

START
ROLL #

41

TRIAL TRANSCRIPTS

1883 - 1927

JOHN JAY COLLEGE

NEW YORK, NY

Trial Transcripts of the County of New York

1883 - 1927

Collection Summary

<u>Name of Court</u>	<u>Years</u>	<u>Number of Cases</u>
Court of General Sessions of the Peace	1886-1927	2586
New York Supreme Court	1896-1922	136
Oyer and Terminer	1886-1895	28
District Police Courts	1887-1894	8
Miscellaneous courts (Magistrates' Court, Department of Public Works, Coroner's Office and Sheriff's Office)	1883-1926	8
Grand Jury (Court of General Sessions and New York Supreme Court)	1883-1920	10

COURT OF GENERAL SESSIONS OF THE PEACE

CASES 203 TO _____

START

203

CASE

203

I N D E X

	Direct	Gross	Re-direct	Re-gross
Samuel Keller	3			
Frank H. Vanderbeck	45			
Samuel Keller (resumed)	49			
Frank J. Wright	451	465	469	469
James C. Powell	477	493		
Elisha C. Hibbard	500	522		
Samuel Freeman	528	537	537	568
Jacob Lamberg	568	578	592	
Lillian Grammer	595	637	659	680
Frederick E. Turner	682	689	696	697
Emilie Goebel	699	722	738	
Sadie Schweiger	741			
Emilie Geebel (rec'd)	745			
Alphonzo K. DeGuiscard	763			
James B. Wilson	764			
Alphonzo K. DeGuiscard (resumed)	770			
Francis Heenan	776			
Herbert L. Frazee	787			
William C. Bailey	789			
Walter B. Talman	790			
Herbert L. Frazee (rec'd)	793			

203

	Direct	Cross	Re-direct	Re-cross
William C. Bailey (rec'd)	799			
James M. Hobby	798	812	824	830
Francis P. Harron	831			
William C. Lange	857			
Francis P. Harron (rec'd)	901			
James G. Ballantine	917			
Frank C. Watts	919			
Charles E. Demarest	920			
Henry P. Seibert	921			
William E. Moore	925			
Alphonzo K. DeGuiscard	927			
Harry Zabriskie	928			
Everett A. Patterson	932	936	940	
William F. Miller	941			
Rudolph Gunther	943			
David N. Carvalho	947			
Charles M. Miller	1030	1034	1043	
Anna T. Mallon	1047	1051		
Robert W. Hawthorne	1060	1065	1068	
Myron L. Bernard	1072	1117	1272	1298
William A. Sweetser	1330			
Mary E. Veith	1333	1369	1429	

203

	Direct	Cross	Re-direct	Re-cross
Rudolph Gunther (rec'd)	1447			
James B. Kellogg	1452	1536		

203

COURT OF GENERAL SESSIONS OF THE PEACE,

County of New York,

Part I.

The People &c.,

-v-

" Before

James B. Kellogg, otherwise called"

HON. JOHN W. GOFF, R.,

Jacob Keller, indicted with Myron "

and a special jury

L. Bernard and Samuel Keller. "

(Indictment No. 26131).

Indictment filed March 30, 1899.

Indicted for Grand Larceny in the first degree and conspiracy

Borough of Manhattan,

New York, March 8, 1900.

APPEARANCES:

For the People:

HON. WILLIAM M. K. OLCOTT, Special Assistant District
Attorney.

For the Defendant:

Vernon M. Davis and Delos McGurdy, Esqs.

Thomas W. Osborne,

Official Stenographer.

203

2
(Defendant's counsel interposed no challenge to the panel).

(A jury was selected and sworn).

New York, March 12, 1900.

TRIAL RESUMED.

MR. DAVIS: I am moving upon the indictment for grand larceny in the first degree, which charges the larceny of ninety-seven thousand and odd dollars, which I understand to be the indictment which is moved for trial. My motion is a preliminary one. It is that the District Attorney be compelled to elect at this stage the count upon which he will try this defendant, the indictment containing eight separate counts. I submit the motion without argument.

THE COURT: I will deny it pro forma, with permission to renew it.

Exception.

(Mr. Olcott then opened the case in behalf of the People.

(At the request of defendant's counsel, all witnesses on both sides were excluded from the Court room).

203

3
SAMUEL KELIER, called as a witness in behalf of the People,

being duly sworn, testified as follows:--

D i r e c t E x a m i n a t i o n .

BY MR. OLCOTT:

Q Where do you live? A 209 West 136th street.

Q How long have you lived there? A Five or six years--five years and a half.

Q You are one of the defendants indicted in this matter?

A I am.

Q You were the general manager of the E. S. Dean Co.? A

I was supposed to be the manager of the E. S. Dean.

Q Do you take the witness stand voluntarily? A I do.

Q Has any promise been made to you by the authorities or any of them? A None of them.

Q When did you first meet the defendant, James E. Kellogg, who sits at the table? A In September, 1896, latter part of September 1896.

Q You were introduced to him by whom? A By Mr. Weinmann, Charles Weinmann.

Q Were Charles Weinmann and you in business at that time?

A We were, at 44 and 46 New Street.

Q Under what firm name? A Sam Keller & Co., at that time.

Q It had been under another name? A At one time, when we first opened at that place, it was under the name of

203

4
E. Mortimer Pine.

Q What was the character of the business you were transacting there? A It was called a bucket shop.

Q That was the character of the business, was it not?

A Yes, sir; we backed all our trades.

Q That is, you traded for customers? A We traded for customers.

Q In small lots? A Or large lots--take any trade---

MR. DAVIS: I object to the form of the question.

MR. OLCOTT: Question withdrawn.

BY MR. OLCOTT:

Q You say it was in the latter part of September that you first met Mr. Kellogg? A September, 1896.

Q Whereabouts? A In the private office of Sam Keller & Company's concern.

Q Did you have any conversation with him on that occasion?

A Just introduced to him.

Q No conversation? A None at all.

Q When did you next meet him? A A couple of days afterwards.

Q Where? A At the same place.

Q Any conversation with him then? A Yes, sir; I had conversation with him then relating to a business he was in at the time.

203

Q State what the conversation was, as nearly as possible in the language used. A I will have to lead up to that, because Mr. Weinmann, in the interim---

Objected to.

Q State the conversation. If anything else is necessary and permissible it can be brought in afterwards. A I told Mr. Kellogg that Weinmann had been talking to me about a concern that he owned, and I would like to hear the particulars. He said that he would show them to me if I would come over to his place..

BY MR. DAVIS:

Q Who said that? A Mr. Kellogg said he would show me all the particulars of the business if I would come over to his place. It was new to me then, that business. Then, after he left, I could not promise to go over because in Weinmann's conversation---

Objected to.

BY MR. OLCOTT::

Q Do not give anything else except the conversation that occurred? A That is the conversation I told him. I could not go over right then.

Q When did you next see him? A I saw him then a day or two afterwards at 35 Broadway.

Q At what place? A E. S. Dean & Co.

203

Q What did he say? A He said, "You can look this plant over!"

Q This plant? A Yes, sir.

Q E. S. Dean & Co.? A Yes, sir. He said, "You can look this plant over if you want to, if you have been talking to Charlie of it, and you can make--

BY THE COURT:

Q Plan or plant? A Plant. He said, "If you can come to the terms that I proposed to Charlie, why, you can examine the books and everything else, and if we can make the deal, well and good. If not, I will keep on running this thing myself."

Q What did you do, if anything? A I went back to see Weinmann. I told him he had sent me on a fool errand. The man wanted twenty thousand dollars, and we had not twenty thousand cents.

Q When did you next see Kellogg? A This was from day to day; I saw him a day or two afterwards.

Q A day or two after this last interview, you saw him again?

A Yes, sir.

Q Where? A At 35 Broadway.

Q What did you do then? A I told him I had been talking to Charley Weinmann, and we had not any money. It was no use, his talking twenty thousand dollars to us. And if he wanted to let us in--- He knew I was an expert accountant

203

7

from what Weinmann had told him--if he would let me in, and give Weinmann a third interest and me a third interest, we would come in and without putting up any money, because it was impossible--we had not any money to run our own business. He would not do that, and he said, "I will think it over." "All right," and I said, "We will wait for you." And I did not hear anything from him for several days.

Q Had you before that time examined the books of the business of E. S. Dean & Co.? A No, sir; just had talked to him, and that is all. He would not let me look at them until I was ready to give up some money.

Q When did you next see him? A He came over to see us. We had moved upstairs then, and Weinmann and I, and he came over to us, and said he would be willing to take ten thousand dollars in cash.

BY THE COURT:

Q Who came over to see you? A Mr. Kellogg came over to our office. We had moved upstairs. He said he would be willing to take ten thousand dollars. He thought I could get a great deal of money from the West, because I had good credit out there, as I showed by drafts--he thought I could get it--in fact, lots of people thought I was rich--and I said I could not give him any cash at all, but if he was willing to let us in on the terms proposed by me, we would come in,

203

8

and I would turn the Keller business over to anybody. It was a little thing, and hadn't any money, at all--had a little money, a few hundred dollars--and I would turn that over, pay for the liabilities, and I would take care of the Dean Company.

