anus of him, Walter Bennett, against the form of the statute.

Now, I contend, may it please this Honorable Court, that the allegation set forth in the indictment, in the words that I have read, is not a statement of fact. Particularly is it not a plain and concise statement of the act constituting the crime, without unnecessary repetition, as provided by subdivision 2 of Section 275.

I now proceed with the opinion: "So far the information designates the crime complained of, but it does not state any facts tending to establish the commission of that crime."

I now return to the information, as laid before the City Magistrate.

If, under that information, and under the sections of the Code, it was incumbent upon the People

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to set forth the facts constituting the act, so also was it necessary in the indictment, to set forth the acts and the facts constituting not only the act, but the crime charged, and not, under the indictment, pleading the conclusion of an act of sodomy, in that the words stated there, in the latter part of the indictment, are not set forth so as to state what the actual act was.

The Appellate Division held in what I humbly take to be, analagously the same kind of a case: "It is to be regretted that this conclusion must be reached, because it results in the defendant's discharge."

So far, then, upon the law.

Now, I appeal to your Honor's judgment that all the infamy, disgrace and distressing consequences that can flow from the charge of such a crime has been meted out to the defendant.

He stands convicted, in this county, before this Court and before the people, of the infamous crime of sodomy, and I allege -- or, rather, I make this argument upon this case--that, if there may be any saving in law, that the reasoning shall apply here: "The specific objection was taken when the defendant was arraigned, and, instead of being then put on trial, she should then have

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been discharged. The Magistrate had not then acquired any jurisdiction to try her, and he never can acquire it, upon such an information."

THE COURT: Do you draw any distinction in form or in substance, between an information before a police magistrate and an indictment found by a Grand Jury, to which indictment the defendant pleads not guilty?

MR. LeBARBIER: Yes, sir. But, being a question of jurisdiction, it is wholly immaterial. A question of jurisdiction, at any stage of the proceedings, from the information to the plea to the indictment, or afterwards, may be raised.

If we are addressing ourselves to the jurisdiction of the Court, and we claim, under the statute, that, by reason of what I have stated, the Court is ousted of that jurisdiction, I may raise the point, as was raised in this case, upon the defendant being arraigned, and before a juror was examined, or I may raise it at the Appellate Division, or, upon the jurisdictional point, I may raise it in the Court of Appeals.

Of course, it may be that I am only making this motion pro forma, because we propose to take the case up, right straight through. But, if I can arrest your Honor's legal mind. I have nothing to say upon the

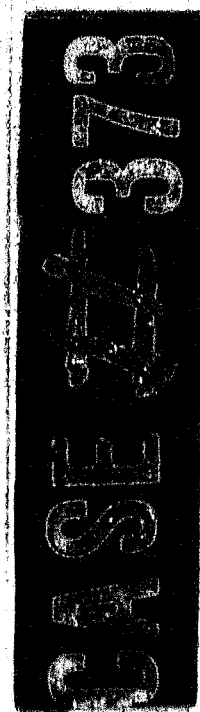
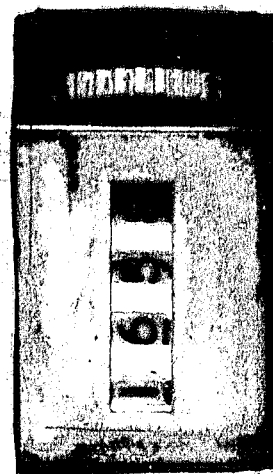
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infamy of these practices at all. I want to address myself wholly to your Honor's legal judgment, and, if I can do that, it is more than pro forma; and, if this case goes up on that point, and it should happen that it should be reversed, I should regret that I had not urged it, with all the seriousness possible, before your Honor, so as to enable you to arrive at a conclusion upon the legal argument which I now make in arrest of judgment, in this case, properly founded upon the authority that I quote.

THE COURT: May there not be a distinction there, Mr. LeBarbier, in the information filed before the Magistrate, which, in general terms, charges the defendant with the keeping of a house of ill fame -- I presume that is it, a disorderly house-- and I think it can be very generally and safely affirmed that a house of ill fame, the phrase, requires definition, as to what constitutes a house of ill fame, and the courts have given to the designation of the crime a definition, which must be accepted-- and may it not be that the Appellate Division, in that case, observed that the information did not contain the facts which come within the definition of what constitutes a house of ill fame?