So we dickered around a day or two or probably two days, and I said I would go over and look over his 35 plant, and if he would let us in, there was no further conversation necessary, and I would fix up the books--I mean, I would take an abstract of the books and we would go in together, and so he finally concluded that Weinmann and myself--

BY MR. DAVIS:

Q What? A Mr . Kellogg came to this agreement--
Objected to.

BY MR. OLCOTT:

Q State what he said. Do not call it an agreement.

A He said, "I will take ten thousand dollars out of the first receipts as soon as you can spare the money, and then I will take a third of the divvies."

Q His third of the divvy? A "My third"--of what he called that profits, that was the money was left in excess of what we sent out to customers for dividends alleged to have been

203

9

earned.

Q Was it after that you examined the books? A Then he had promised to take our terms--yes--he had promised to let us in on our terms--that is the way to put it--and then he said, "You can look over the books." And so I went there and looked over the books and saw his ledger and customers books and Goslin's books, and one thing and another, and I found out what he owed.

Q Was that the ledger of the business of E. S. Dean & Co. which Kellogg showed you that day?

MR. DAVIS: I do not think the witness has reached that point, and I object.

MR. OLCOTT: I understood him to say that he looked over the ledger.

THE COURT: I think the question is premature at the present moment.

(Former question and answer read to the witness.)

BY MR. OLCOTT:

Q Is there anything in the last answer that you wish to correct? A Yes.

Q What is it? A I would not make him a proposition unless I knew what I was trying to buy.

MR. DAVIS: I object to the argument of the witness.

203

THE COURT: I sustain the objection.

BY THE COURT:

Q What did you say in relation to this matter? A I want to correct that. I want to say that I looked over before the day that this agreement was made. I looked over the liabilities. I also read some of his circulars, and I saw the way the remittances had been coming in--that is, his daily mail for a few days, and then I thought it was a good thing.

THE COURT: Strike out the latter part, as to what the witness thought.

BY MR. OLCOTT:

Q So then, I understand you that before you made an examination of his books, you had seen his circulars? A Yes, sir.

Q Is that true? A Yes, sir.

Q Is that one of the circulars that he showed you on that occasion? A That is one of them, yes, sir, just like the ones that I saw--stacks of them.

Q You saw a large number of those? A Yes, sir.

Q Did Mr. Kellogg say anything to you about it? A He said, "There I sit."

Q Pointing to what? A His picture there.

MR. DAVIS: I move to strike out the last an-

203

11
swer. The circular is not in evidence.

MR. OLCOTT: I was about to introduce it.

MR. DAVIS: The witness has given what pur-
ports to be a part of the circular.

Motion denied. Exception.

MR. OLCOTT: I offer this circular in evi-
dence.

MR. DAVIS: I object to the admission of the
circular in evidence on the ground that it is incom-
petent, irrelevant and immaterial and not properly
proven. The witness does not say it is the circular
ar which he saw, or which was given to him. He
says it is one similar.

BY THE COURT:

Q You say this circular is similar. A Yes.

Q In what respects? A That is the company's circular.
They are all alike.

Q What the Court wishes to know is as to the circular that
you say the defendant handed to you and showed to you.

A Yes, sir; it is similar. We used that circular with a
different heading after the corporation was formed.

MR. DAVIS: I move to strike out the last an-
swer.

THE COURT: Strike out the latter part of the

203

last answer.

MR. DAVIS: I object to the introduction of this circular.

Objection overruled. Exception.

The circular is received in evidence and marked

People's Exhibit No. 1.

BY MR. OLCOTT:

Q Was that the only circular he showed you that day? A I could not remember that. That was the principal circular he used at that time. I could not answer. He showed me a book with an annual statement, but we did not consider that a circular.

Q What was that book? A That was an annual statement.

Q What was it called; do you remember? A I would not swear whether it was called *the bit annual statement* - I would know it if I saw it.

Q Was it the same day that he showed you the books of E. S. Dean & Co.? A The day he showed me the circulars, the day I saw the books.

Q Is that book you have in your hand one of the books that he showed you?

MR. DAVIS: Fix the date, Mr. Olcott.

MR. OLCOTT: I will, in my next question.

A Yes, sir; that is it.

BY MR. OLCOTT:

203

Q What did he tell you that book was? A That is his ledger.

Q When was this conversation, as near as you can remember?

A This was early in October, this final conversation.

Q Of what year? A 1896.

MR. OLCOTT: I offer the book in evidence.

MR. DAVIS: Objected to as immaterial, irrelevant and improper, and not properly proven.

THE COURT: The only evidence here is that this defendant told the witness this was his book of account, his ledger.

MR. OLCOTT: And that he showed it to him at the offices of E. S. Dean & Co., 35 Broadway, in October 1896.

THE COURT: What is the purpose, Mr. District Attorney, at this time, assuming that the defendant did tell the witness that this was his ledger?

MR. OLCOTT: The purpose is to turn to page 3, and ask this witness what Kellogg said to him about the account there contained.

THE COURT: I sustain the objection to the introduction of the book.

BY MR. OLCOTT:

Q Did he speak to you about any special account in that book?

Objected to. Objection sustained.

CASE 203

Q What did he say about that book? A He said, "This is my ledger. In this book you can find out how much I have taken in, and you can see whether it is a good thing or not."

Q Did he say anything else? A I asked him what this Goslin & Co. account was, and then he told me that there is where he worked his money.

Q Was the page containing the Goslin account open before you at the time or not? A Yes, sir; laying just like this.

Q Who were looking at the book at the time? A Just he and I.

MR. OLCOTT: I offer page 3 of the book in evidence.

MR. DAVIS: I object as immaterial, irrelevant and incompetent.

Objection overruled. Exception.

It is received and marked People's Exhibit No. 2, being page 3 of the ledger referred to.

BY MR. OLCOTT:

Q Did he say anything else about Exhibit 2?

MR. DAVIS: I object.

THE COURT: Objection sustained, as to the form of the question.

BY MR. OLCOTT:

Q State the entire conversation at that time, if you have not

203

already stated it. A I have not finished.

Q Proceed. A I said, "According to this book, Goslin & Co. owe you a lot of money." He said, "We could fix that up all right with Al," meaning Al Goslin, and I said, "It was a careless way to keep a discretionary pool account. In case something happened, when you had a run or anything like that, and had to close down, you could not show what became of your money." He said that was all right, he would show me the books that would prove where the money had gone. I said it was a careless system of book-keeping. He said he had the books all right, the combinations all right, and when we took hold, all we had to do was to assume the liabilities and fix it.

MR. DAVIS: I did not hear you.

THE WITNESS: All we had to do when we took hold of this business was to assume the liabilities.

BY MR. DAVIS:

Q Who said that? A Kellogg.

BY MR. OLCOTT:

Q Did he say anything else? A About this one page?

Q Or any of that book? A Oh, yes. Then, of course, I added up the liabilities, and they came to about \$112,000.

I said, "You have run this up pretty good, to \$112,000."

203

Now, what has become of it?" He said, "Well, that is what I have grabbed, this \$112,000." I said, "How much cash have you got on hand?" He said, "Well, whatever cash there is on hand, when you all start in, I will turn over to the corporation." Of course, we had not taken charge up to that time, and I did not ask the particulars as to how much cash he had on hand. I did not think that when we took hold of it we would have to assume all the liabilities in this ledger.

Q Who told you that? A Kellogg told me that. I am talking of Kellogg and I having this conversation all the time.

Q Proceed. A Of course, this \$112,000. of liabilities of E. S. Dean & Co., there was nothing to represent that except entries in the books. There was no \$112,000. cash on hand, because he was not to turn us over anything except the balance in the bank. He said, "I have got some money up in the Gansevoort Bank. Of course, I will turn that over, but if there is any money comes in between the day we sign this contract---I want this contract to commence from the 12th of October--that will be on a Monday,"--and he says, "Of course, I am entitled--the old company is entitled to the Saturday and Sunday mail."

Then I objected, because we could not run the business without any money. I said, "Saturday and Sunday mail

203

is generally very heavy, according to your books, as I have looked over; your Monday mail is a fine mail, and Saturday mail--there is an accumulation of two days, and that will probably give us enough money to run through the next two days, because there is a dividend due on the 15th, and we will have to pay that, according to your circulars."

BY MR. DAVIS:

Q Who said this? A Kellogg. I am only talking about Kellogg and myself.

BY MR. OLCOTT:

Q You said that last to Kellogg? A Yes, sir.

BY MR. DAVIS:

Q You are talking now? A Yes, sir. I said, "There is a dividend due on the 15th."

Q Who said that? A I said to Kellogg.

Q What you have been testifying to now is what you said to Kellogg about the dividends? A About the dividends.

THE COURT: The witness is testifying to a conversation between himself and the defendant.

Continue.