MR. LeBARBIER: No, your Honor, no. I humbly differ

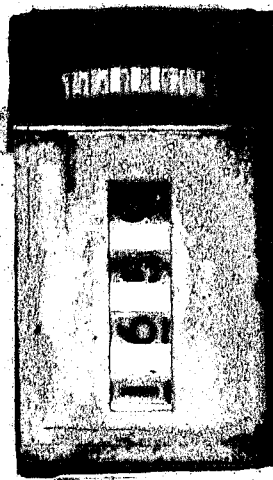


with your Honor. I have given this matter some consideration.

THE COURT: Will you please read that information again?

MR. LeBARBIER: In fact, if it makes any difference with your Honor, I would like to submit the matter, if your Honor thinks it of such seriousness and import, and let it be considered, unless your Honor has reached a conclusion, until Monday; because I am free to say that, with some little experience in the practice of the criminal law, I have given very careful consideration, particularly, to this case, and I am obliged to differ with your Honor, in that it does not follow that an indictment for a house of ill fame, or bawdy house, must be pleaded in any other way than as is stated in the Code; and, if the Code states that the facts must be pleaded, whether it is a bawdy house, murder, arson or sodomy, and not a conclusion, and a general conclusion, as is made in this case--because, unless I am far away from my powers of ratiocination, that is all that is pleaded here--no excuse can be found, upon an indictment for a bawdy house or other crime, unless the statute has been complied with.

THE COURT: Pardon my interruption, but I think you



misapprehended the point of my observation before.

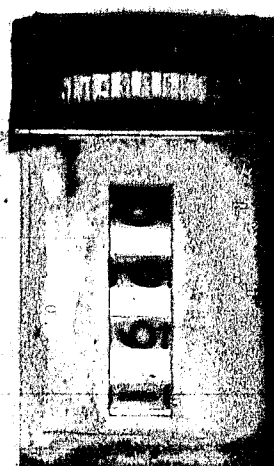
MR. LeBARBIER: Maybe I did.

THE COURT: I suggested this: That, may there not be a distinction between an affidavit, used as an information, charging the defendant with keeping a bawdy house, without specifying any acts in which the keeping of the bawdy house consisted -- and, if I remember your reading of the information, that was the defect, that it did not state the acts constituting the bawdy house-- and the acts, in such case, would be, as a general description, that men and women met in that house for the purpose of unlawful sexual intercourse, and carried on disorderly acts, etcetera-- and the indictment, in this case, charges the crime, as did the information before the Magistrate, in the case you cite, it names the crime, it charges the crime of sodomy, but it proceeds to state that the defendant did make an assault, a felonious assault, upon the person of another, by carnally knowing him by the anus? I may not give it correctly.

MR. LeBARBIER: That is right, sir, that is right.

THE COURT: That is the act charged, carnally knowing him by the anus.

MR. LeBARBIER: But that, I submit, is a conclusion.



THE COURT: Can you suggest to me a more definite statement of the act that that contained in the indictment?

MR. LeBARBIER: Yes, sir, I will. I submit to your Honor, may it please the Court, that the indictment should have been, so far as the facts pleaded are concerned, in the nature of the information laid before the Magistrate. That is the position I take.

THE COURT: I presume -- I will read another information-- I presume they are substantially the same?

MR. LeBARBIER: Yes, sir.

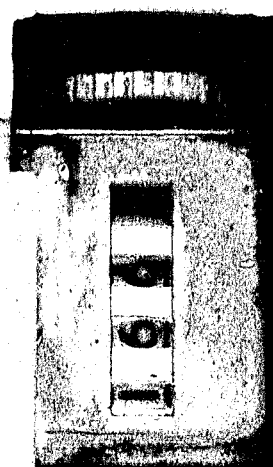
THE COURT: I am of the opinion, Mr. LeBarbier, that your contention involves the commingling of evidentiary facts with the mere statement of facts. I deny your motion.