THE WITNESS: I said, "The 15th of October will be next week, and of course we have to pay a dividend according to your circulars and statements, and we are going to continue to pay dividends as a corporation, and we have no money, Charlie and I have no money."

203

Kellogg then said, "All right. You can have the Saturday and Sunday mail."

So the Saturday and Sunday mail was pretty good, was enough to run us through Wednesday, dividend day, and of course, we were getting in mail every morning, Monday, Tuesday, Wednesday, Thursday and Friday.

So we sent out drafts on the corporation for the dividend, which gave us from two to eight days to pay those drafts, because some of them went away out West. And so we were easy in money matters the first week that the corporation took hold.

BY MR. OLCOTT:

Q You spoke of sending out drafts that first week. To whom did you send them? A We sent them to all the subscribers of E. S. Dean & Co.

Q That is, to all these old customers? A All the old customers of E. S. Dean & Co., who had joined the corporation, who had transferred their accounts to the corporation.

Q You have not told us about that. What was done with reference to those customers? A I must tell you the conversation from the beginning.

Q Stick to the conversation. A Mr. Kellogg suggested that we make a corporation of it because this thing had gotten away beyond his expectations, that is, the amount of money

203

received, and he said, "If we make a corporation of this, Keller, we can all slide out in case anything happens; in case there is a smash-up or anything like that we are nothing and none of us are officers, and they won't hold us as individuals."

So Weinman and I went up to our attorneys, and asked their idea of forming a corporation. Of course, Kellogg and I, in the course of our conversation, concluded that a million dollar capital would sound pretty good. So our attorneys told us how much it would cost.

We did not have the money to pay them for this incorporation, because it took about \$150. to pay someone in Trenton--let us see---we had to pay, any way, a certain percentage on each thousand or ten thousand dollars ^{and} we had to pay that in cash before we could get a certificate. They were willing to trust us for fees and services---

BY MR. DAVIS:

Q Who was that? A Our attorneys. They were willing to trust us, but the money that they had to advance to the Chancellor I believe, in New Jersey, we had to furnish. We got that money some way or other.

BY MR. OLCOTT:

Q Was Kellogg with you when you went up to see your attorneys?

A No, sir.

203

Q Had you had any conversation with him other than what you have narrated? A In reference to what?

Q About the division? A I have not gotten to that yet. I have only gotten to the corporation, to his idea of forming a corporation.

Q Had you not prior to that time come to an agreement with him?

A I said that a while ago, that he was to get ten thousand dollars out of the first receipts and continue his partnership, drawing one-third of our profits. I stated all that a while ago.

Q Who was to get the rest? A Weinmann was to get one third and I was to get a third.

Q What was to be done with the \$113,000.?

Objected to as leading. Objection sustained.

Q Was anything other than you have stated said about any subject, as to the participation of the various persons in the profits? A There was nothing said about profits, other than he was to get ten thousand dollars as a bonus for letting us in. He was to continue in the same capacity, that is, writing the circulars, which was his strong suit-- he was to continue writing the circulars. I said he gets his ten thousand dollars out of the first receipts, continues to write the circulars, and Weinmann was to take charge of the mail and the mailing department, as he was an adept in

PAGE 203

correspondence, and I was to have charge of the front office, making the trades up, the office manager, in short. We agreed on those terms. The liabilities of E. S. Dean & Co. were carried over to the corporation. We sent out a circular letter composed by our attorneys, asking the creditors of E. S. Dean & Co. to consent to a transfer of their account with E. S. Dean & Co. to the corporation, and if any dissented, to let us know on an enclosed blank, and we would send them their money, their principal and accumulated dividends. We sent those circulars out on the Sunday, the day before the corporation took charge.

Q That is Sunday October 11? A October 11th, the Sunday before the corporation took charge, and the girls worked down there that day, and we were all down, Kellogg and Weinmann and Barnard and myself and the clerks.

Q At what office? A 35 Broadway.

Q The old office of E. S. Dean & Co.? A Yes, sir, the old office of E. S. Dean & Co. We sent out those circulars and got a good many of them off Sunday night, I guess the majority, and the balance on Monday, and as slips were returned assenting to the transfer, the memorandum was kept by one of our clerks, a Miss Kramer, who had charge of that department, and I think that every---

Objected to.

203

THE WITNESS: I don't believe--I know that every one of the creditors of E. S. Dean & Co., with the exception of possibly two, signed that transfer.

Q As to the two, what did you do with them? A Gave them their money back, if there were two. I did not say there was two. I know of one.

Q On October 11th, this Sunday when you stated you were at 35 Broadway, who else was present? A The firm, Keller, Kellogg, Weinmann and Barnard and the clerks.

MR. DAVIS: I move to strike out the answer.

THE COURT: The motion is granted. The characterization of "the firm" is improper.

BY MR. OLCOTT:

Q Just state the names of those present, who were present on Sunday? A Mr. Kellogg, Weinmann, Barnard, Willie Lang, a colored boy whose name I do not know--called him Arthur--Miss Kramer, Miss Crowfoot, Miss Moe, the clerks there, and myself.

Q You had not mentioned Barnard's name before. Tell us about him, so far as Kellogg and you conversed about it? A We needed a President, when Kellogg and I could not find a president---I could not suggest any name that would suit him, and he could not suggest any that would suit me, and I had a brother-in-law then out of work, and I was taking

203

care of him, and I thought it would be a good chance to give him a job, so I suggested to him to come down there and take the presidency of the concern.

Q Did you propose that to Kellogg? A Yes, sir; Kellogg had to agree, of course. Would not do anything unless I did ask him.

MR. DAVIS: I move to strike out that voluntary statement.

THE COURT: Strike it out.

MR. DAVIS: And will your Honor caution this witness to answer the questions?

THE COURT: Confine yourself to the questions.

THE WITNESS: Yes, sir. Can I go on with the Bernard matter?

MR. OLCOTT: Yes.

THE WITNESS: I told him to take the presidency.

BY MR. DAVIS:

Q Who? A Bernard; and we would give him a good salary, and then he could support his family, and I would not have to support him.

BY MR. OLCOTT:

Q Who was present at the time you had this conversation with Bernard? Anybody but you and he? A Nobody.

203

MR. DAVIS: I move to strike out the conversation.

MR. OLCOTT: There is no objection.

THE COURT: Strike it out.

THE WITNESS: He consented to take---

MR. DAVIS: I object.

THE WITNESS: I thought you were waiting for me.

MR. DAVIS: I am waiting for you, but I have to wait my turn.

MR. OLCOTT: Now I respectfully offer so much of that ledger as the witness has referred to, as showing the accounts of customers.

MR. DAVIS: I object to the admission of that part of the book in evidence, on the ground that it is irrelevant, immaterial and incompetent.

THE COURT: How is that material?

MR. OLCOTT: Material as showing the figures which appear now only in evidence from this witness's statement. This witness states that the figures were gone over between him and Kellogg at the time when he examined this book of E. S. Dean & Co. at Kellogg's invitation. Kellogg then stated to him, "There is \$113,000. due to customers, but they are

203

not calling for their money, and they will consent to an assignment of their claims to the E. S. Dean corporation." This ledger shows that that was the amount.

THE COURT: Concede that to be so, but how does that become material on the question, for instance, of the misappropriation of moneys afterwards alleged to have been received.

MR. OLCOTT: Because it formed part, as we shall argue, of the motive on Kellogg's part to turn his business into a corporation, and because it gave Kellogg the advantage of participating to the extent of that \$112,000. before the others got anything.

THE COURT: I will sustain the objection.

BY MR. OLCOTT:

Q I hand you a book and ask you what it is. A That is the first ledger of the corporation.

Q How was that opened? A That was opened by transferring the balances.

MR. DAVIS: Objected to on the ground that it is incompetent, immaterial and irrelevant.

Objection overruled. Exception.

THE WITNESS: That was opened by taking the

203

CASE

balances off the ledger of E. S. Dean & Co. and transferring them to this new ledger.

BY MR. OLCOTT:

Q When were those transfers made?

Objected to. Objection overruled.

Exception.

A They were made some time in the week commencing October 12th.

Q All made at once? Tell us how they were made.

Objected to. Objection overruled.

Exception.

A We did not make them all at once. We used the old book for a while, because we had not had the consents of the subscribers of the company to the transfer to the corporation.

MR. DAVIS: I object, and move to strike out the answer.

THE COURT: Strike out everything after the word "because".

BY MR. OLCOTT:

Q I ask you again, when were those transfers of the customers' accounts made?

Objected to. Objection overruled.

Exception.

A They were made commencing from the morning of October

CASE 203

12th, those accounts that were in the old ledger, and run right along as fast as the girl could enter them.

MR. DAVIS: I move to strike out the answer.

THE WITNESS: I meant to say the book-keeper, instead of the girl.

THE COURT: I deny your motion, Mr. Davis.

Exception.

BY MR. OLCOTT:

Q How long did that book continue to be the ledger of the Dean Company?

Objected to. Objection overruled.

Exception.

A We had so many ledgers--we used this ledger right up to the close.

The ledger is offered in evidence by Mr. Olcott.

MR. DAVIS: Objected to as incompetent, irrelevant and immaterial.

THE COURT: I sustain the objection. I do not think it is sufficiently proven.

MR. OLCOTT: I will ask further questions along that line.

BY MR. OLCOTT:

Q How often did you see that ledger?

Objected to. Objection overruled. Exception.

A I saw the ledger every day.

Q Who kept it? A Well, it was kept by different people.
At first Miss Crowfoot kept it.

Q And afterwards who? A Some assistant--her assistant.

Q What did you do, if anything, with reference to it, every day?

Objected to. Objection overruled.

Exception.

A I don't understand your question.

Q You say you saw it every day? A Yes, sir; the books were taken out and put on the counter every day. I told Miss Crowfoot---

MR. DAVIS: I object to what he told.

Objection sustained.

BY MR. OLCOTT:

Q Did you examine it each day? A No, sir.

The book is marked for identification, People's
Exhibit No. 3.

Q You brought us down to October 11, 1896. State what transpired thereafter. Go right on from that time down.

MR. DAVIS: I object to the question as too general.

THE COURT: Yes; it is very general.

BY MR. OLCOTT:

CASE 203

Q What was done with reference to the business on October 12th 1896?

Objected to as too general.

Objection overruled. Exception.

A Well, October 12th, 1896, the corporation took charge of the business of E. S. Dean & Co.

Q Did you go down to the office at 35 Broadway? A I was then in charge of the front office of 35 Broadway.

Q Was Mr. Weinmann there that day? A Yes.

Q Who else? A The old clerks of E. S. Dean & Co.

Q Who had been made as the other officers of the corporation?

A M. L. Bernard was president; there was a boy named Jake something--Jake Lamberg, who was made secretary and treasurer both.

Q Who was he? A He was a clerk over at 44 Broadway, at the business of Keller & Co.

BY MR. DAVIS:

Q Sam Keller? A Yes.

BY MR. OLCOTT:

Q Any other officers at that time? A There was some directors. There was a man--we had to have a Jersey director to make it a corporation, Jersey corporation.

Q Who was he? A His name was Leopold Bellbag.

Q What did he do with relation to the affairs of the corpora-

203

tion?

Objected to.

MR. OLCOTT: I want to show that this corporation was a corporation of straw; that the officers and directors did nothing; that the business was run by these people along the lines of the statement that the witness has already made.

I respectfully urge that it is competent for me to show that these so-called officers and directors really did nothing with relation to the business.

THE COURT: Your question is very general and indefinite--what did they do with relation to the corporation?

BY MR. OLCOTT:

Q I will put it in this form: Did this man Bellbag have any charge of the business.

Objected to. Objection overruled.

Exception.

A Never knew him.

THE COURT: Strike out the answer.

BY MR. OLCOTT:

Q Did Bellbag have anything to do with the business?

Objected to. Objection sustained.

203

Q Did this man Bellbag have any charge of the business?

Objected to. Objection sustained.

Q Did you ever see Bellbag?

Objected to. Objection overruled.

—Exception.

A I never saw him.

Q How often were you at the offices of the company? A 35
Broadway?

Q Yes. A Every day.

Q And for how long a time each day? A From the opening to
the close.

Q Did you ever see Jake Lamberg at the offices of the company?

A Yes, sir.

Q How often? A Whenever he was needed to sign checks.

Q How often?

MR. DAVIS: I move to strike out the last an-
swer.

Motion denied. Exception.

BY MR. OLCOTT:

Q How often? A Every day.

Q Did he do anything with relation to the business of the
company except sign checks?

Objected to. Objection overruled.

Exception.

203

A That is all he did.

Q Did you ever at any time have a directors' meeting of the E. S. Dean Company?

MR. DAVIS: I object as not being the best evidence, and as incompetent, immaterial and irrelevant.

Objection overruled. Exception.

A I was not an officer of the company.

MR. DAVIS: I move to strike out the answer.
Motion granted.

BY MR. OLCOTT:

Q Do you know whether any directors' meetings were ever held?

Objected to. Objection overruled.
Exception.

A I never heard of any.

MR. DAVIS: I move to strike out the answer.
Motion granted.

Q (Question repeated). A I know there were none.

MR. DAVIS: I move to strike out the answer.
Motion denied. Exception.

BY MR. OLCOTT:

Q Do you know whether any capital was ever subscribed to the corporation?

Objected to. Objection overruled.

203

MR. DAVIS: That is not the way to prove whether any capital was subscribed. There is a method of doing that, under the laws of the State of New Jersey. This witness is not competent to testify to that.

MR. OLCOTT: We shall introduce from Trenton a certificate that one million dollars full payment of capital stock was subscribed, but I ask from this witness the fact--

MR. DAVIS: Is not that the way to prove it?

MR. OLCOTT: No, because it was not a fact. I ask what the fact is.

THE COURT: I overrule the objection, but the word "capital" is somewhat indefinite--that phase of the question.

Exception.

BY MR. OLCOTT:

Q Was any money, if you know, subscribed by anybody except the customers whom you have spoken of, to the funds of The E. S. Dean Company?

MR. DAVIS: Objected to upon the ground that the witness has testified that he was not an officer of the corporation.

Objection overruled. Exception.

203

A There was no money.

BY MR. OLCOTT:

Q When did the corporation send out its first circular?

Objected to. Objection overruled.

MR. DAVIS: I have no desire to have anything concealed from the jury as to the methods of this corporation. My objection is made simply because I do not believe it competent or relevant or material as against my client.

THE COURT: It is perfectly proper for you to protect the interests of your client.

MR. DAVIS: That is the ground of my objection. Does your Honor overrule it?

THE COURT: Yes.

Exception.

A The first week commencing the 12th of October.

BY MR. OLCOTT:

Q Is that paper I now hand you the circular you sent out first? A That is the first circular that we sent out.

MR. OLCOTT: I offer this in evidence.

Objected to as incompetent, irrelevant, immaterial and improper.

Objection overruled. Exception.

It is received in evidence and marked People's



203

35

Exhibit No. 4.

- Q Who composed that circular? A Mr. Kellogg.
- Q Where did he write it, if you know? A I do not know where he wrote it.
- Q How often did he come to the office of Dean & Co. after October 12th? A Every day.
- Q At what time in the day? A Before mail time, nine or half past nine.
- Q What did you see him do? A He would sit around until the first mail's receipts were added up.
- Q Then what did he do? A Then he would go back in his den, in his own headquarters.
- Q Where were they then? A For a while there was only-- we did not have much room. For a little while he had his room in what we called the Mail^{ing} Room. That was directly opposite the cashier's window.
- Q He sat in there when he was in the company? A He sat in there and met the customers.
- Q How long did that continue? A That continued until we spread out our quarters and rented more rooms.
- Q When did you do that? A In November, towards the end of November.
- Q Towards the end of November 1896? A Yes, sir.
- Q What did Kellogg do then? A He made his headquarters back

new Mailing Room.

Q Where was that with relation to the rest of the suite?

A That was away at the end of the hall, extreme end of the hall.

Q Was that anywhere near the general entrance of the offices?

A No; the general entrance was near Broadway, and this was on the street back of Broadway--Church street--and in the Directors' Room, occasionally he would go in there if there was no danger of anybody that he did not want to see coming around.

MR. DAVIS: I move to strike that out.

Motion granted.

BY MR. OLCOTT:

Q How long did he stay there each day? A He would stay there--we would have lunch, all of us would eat lunch together.

Q Where? A Back in the Mailing Room. That was the only large table we had.

Q When was it that the first payment from the business of the corporation was made?

Objected to.

THE COURT: How does that become material?

I want to get your theory, Mr. Olcott.

MR. OLCOTT: The payment of the ten thousand dollars, do you mean, to Kellogg?

THE COURT: Yes. How does that become material upon the counts charging misappropriation, for instance?

MR. OLCOTT: It is not. It is material upon the count charging conspiracy, and I suppose that under the decision in the People against McKane in the 147th New York, it also is material even on the larceny charge, as being part of the conspiracy which led up to the commission of the larceny.

Of course, the larceny as alleged is away down in March 1897--all of this is not material, but I claim the entire conduct of the business, both as to the company and corporation is material distinctly on the conspiracy charge, because the charge in the conspiracy count, being the eighth count in the indictment, is that Kellogg, having theretofore conducted a business of a certain sort, under the name of E. S. Dean & Co., on October 12th and prior thereto conspired with the other defendants to merge the business into a corporation and thereafter conducted it so that it led up to the winding up of the closing of their business in March, so that the going over detail and step in the business is material under

that count.

THE COURT: I will allow the question.

Exception.

BY MR. OLCOTT:

Q (Question repeated as follows: When was it that the first payment from the business of the corporation was made?).

A To whom?

Q To any of the persons interested. A Oh, we paid Kellogg his ten thousand dollars on the 24th of October.