MR. LeBARBIER: Exception. I brought it up specially, with your Honor's permission, to argue it now, because I shall rely very strongly on the ruling of the Appellate Court on that point.

THE COURT: Certainly.

MR. LeBARBIER: In the case of the People against Bennett, which case has come to me upon the appeal, and for whom I am now counsel, the defendant, Walter Bennett, moves for a new trial, upon the following grounds:

First- that the verdict is contrary to the law, and



clearly against the evidence.

Second- that the verdict is against the evidence and against the weight of evidence.

Third- Upon each of the exceptions taken by the defendant to the rulings of the Court upon objections to the admission of evidence offered by the prosecution.

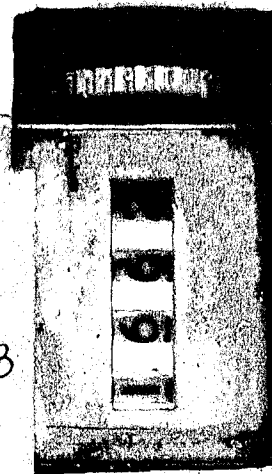
Fourth- Upon each of the exceptions taken by the defendant to the rulings of the Court in excluding testimony offered by the defendant.

Fifth- Upon each and every exception taken to the ruling of the Court in admitting witnesses or testimony, and deciding any question of law, or in charging or instructing the Jury upon the law, upon the trial of the issue herein.

THE COURT: Motion denied.

MR. LeBARBIER: Exception. The defendant, Walter Bennett, further respectfully moves in arrest of judgment herein, on the ground that no judgment can be rendered upon the verdict of guilty herein, upon the ground that the indictment was insufficient to confer jurisdiction upon this Court for the trial of this case, and that there are no facts alleged therein sufficient to constitute a crime.

In support of that, since the other motion has been



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denied, and before this one is denied, I can only make
this suggestion to your Honor, and that is, that, in my
opinion, evidentiary facts must be pleaded in an indictment charging this kind of crime.

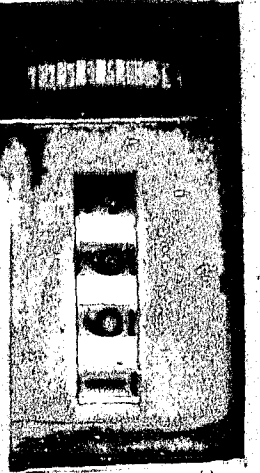
THE COURT: I deny the motion.

MR. LeBARBIER: Exception.

We are not here to plead, we are not here to add anything to what has been said, in these cases, except this: The defendant, Galbert, is an unmarried man, with all his future before him, which, of course, was not taken into consideration by the jury. But no finer array of gentlemen could now come forward than those who took the stand in his behalf.

It may be that, in the ripe experience of your Honor's judgment, your Honor may find some way, under what your Honor has heard of Galbert, or possibly what your Honor may surmise or conjecture, I say, your Honor may find some way to temper justice with mercy. If, in a case of this kind, I can make any such request upon your Honor, that is as far as we can say, in the Galbert case.

In the Bennett case, my redoubtable adversary for the people, Mr. Fly, certainly seemed to have smashed that case.



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But there was a question of an alibi in that case, that went to part of the officers' testimony, and I am free to say, from my examination, since that case has come to me, that really had that alibi been formidably welded, it would have done away entirely with the testimony of those officers.

And, furthermore, in a short while, while we are going along this hard and stony route, in the application for a stay and a certificate of reasonable doubt, we propose to come in, in the Bennett case, on a motion for a new trial, in which it shall be made to most affirmatively appear that the officers, up to a certain hour, could not have been telling the truth.

It is a physical impossibility. That part of their testimony is absolutely incredible, unbelievable, under the evidence that I will submit.

Whether they saw the act at the time, afterwards, which is denied, is another matter.

Good character was present in Bennett's case. The Rev. Mr. Bentley of the Actors Church Alliance, while made sport of--

MR. ELY: Not at all, not at all.