Q Out of what moneys? A Out of the receipts.

Q From whom? A Receipts from the customers.

Q The people who sent you money to invest? A Yes, sir.

Q Was it all paid in one sum? A Yes, sir.

Q When did you first have a payment made to you?

Objected to.

THE COURT: I sustain the objection as to the form of the question.

BY MR. OLCOTT:

Q How much money was received from customers?

Objected to. Objection overruled.

A I could not tell you exactly.

Q Can you turn to any book and refresh your recollection?

A Yes, sir.

MR. OLCOTT: I will withdraw that question.

a moment, because the book I wish is not here.

Q After that ten thousand dollars you have just spoken of was paid to Kellogg, when was the next money paid to him?

Objected to. Objection overruled.

Exception.

A We had accumulated enough money by the 24th of October---

Objected to.

Q Just give us the date. A About the same day.

BY THE COURT:

Q You say you paid ten thousand dollars to the defendant on the 24th of October? The question is, When next did you pay? A Well, about that same time we had a surplus, and then we each took our one-third of that surplus.

MR. DAVIS: I move to strike out the answer.

Motion denied. Exception.

BY MR. OLCOTT:

Q I hand you a piece of paper, and ask you what it is. A That is a check of the---

MR. DAVIS: Objected to. I ask your Honor to caution the witness not to state the contents of that check.

THE COURT: Merely state what it is.

THE WITNESS: It is a bank check.

BY MR. OLCOTT:

Q Do you know what the moneys represented by that check were used for ?

Objected to. Objection overruled.

Exception.

A That was our first payment--that was our payment to Kellogg for our two-thirds interest in the company.

MR. DAVIS: I move to strike out the answer.

Motion denied. Exception.

The check is offered in evidence.

MR. DAVIS: I object to the reception of it as irrelevant, immaterial, incompetent and not properly proven?

THE COURT: Is this the check representing the ten thousand dollar payment?

MR. OLCOTT: Yes, sir.

THE COURT: Let me see that check. I sustain the objection at the present stage of the evidence.

MR. OLCOTT: I asked him if he knew whether it was the check. I can trace his knowledge--

THE COURT: He has said that it represented payment to the defendant. Now, you introduce the check. Of course, it requires more proof than a mere statement regarding the check. He said it represents it. That is as far as you have gone.

BY MR. OLCOTT:

Q Do you know what was done with this check from the time it was first written? A Yes.

Q Describe it. A The check was drawn and sent to the bank and cashed.

MR. DAVIS: I object, and ask to have the answer stricken out. The witness cannot possibly know that unless he did it himself.

Motion granted.

BY MR. OLCOTT:

Q You know of its being drawn? A The check?

Q Yes. A Certainly.

Q To whom was it handed--only as to your own knowledge. A To my own knowledge, Willie--Willie Lang.

Q Were instructions given to him as to what to do with it?

Objected to. Objection sustained.

Q What was said to Willie Lang when it was handed to him?

Objected to.

THE COURT: First, who were present?

BY MR. OLCOTT:

Q Who were present when the check was handed to Willie Lang?

A Weinmann, Bernard, Kellogg and myself.

Q What was said to Willie Lang at that time by any of you?

Objected to. Objection overruled.

Exception.

A I told him to go around to the bank and get the money.

Q Were you present when he came back? A I was.

Q Who else were present? A Weinmann and I.

Q What was done? A Handed it to Jim, and said, "That makes us even."

Q What is that? A We handed it to Kellogg.

Q Was Kellogg also present? A Certainly.

Q You said Weinmann and you. A You asked me who was present with Kellogg.

Q I do not think I did. A I beg your pardon.

Q Who were present when Willie Lang came back? A Kellogg, Weinmann and I.

Q What did Willie Lang do? A Gave me the money.

Q In what form? A Ten one-thousand dollar bills.

Q What did you do with it? A I gave them to Kellogg.

Q What was said by anyone of you, if anything? A I told him that that pays him for the bonus, and now we start in as equal partners.

The check is offered in evidence.

Objected to. Objection overruled. Exception?

It is received and marked People's Exhibit No. 6.

BY MR. DAVIS:

Q Did you say Bernard was present?

MR. OLCOTT: No.

BY MR. OLCOTT:

Q Was Bernard present? A Not when Willie came back.

Q I hand you three papers, and ask you whether you have ever seen that before. A Yes, sir; I have.

Q Were you present when those papers were written? A I cannot swear to that.

Q When did you first see them? A They were written under my orders.

Q When? Please look at the dates of each one of them and tell us when. A On the same Saturday that we drew that other check, the 24th of October, 1896.

Q What was done with that piece of paper after it was written, so far as you know?

Objected to. Objection overruled.

Exception.

A I cannot tell each individual paper, except one with the stamp on, with the stencilled date. Now, what do you want to know?

Q Look at the dates of those three papers, and tell me whether you are right in thinking they were drawn on October 24th.

A I know they were drawn on October 24th.

Q Now, were they all drawn at the same time? A Yes, sir.

Q By whom? A By Miss Crowfoot.

Q What was done with them after they were drawn?

Objected to. Objection overruled.

MR. DAVIS: Unless he was present and saw
what was done, it is incompetent.

BY MR. OLCOTT:

Q I mean only when you first saw them. A They were endors-
ed by Miss Crowfoot and handed to me.

Q What did you do with them? A I gave one to Kellogg and
one to Weinmann, and kept one myself.

The Court admonished the jury in accord-
ance with Section 415 of the Code of Criminal
Procedure.

Recess until three o'clock.

AFTER RECESS.

MR. OLCOTT: Will your Honor permit me to set aside this witness a moment to permit the introduction of more records that have come up from the Chancellor's Office, State of New Jersey? The attendant is here, and we could not subpoena him.

THE COURT: I see no objection.

FRANK H. VANDERBECK, called as a witness in behalf of the People, being duly sworn, testified as follows:--

D i r e c t E x a m i n a t i o n .

BY MR. OLCOTT:

Q What is your office? A I am in the employ of the Clerk in Chancery of the State of New Jersey.

Q With your office where? A State House, in Trenton , New Jersey.

Q Have you produced here from the records of the Chancellor's Court certain papers? A I have.

Q Which are on file there? A Yes.

Q Is the paper I hand you from the files of that office ?

A It is.

Q And was filed in that office at what time? A On the 7th of April 1897.

MR. OLCOTT: I offer it in evidence. It is

77 203

the petition and affidavit for the appointment of a receiver of the E. S. Dean Company on the allegation that it is insolvent and has no money to pay its debts.

MR. DAVIS: Objected to as immaterial, irrelevant and incompetent, and not properly proven.

THE COURT: It is the original paper?

MR. DAVIS: I object, as not binding upon the defendant in any way.

MR. OLCOTT: It is signed by Myron L. Bernard, President, and is introduced on the theory of being a declaration of a fellow conspirator, Bernard being one of the defendants indicted under this indictment.

THE COURT: Is this a petition for a dissolution?

MR. OLCOTT: Yes, petition upon which an order was entered appointing receivers.

THE COURT: What date?

MR. OLCOTT: April 3rd. I think it was filed April 7th.

Objection overruled. Exception.

It is received and marked People's Exhibit No. 6.

MR. OLCOTT: May we allow this to go back to Trenton, and have an exemplified copy filed with the

7203

Court, from the Trenton office?

THE COURT: Is there any objection to that, Mr. Davis?

MR. DAVIS: I have no objection, but I make that statement without prejudice to my client's right to object to the admission upon all the grounds which I have just stated in my objection to the offer.

THE COURT: I mean as to form--Having a certified copy used here instead of the original?

MR. DAVIS: So far as I have stated, I have no objection. What I want to do is to preserve all the rights of my client. My objection is as to the admission on the various grounds I have stated. I suppose it would be convenient to have the certified copy.

BY MR. OLCOTT:

Q Is this another paper which you have produced from the files of your office? A It is.

Q That paper filed in your office? A Yes, sir.

Q What date? A 8th of April 1897.

MR. OLCOTT: I offer this paper in evidence.

It is the order appointing the receiver of the E. S. Dean Company.

~~Same objection, filing and exception.~~

203

It is received and marked People's Exhibit 7.

Q Whose signature is that attached to the foot of the paper?
Chancellor McGill's. Alexander T. McGill, Chancellor of
the State.

Q You know that signature? A I do.

Q That is his signature? A That is his signature.

MR. DAVIS: Signature attached to what paper?

MR. OLCOTT: Exhibit 7.

BY MR. OLCOTT:

Q I hand you another paper and ask you if that is from the
files of your office. A Yes, sir.

Q Filed when? A April 30, 1897.

Q Do you know the signature at the foot of that paper? A I
do.

Q Whose signature is it? A Chancellor McGill's.

The paper is offered in evidence.

THE COURT: What is that?

MR. OLCOTT: Order appointing Mr. McMaster
receiver.

MR. DAVIS: I object as incompetent, irrelevant
and immaterial and not binding upon the defendant.

Objection overruled. Exception.

The paper is received and marked People's

Exhibit No. 8.

17 203

AI

49

SAMUEL KELLER, resumes the stand:

BY MR. OLCOTT:

Q Do you know the signature of Myron L. Bernard?

A Yes, sir.

Q Have you seen him write? A I have.

Q How many times? A Hundreds and hundreds.

Q Will you look at the paper I hand you, marked "People's Exhibit Number 6" in this case, and say whether the signature at the end of that paper?--- A That is Mr. Bernard's handwriting.

Q Myron L. Bernard's handwriting? A Yes, sir.

Q Look at the name where it appears on that sheet; whose signature is that? A Myron L. Bernard's.

Q That is on the fifth page of People's Exhibit 6?

A Yes, sir.

Q As well as on the last page? A Yes, sir.

Q I show you People's Exhibit 2, being the third page of the book which you have called the ledger of E. S. Dean & Company, and I ask you whether in addition to what you have said, anything else was said by Mr. Kellogg and yourself while you were examining that page the first time you saw it, and to state when that was again. A It was right near October, after we had concluded, we had agreed on the terms and concluded to take hold.

77-203

Q Before the corporation was formed? A Yes, sir.

MR. DAVIS: Let him finish his answer.

MR. OLCOTT: He had done so.

MR. DAVIS: He had not, his voice was suspended.

THE WITNESS: When I said that the liabilities of this concern run up so high he said they might be just as well up a million as some few odd dollars, "because I could pay one as soon as I could the other. That don't make any difference in the bargain, because the liabilities of the concern do not lessen or increase the value of the plant any." I was satisfied---

Q Never mind that.

MR. DAVIS: Let us hear what he was satisfied with.

MR. OLCOTT: I am willing.

BY MR. OLCOTT:

Q Go on, Mr. Keller, Mr. Davis is willing you should state.

A I was satisfied from the way the money had been coming in, as I saw by the books, that we would take in enough money to keep this thing going. I think that is about the gist of--

Q That is all you remember that was said about the Goslin & Company account? A Oh, the Goslin & Company account, of course he said that the Goslin & Company checks were charged

#203

in there to balance the money that he had grabbed.

Q He said that to you? A Yes, sir.

Q Did he say anything else about it? A That they had nothing--- that Goslin & Company was no firm, no stock exchange house or any exchange concern, and these charges were made up against Goslin & Company to balance the receipts from the customers.

Q Anything else that you remember--- did you go over the specific items in that account with Kellogg? A Yes, sir, I went over the entries. That was my first introduction to a combination account. I had never heard of a combination account before I saw that page.

Q What did Kellogg say to you about it? A The combination account was charged right off to Goslin & Company--- the full amount of the combination, to balance the receipts from the customers so, the combination say \$11,100, receipts from the customers, Goslin & Company were charged with that \$11,100.

Q Did Kellogg tell you that? A Yes, sir.

Q I observe that the second entry on the left-hand side of Exhibit Number 2, "September 1st, to combination account, \$11,100." What did Kellogg say about that? A The customers' moneys---

MR. DAVIS: He has not said he said anything

203

about that.

BY MR. OLCOTT:

Q Did he say anything about that item? A Yes, sir.

Q What did he say about it? A That the customers' moneys were put into different combinations to balance the receipts on the credit side of the customers' account in the ledger; there had to be a debit charge some place, and consequently they were entered on the Goslin & Company account, making a balance.

Q Did he say what, if any, investments he really made?

Objected to as leading.

Objection sustained.

BY MR. OLCOTT:

Q Was there anything else you remember that Mr. Kellogg said?

A I asked him what became of all that money; he must be pretty easy. I had no money then. I had just borrowed \$100 from him, and he said that he had that money well taken care of, had it planted.

BY MR. DAVIS:

Q Had it what? A Planted.

Q What is that? A (No answer).

BY MR. OLCOTT:

Q Planted; what is that? A Planted is buried.

Q What is that? A It is where you can't get at it, where

17 203

someone else couldn't get at it he had it. I understand the term.

BY MR. DAVIS:

Q I understand it now. You understood it at the time?

A Yes. . . Then I said, "There is a pretty big size liabilities to take hold of, and pay you \$10,000 besides." He said, "Well, the money comes in. It is just like a snowball rolling downhill, it will just come rolling in and you will all win ~~out~~, and we will all have all the money we want."

BY MR. OLCOTT:

Q Was there anything else said about the \$185,000 balance which appears on People's Exhibit Number 2, to be due from Goslin & Company to E. S. Dean & Company? A \$185,000 was to be-- they were visionary assets.

Q Did Kellogg say so? A Kellogg certainly said so; he said there is no money. Whatever this balance is.

MR. DAVIS: I object to this as leading.

THE COURT: Proceed.

THE WITNESS: Kellogg said, "Now, this \$185,000 which is charged up to Goslin & Company, we will just draw up a receipt for that and let the corporation give me a receipt for this \$185,000, and we will draw it up so it will appear I turned over to the corporation bonds and stocks and other

valuable securities to the amount of \$185,000."

BY MR. OLCOTT:

Q Was that done? A That was done. Kellogg took one receipt and Bernard took a tissue paper copy of that receipt.

Q Have you ever seen the receipt since, which Kellogg took?

A Never saw Kellogg's receipt.

Q Have you ever seen the tissue paper copy which you say was taken? A Yes, I took the tissue paper copy.

Q What did you do with the tissue paper copy thereafter?

A You have got it.

Q Where did you take it, on that piece of paper? A That is the tissue paper copy.

Q (Witness shown a paper) You identify that as the press copy you have been speaking of? A Yes, sir.

Q Is that the only copy that you or the E. S. Dean Company retained? A This is the only one.

MR. OLCOTT: I offer this in evidence.

MR. DAVIS: I object to that upon the ground that it is irrelevant, immaterial and improper.

MR. OLCOTT: The witness has just testified that at the time the corporation took this business off the hands of E. S. Dean & Company, there was, pursuant to Mr. Kellogg's suggestion, a fictitious receipt taken for papers which in reality did not

203

pass to the Dean corporation, but which were alleged to be worth \$185,000. The witness says that the original was written out in typewriting and was signed by The E. S. Dean Company and by Goslin & Company, the brokers, or alleged brokers, who were reputed by the book of E. S. Dean & Company to have possession of these securities; that the written copy was delivered to Mr. Kellogg, and we have not seen it and do not know its whereabouts now; that there was taken instead of a duplicate-original, a press copy of that paper which Mr. Keller retained, that is, it was retained in the Dean Company offices. From the Dean Company offices we obtained at the time of the closing of the business and the seizure of the papers, this letter-press copy.

Now, it seems to me, first, that practically this piece of paper was and intended to be a duplicate-original, and so presumed at that time; and, secondly, that it is part of the records of The E. S. Dean Company, and is therefore one of the records and a declaration of a fellow conspirator of this defendant--- of course presuming that we are to corroborate the allegation of this accomplice, that he and Kellogg were fellow conspirators.

17203

and as such---

THE COURT: You say that the original was given to the defendant?

MR. OLCOTT: The original was given to the defendant.

THE COURT: Then you had better ask the defendant for it.

MR. OLCOTT: Through his counsel?

THE COURT: Yes.

MR. OLCOTT: I ask Mr. Davis to produce the original.

MR. DAVIS: We will look for it, and if it is among the papers, we will produce it.

(The tissue paper copy is marked for identification, "People's Exhibit9").

BY MR. OLCOTT:

Q When the corporation took charge of the offices and property at 35 Broadway, did it in fact receive either from Kellogg or from Goslin & Company any securities or property?

A Nothing at all.

Q Of any sort? A Nothing at all..

Q Did it receive any money in bank from Kellogg or from the old E. S. Dean & Company? A On October 12th we received a check from Mr. Kellogg signed by him.

- Q Drawn upon what bank? A The Gansevoort Bank, for \$1200 and a few dollars.
- Q Was that the balance to the credit of E. S. Dean & Company at the Gansevoort Bank? A That was the balance.
- Q Did you receive any other property but that and the office furniture? A We received circulars and annual statements.
- Q And the books? A Books--- all the paraphernalia necessary to run an office.
- Q Anything else? A That is all.

A1

58

BY MR. OLCOTT:

Q (Handing book to witness) I hand you this book and ask you whether on the occasion of which you have last been speaking, when you met Mr. Kellogg in the early days of October at 35 Broadway, he showed you that book? A (After examining) Yes.

Q And all that it contains? A I looked it over myself.

Q While he was with you? A Yes.

Q What did he say about that book?

MR. DAVIS: That is objected to.

MR. OLCOTT: He has identified another book.

THE COURT (To defendant's counsel): Do you object?

MR. DAVIS: Yes, I object.

Objection overruled; exception.

A He said that his book that Goslin fixed up for him showed his transactions or alleged transactions in the market. I knew nothing about this crossing business at that time, and I asked him to explain it; and he explained it by telling me that they had been bought and sold at the same time with Goslin & Company, and they used whichever slip was necessary. That is all the explanation I asked for, and I am satisfied with me.