MR. LeBARBIER: By my distinguished friend, as to any discussion about his character, which was a very

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formidable point made by him, and he tried his case admirably to the jury, still it had its weight. He has said that he has known the defendant. Still the women were laughed at in the case, "All girls together," as the distinguished prosecutor said, in his summing up, nevertheless, they were truthful witnesses.

Now, what weight will your Honor attach to it?

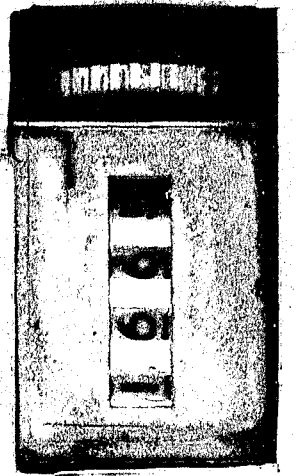
In the Galbert case, is your Honor's mind made up about the identification, If your Honor was sitting as a juror, or the physical possibility of the act, considering the testimony in that trial as to the size of the couch and the height, which was also pleasantly and formidably ridiculed by the prosecutor, in his jocose remarks to the jury about a tape measure?

Now, those are two serious points, in a very serious case; and it seems to me that it ought to halt the mind, even of a judge, in meting out any severe sentence, in his case.

THE COURT: Mr. Butts--

MR. LEE: I assume that your Honor bears in mind the suggestions that I made, the other day, in behalf of the defendant Lawrence?

THE COURT: Yes. Mr. Butts, I do not say whether or not your statement to the Court-- I will talk with you,



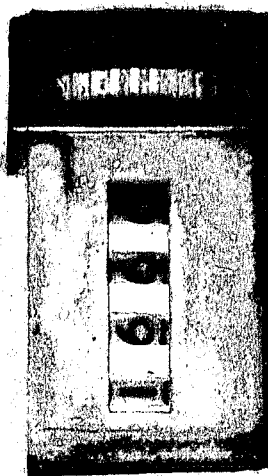
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if you please -- I do not say whether or not your statement to the Court will have any effect upon it, in passing sentence upon your client. I wish to know, however, your exact attitude. Whether it is, that you have been moved by the intensity of your feelings on behalf of your client, or whether it is the result of a cold calculation, and that is that you do not, that your client does not ask mercy. Am I to take that as the finality?

MR. BUTTS: All that I can say, your Honor, is that, in all the interviews that I have had with this defendant, in all the investigations that I have made, as to his previous surroundings and character, and all the talks that I have had with his brother, who has been for life his nearest and dearest companion, and all the conversations that I have had with this man's sister, who has been like a mother to him since his mother's death, all those conversations, all those interviews, have had their impression upon my mind.

Not only that, but I have had interviews with those outside of the family circle, with his employers, with men with whom he was every day at work; and I make the statement that I did fully and fairly upon the facts which I have stated to your Honor.



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I could not stand, in this court, and, under the circumstances, ask for leniency. I could not, under such circumstances, beg for mercy. I could not, in duty to that man who stands at the bar, about to be sentenced, make a plea for mercy, because he might contradict me, and assert his absolute innocence of the charge for which he was about to be sentenced; and, if he has been convicted, he is not the first man who has been convicted unlawfully and unjustly.

THE COURT: Well, I think that you have proceeded far enough. The defendant Schnittel will stand aside. The other four defendants will step up to the bar.

MR. LeBARBIER: May I say one word more?

THE COURT: Yes.

MR. LeBARBIER: May it please the Court, standing here convicted -- and I have not the refined feelings, I may say, of Mr. Butts-- we are convicted, and guilty, as charged, by the verdict, and so we plead for mercy, and we plead for mercy, and we plead with all the power that we can bring to bear and exercise upon your Honor's mind. We beg it, on our knees. We implore your Honor to grant us clemency. We ask and pray for extreme clemency. We realize the position that we are in, and we do not want, in addition to the conviction of this

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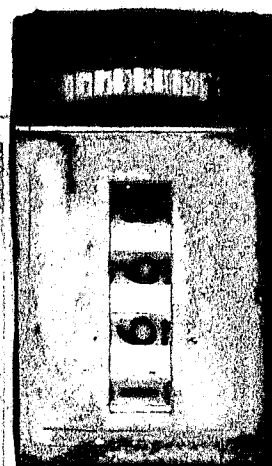
infamous crime, any enormous sentence, and so we are
beggars at your Honor's hands, and we are begging.