MR. DAVIS: Is that Exhibit No. 1?

MR. OLCOTT: It has not been offered in evidence yet. I will offer it and have it marked in a moment.

BY MR. OLCOTT:

Q He said that they bought and sold? A Through Goslin & Company simultaneously, and used whichever slip was necessary. If they were long of the market, they used the slip showing the profits on one side, and if they were short vice versa, they used a slip showing a profit on the other side.

THE COURT: Explain it to the jury. We all may not know the technical meaning of the terms long and short.

THE WITNESS: When a man buys stock or any commodity, he is long of the market when he buys this; for instance, a man buys 10,000 bushels of wheat at 80. He expects to sell it at a higher price than 80; that is, he is long of the market.

BY MR. OLCOTT:

Q And he is long 10,000 bushels of wheat, is that the way you speak of it? A Yes.

MR. DAVIS: I heard your Honor ask the witness to explain to the jury.

THE WITNESS: If a man is short of the market, he thinks wheat is going down, and he sells 10,000

203

bushels; in other words, he would buy it at a lower price than he sold it out for.

BY THE COURT:

Q. You call that short? A. That is going short of the market. Now, if we buy 10,000 bushels at 80, at the same time we would use these two slips; if the market went up to 82 the next day, we could show a slip that we bought at 80 and that we had made two points. I am now speaking of 10,000 bushels, but of course we had millions of bushels that we bought.

If we bought wheat at 80 and it went to 78 or 79, we would show where we sold wheat at 80, because we bought and sold simultaneously.

MR. DAVIS: I move now, your Honor, to strike out the testimony of the witness given in answer to the last question.

THE COURT: I asked the question of the witness, Mr. Davis, on account of his use of the terms long and short. In so far as a part of his answer gave illustrations of what they did-- what the defendant or defendants did-- I think your motion is proper. But in so far as a part of his answer might be called his abstract definition of the terms long and short, I will allow the answer

2013

to stand, and therefore grant your motion to that extent.

MR. DAVIS: My motion was to strike out those parts which your Honor has indicated.

THE COURT: Yes, I grant your motion to that extent.

BY MR. OLCOTT:

Q Did Mr. Kellogg tell you what the firm of E. S. Dean & Company---

MR. DAVIS: I object to the question.

BY MR. OLCOTT:

Q Did he say anything further than what you have stated, as to his investments? A I asked Mr. Kellogg if he had been speculating any in the market for his customers. He said, "No, not for the customers, but Al has lost a good deal of money for me personally."

BY THE COURT:

Q Who? A Meaning Al Goslin.

Q Gardiner? A Goslin; "and he stopped that foolishness, trading in the market or trying to beat it; he was satisfied with the way things were coming;" and Mr. Kellogg says, "I am not going to take any more chances in the market," and I told him--- (the witness hesitates).

Q Yes; state what you told him. A And I told him he was

203

sensible, because he couldn't beat it, that I had been trying to beat it for ten or twelve years and had never been able to do it for more than a minute.

THE COURT: Strike that out.

MR. DAVIS: I don't move to strike it out.

THE COURT: Sir?

MR. DAVIS: I would rather have it stand.

THE COURT: Then let it stand.

MR. OLCOTT: I offer this book in evidence.

MR. DAVIS: I object to the admission of the book on the ground that it is immaterial, irrelevant and incompetent, not properly proved, and not binding upon this defendant.

THE COURT: What was the proof regarding that book?

MR. OLCOTT: The proof regarding the book is that this book was shown to Mr. Keller by Mr. Kellogg when they were discussing about the terms of the transfer of the corporation; that Mr. Kellogg told him, Mr. Keller, that there were transactions pretended to be made through Goslin & Company, and combinations representing their alleged trades. That was Mr. Kellogg's language.

THE COURT: Yes; objection overruled.

MR. DAVIS: Exception.

(The said book is admitted in evidence, and marked, "People's Exhibit Number 10").

BY MR. OLCOTT:

Q I am referring again to the book you have called the ledger of E. S. Dean & Company, and asked about at that interview that you have last spoken of, and turn to page 9 of that ledger.

MR. DAVIS: What exhibit is that? I object to the question as leading.

THE COURT: I think it is objectionable in that feature.

MR. OLCOTT: I ask then to put in evidence the whole of that ledger. The whole of that ledger was exhibited in the interview with Mr. Kellogg, and was treated as the ledger of E. S. Dean & Company. Now, whatever there is there we are entitled to adduce from the pages of that ledger, as to the fictitious character of the business.

It appears to me to be relevant as against Mr. Kellogg, because he represented it to be the stock ledger and commented upon things therein contained.

MR. DAVIS: Does it bear any identifying mark?

MR. OLCOTT: Nothing but page 3, which has been marked People's Exhibit Number 2.

THE COURT: Of course the introduction of a large book like this in evidence will necessarily encumber the record. There might be a great many things in such a large volume as that appears to be, which will have no bearing whatever upon this question; that is the trouble of admitting in evidence such a huge book as this. I think parts of it ought to be selected, that is, parts that have a bearing, or purport to have a bearing upon the question.

MR. OLCOTT: Your Honor will bear with me when I suggest that just a moment ago I endeavored to make a specific reference to page 10, and Mr. Davis objected on the ground that I was leading the witness. I did it for the very purpose your Honor has pointed out so ably, to bring to the witness's attention and notice certain pages, at the same time, while I had the same idea which your Honor has so forcibly stated at that time, it does seem to me that we are entitled to put that book in evidence as a whole, and adduce from it whatever facts and circumstances an expert, which we may put on.

#203

the stand next, may find in its pages, inasmuch as it was represented to be the ledger of E. S. Dean & Company and admitted by Mr. Kellogg to be the ledger kept by him in that business.

MR. DAVIS: You mean that Mr. Keller says he admitted it.

MR. OLCOTT: Certainly.

MR. DAVIS: Quite a difference!

MR. OLCOTT: There is no difference in the eye of the law. We have evidence.

THE COURT: I am of the opinion that the book is competent.

MR. OLCOTT: And admissible as such?

THE COURT: Yes. Of course care must be taken to guard against the admissibility of unnecessary matter and to eliminate as far as possible those things which have not a bearing upon the question at issue.

MR. OLCOTT: If your Honor will allow it to be marked in evidence now, I will promise at the close of our case to select the pages which I desire to refer to in that book, so that the records may be minimized as much as possible.

MR. DAVIS: I would like to get my objection

#203

on the record. I object to it on the ground that it is immaterial, irrelevant and incompetent, and not properly proved.

THE COURT: This book, Mr. Davis, I understand according to the testimony of this witness is alleged to have been produced by this defendant as a book which contained the record of the transactions of the company which he claimed to control or belong to at that time, and which formed the basis of the translation from the company, or partnership rather, to the company. When I said company before I meant partnership; that is, of E. S. Dean & Company to The E. S. Dean Company. I will overrule the objection.

MR. DAVIS: And may I take an exception?

THE COURT: Yes.

MR. DAVIS: What is the book called?

MR. OLCOTT: Ledger.

(The said book is admitted in evidence, and marked, "People's Exhibit Number 11").

BY MR. OLCOTT:

Q (Handing another book to witness) I hand you a book called on the outside "Journal" and ask you whether on that occasion last referred to Mr. Kellogg showed you that?

7203

A (After examining) Yes, sir.

Q What did he say about it? A He said, "This is our journal. You can look through this and can find out exactly how we stand;" and I looked through it and marked some parts of it.

Q Was he present with you all the time? A Yes.

MR. OLCOTT: I offer that in evidence and make the same statement in regard to it.

MR. DAVIS: Same objection, on the same grounds

THE COURT: Same ruling.

MR. DAVIS: Exception.

(The said book is admitted in evidence, and marked, "People's Exhibit Number 12").

BY MR. OLCOTT:

Q (Handing another book to witness) I hand you this book called on the outside "Cash," and ask you whether you saw this book at the same time, and ask you what, if anything, Mr. Kellogg said about it? A This is my cash book," he said.

BY MR. DAVIS:

Q What, please? A He said, "This is my cash book."

BY MR. OLCOTT:

Q Who said that? A Mr. Kellogg.

Q Did you look over it? A I did, and that is what made me ask what these Goslin' checks were for. This is the book charging Goslin with \$5,000 every once in awhile.

203

MR. DAVIS: I move to strike that out.

THE COURT: Strike that out.

BY THE COURT:

Q State what you said to this defendant in relation to that or any other subject. A He said, "This is my cash book." I looked through it and came across several five-thousand dollar entries.

MR. DAVIS: I move to strike that out.

THE COURT: Yes.

BY THE COURT:

Q You came across several entries? A (No answer).

BY MR. OLCOTT:

Q The Court allows you to say that you came across several entries. A Yes, I came across several entries.

Q What did you say to Mr. Kellogg, if anything? A I said, "What are these entries?" and he said, "They are dead ones."