I understand that, on nine counts for sodomy, a
sentence was imposed of twenty years.

Now, there is only one count against each of my
clients; and, if those twenty years were imposed for
the nine counts, grant us, beggars, as we are, the pro-
portion, the pro rata, the differences, you may say,
as to the one count; and, as to that one count for each,
if your Honor can make up your mind as to that, not-
withstanding that, we can still plead a little further
for clemency, we ask for it, and beg of you to give it,
extreme clemency.

MR. PENTECOST: If your Honor please, I want to
say that, as to what Mr. LeBarbier has just said, I
most heartily concur. Whether my client is innocent or
guilty, I want all the clemency that the Court can give
him.

MR. BUTTS: May I say one word your Honor?
What I said was not in defiance of the Court, but in jus-
tice to my client; and I assume that the Court will
exercise as much clemency to the prisoner that I represent
as it will in the other cases, where the distinguished
gentlemen have expressed their views so fully.

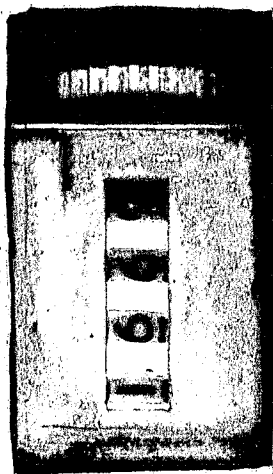


THE COURT: I think that is the proper attitude for you to assume. For the sake of your client, I am very glad that you have assumed it. Restore the defendant Schnittel to the line.

I do not propose to use many words in my observations regarding the crime of which these five defendants have been found guilty.

One defendant has plead guilty, but the plea of guilty was only interposed after it had been demonstrated that juries in this court had the courage and conscientious sense of the performance of duty, in the cases that came before them, to declare their verdicts on the strength of the evidence submitted; and, in view of that fact, I do not see that there is any cause of differentiation between the case of a defendant who has pleaded guilty, and who assumed the name of a well known family in this city, and of a gentleman prominent in life, who bears the identical name, I do not see that he is entitled to any further consideration than the others will receive.

I bear in mind everything that has been urged in your behalf. If there has been legal error, it should be a matter of very great sorrow on my part that sentence will have been imposed upon you, but it is impossible



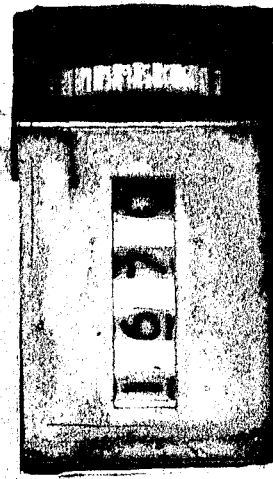
to guard against human errancy, and the duty devolves upon me to pass sentence upon you, in conformity with the verdict of the jury, declaring you guilty of this most heinous crime.

A feature of this case, which is one of an excruciating nature to me, is to have to sit in judgment, and to have to pass sentence for so revolting an act, upon men who might justly claim to be gentlemen, as some of you might, and who might be entitled to be called gentlemen, were it not for the unfortunate and criminal habits into which you have fallen. I deeply and sincerely deplore the necessity that compels me to pronounce upon you the sentence of the Court for such a nameless and revolting crime.

I appreciate all that Mr. Pentecost has stated as to the severity which the law metes out to this crime. I am not here to act as a sociologist at all. The law of the Legislature is supreme and binding upon me.

A discretion, however, is vested in me, and I purpose to use that discretion, by conserving the protection and well being of society, on the one hand, and, on the other hand, extending as much mercy and clemency as I can to the unfortunate defendants.

I sentence each of you to State prison for a period of seven years and two months.



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New York, June 12, 1903.

MR. LE BARBIER: In the case of the People against George Galbert, charged with the crime of Sodomy, I now move upon notice, which the District has consented to accept, for a special jury.

MR. ELY: I give consent to accept oral notice, sir, as to a special jury.

MR. LE BARBIER: Before the trial of this case, on all the grounds that are set forth under that act, and on the ground that, inasmuch as this case-- as the case of the People against Walter Bennett has been tried in this Part, before your Honor, in the presence of the talesmen who have been summoned at this Term of Court, I submit that it would be unfair, improper and unjust.

THE COURT: Submit your affidavit, Mr. Le Barbier. The Statute requires the affidavit, and let the District Attorney endorse his consent on your affidavit.

MR. ELY: I did not consent to a special jury, at all. I simply said that I consented to have the motion made, without notice; that's all.

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THE COURT: I understood that the District Attorney consented to the special jury?

MR. ELY: No, sir; I did not.

MR. LE BARBIER: No, sir; he said that he would consent to my making the motion, orally, before you; that he would accept oral notice of the motion.

THE COURT: Very well. I now understand. Submit your moving papers, Mr. Le Barbier. The District Attorney says that he waives notice of motion. Submit them during the day, or on Monday morning.

MR. LE BARBIER: Yes, sir; either today or on Monday morning, as your Honor wishes.

THE COURT: At your convenience, Mr. Le Barbier.

MR. ELY: Well, if your Honor please, I cannot proceed with the case today; that's all.

THE COURT: Mr. Le Barbier, I appreciate your position, with regard to the panel of jurors, while I took pains that the remainder of the jurors should not hear any of the testimony at all, which they did not.

MR. LE BARBIER: But I have alleged in my affidavit, or I refer to one which I will prepare, that all the evidence was summed up in their presence.

THE COURT: Why not take a panel from another Part of the Court? That is the same thing; is it not?

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MR. LE BARBIER: Take a panel from another
Part of the Court?

THE COURT: Yes. That reaches the same pur-
pose.

MR. LE BARBIER: I think it answers the same
purpose, your Honor.

THE COURT: You want to secure a panel of jurors
who have not heard anything about the case?

MR. LE BARBIER: Yes, sir.

THE COURT: I sympathize with you; and I will
grant your request, as far as I can.

MR. LE BARBIER: I will accede to your Honor's
suggestion, as to another panel from another part of the
Court.

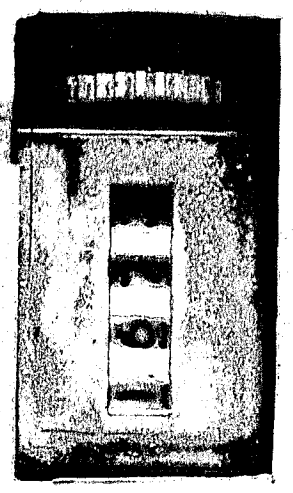
THE COURT: I will obtain a panel from another
Part of the Court. Of course, gentlemen, it will large-
ly depend upon the exercise of your preliminary challenges.
We might exhaust the panel from another Court.

MR. LE BARBIER: Well, if I think a man is
fair, I will certainly accept him.

THE COURT: Well, then, we will try to secure
a jury.

MR. LE BARBIER: I am perfectly content with
that, sir.

THE COURT: Very well, then. The Clerk will



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send into another Part for a panel of jurors.

MR. LE BARBIER: Now, may it please the Court, in the case of George Galbert, counsel for the defendant respectfully moves, under Section 244, et seq of the Code of Criminal Procedure for the removal of this case from the Court of General Sessions to the Supreme Court, upon his application; and upon the ground, also--- upon his application; that is all.

THE COURT: I deny the motion.

MR. LE BARBIER: Exception, may it please the Court. Now, if your Honor will permit me--- Does your Honor deny it for the reason that no ground is stated?

THE COURT: I will ^{not} state any further.

MR. LE BARBIER: Well, may I state the ground, if your Honor please?

THE COURT: Oh, no.

MR. LE BARBIER: Exception.

(The case was then adjourned, by consent, until Tuesday morning next, counsel for the defendant having consented to have a special jury drawn for the trial of the case.)