BY MR. DAVIS:

Q He said what? A He said, "They are dead ones." I understood what he meant--- these checks charged to the parties---

BY MR. OLCOTT:

Q Point out the entries.

MR. DAVIS: Let him answer.

A These checks that are charged to this firm have not been cashed yet.

BY MR. DAVIS:

Q You said you understood that? A (No answer).

BY MR. OLCOTT:

Q You said that he said that? A He said that.

BY MR. DAVIS:

Q You understood what he was saying? A I understood what he said about dead ones?

Q Yes. A Certainly.

BY MR. OLCOTT:

Q What did you understand? A Why, those fictitious accounts; fictitious entries I mean.

Q Now, show me those entries? A Well---

MR. DAVIS: I object.

K

203

BY THE COURT:

Q Did you point out those entries to the defendant? A Yes, sir.

Objection. Overruled. Exception.

THE WITNESS: Can I tell why I pointed them out?

THE COURT: Yes.

THE WITNESS: Because the cross entries--

THE COURT: Oh, no; I misunderstood you. I thought you said it to him.

THE WITNESS: No; I wanted to tell you what attracted my attention to the entry.

THE COURT: That is not necessary; simply the fact of the pointing of them out is all that is needed now.

MR. OLCOTT: Your Honor permitted him to point out the entries that I asked about in my last question?

THE COURT: The question is permitted, what entries he pointed out to the defendant and what he said about them.

MR. DAVIS: What is the question?

THE COURT: He was going along in answer to a question, and actually entered in upon an expan-

#203

sion, as it were, of the original question.

MR. OLCOTT: If your Honor will allow me to put the question, perhaps I can make it specific.

THE COURT: Yes.

BY MR. OLCOTT:

Q Point out to us what entries you pointed out to Mr. Kellogg upon that occasion, when the conversation that you have given us ensued. A One entry was, "Goslin & Co., \$5000.

Q Give us the page. A Page 39.

Q Of exhibit No. 12; what line?

MR. DAVIS: I thought the journal was exhibit No. 12.

MR. OLCOTT: Yes; this should be exhibit No. 13.

A The bottom line, last entry.

BY MR. OLCOTT:

Q And how does that read? A "Goslin & Co., \$5000."

Q What does that entry mean, as a matter of bookkeeping?

MR. DAVIS: I object.

THE COURT: I will sustain the objection.

MR. OLCOTT: May I qualify this witness as an expert on bookkeeping, because the jury does not know, unless they know more than I do about it.

THE COURT: I think you had better confine

yourself at the present time to what took place between this witness and Mr. Kellogg.

MR. OLCOTT: Very happy to adopt your Honor's suggestion.

MR. DAVIS: Is he an expert bookkeeper?

MR. OLCOTT: I think so, without a doubt.

THE WITNESS: Page 37, third line, "Goslin & Co., \$5000. Page 35, second line, "Goslin & Co., \$3200." Third line, "Goslin, \$5000." The third from the last, "Goslin, \$5000;" and the fourth from the last, "Goslin \$3800."

I think I stopped there. I think I had gotten-- yes, I stopped there.

BY MR. OLCOTT:

Q They are all Goslin & Co., aren't they? A Yes, sir.

MR. DAVIS: He said "Goslin" once at least.

BY MR. OLCOTT:

Q Now, I understood you to say that you pointed out each of those entries that you have read to Mr. Kellogg? A I pointed out all these Goslin entries, and I made the remark at the time that it seemed funny to charge up to a concern that was not on the Stock Exchange so much money, in case trouble came along, and especially to charge up to Goslin that much money, when he had Goslin's due bill at that time.

#203

Q What did Mr. Kellogg say?

MR. DAVIS: Won't he (indicating witness)
tell us the amount?

BY MR. OLCOTT:

Q What was the amount of the due bill? A \$105.

Q Do you say you said to Kellogg— A Kellogg paid me.

Q State what occurred at the time. A I told him I was short
of money, and I had Goslin's due bill from a trade that he
made up in an office that I had up in Broadway, and he said
he would pay it for Goslin, and he paid me.

Q What Goslin was this? A Alfred Goslin.

Q Aldred R. Goslin? A Yes, sir.

Q You had known him before that time? A Not as Goslin.

The due bill was Donald Bevin's, but I recognized Goslin at
35 Broadway. And I said, "What is Bevins doing here?"

He said, "This is Goslin." I said, "I have got his marker
for \$105."

BY MR. DAVIS:

Q His what? A His due bill.

Q You said marker. A And he said he would pay it for Gos-
lin; and he paid it.

BY MR. OLCOTT:

Q Did he tell you why? A Because Goslin was working for
him. He told me that Goslin was working for him, and he

would pay it.

BY MR. DAVIS:

Q He told you that? A Yes, sir.

BY MR. OLCOTT:

Q Did he tell you anything else; have you given us the whole that he told you about that? A I guess I have told about all that I could swear to.

Q (handing book) Did you see anything like that on the occasion of your interview that you have been describing, with Mr. Kellogg? A Yes, sir; this is the sixth annual statement of E. S. Dean & Co.

Q Where did you first see that book? A Over at 35 Broadway.

Q When? A In September, the end of September.

Q 1896? A 1896.

Q Who showed it to you? A Mr. Kellogg.

Q What did he say about it, if anything? A Shall I tell just what he stated?

Q Yes. A He stated, "Why, here is a bird."

BY MR. DAVIS:

Q What? A He said, "Here is a bird that I got up, that will get money, and I have got 1400 names in the back of this book here, references."

MR. OLCOTT: I offer that book in evidence.

213

75

if your Honor please.

MR. DAVIS: He swears this is the very book?

BY MR. OLCOTT:

Q How about that; is that the very book? A Not the very book. There were piles and stacks of them there; you could pick them up. I picked one up, and took it home.

Q Do you know that that is identical with the stack of books that you speak of? A Yes, sir.

BY THE COURT:

Q Is it the one that you took with you? A No, sir. I took one with me to read it over.

MR. OLCOTT: For the purpose of avoiding any question on that score, we will mark it for identification, because the man who received it will testify.

(The said book is marked for identification
People's exhibit 15.)

BY MR. OLCOTT:

Q I think you said this morning that it was on Monday, October 12th, when the corporation was finally organized, and you took charge, did you not? A Yes, sir.

Q (handing paper) I hand you that paper and ask you what you know about it. A This is the first circular that was sent out by the— this is the circular that was sent out by the

203

E. S. Dean Co., introducing the corporation to all the customers of E. S. Dean & Co.

Q When was it sent out? A It followed a day or two after I went to 35 Broadway.

Q About what time would that be in October, 1896? A Can I correct that?

Q Yes. A Some of them were sent out on the 11th, and some on Mondays, Tuesdays and Wednesdays.

Q The 12th, 13th and 14th? A Yes. We were very busy then.

Q Who drew this circular? A Mr. Kellogg.

Q Did you see the draft or original of it? A I never saw the original part of that; no, I never saw the original part of that.

Q When did you first see the circulars of which this is one?

A What do you mean by that? A

Q What date did you first see them? A On Saturday prior to the—

Q October 10th? A On October 10th, yes.

Q Who printed them? A The regular printer for E. S. Dean & Co., a man named Brooks.

MR. OLCOTT: I offer this in evidence.

MR. DAVIS: I object to its admission, on the ground that it is incompetent, irrelevant and immaterial.

17 203

Objection overruled. Exception.

MR. OLCOTT: I would like to read this, if your Honor please. I regret that so many papers have to be read, but I wish to question the witness about it.

(People's counsel reads the said paper to the jury.)

MR. DAVIS: That is signed by the corporation?

MR. OLCOTT: Yes; it is headed by the firm and signed by the corporation, showing that it was in a state of transition at the time.

BY MR. OLCOTT:

Q Was it true, or not, that large capitalists were interested in this business, and had been brought in?

MR. DAVIS: I object.

THE COURT: I sustain the objection. That is a relative term.

MR. OLCOTT: Yes.

Q Besides Lanberg Ballbach, whom you mentioned this morning, Charles Weinmann and Bernard, were any others brought in as directors of this company?

MR. DAVIS: That I object to.

Objection overruled. Exception.

A Well, Weinmann and I were not directors.

#203

BY MR. OLCOTT:

Q You were not directors? A No, sir.

Q Then, who were the directors of the company?

MR. DAVIS: That I object to, on the ground that it is incompetent, irrelevant and immaterial, and that it is not the way to prove who were and who were not directors of this company.

THE WITNESS: The incorporation papers would show it.

THE COURT: The incorporation papers would show the directors, would they not?

MR. OLCOTT: Yes.

THE COURT: I sustain the objection.

MR. OLCOTT: We shall introduce this later on, if your Honor please.

BY MR. OLCOTT:

Q handing another paper to witness) Look at the paper now shown you, and state what that ~~it~~ is. A That is a circular that the corporation issued.

Q When was that issued? A As soon as the corporation was formed.

Q And in date, about what time? A October 18th or 19th.

Q That was sent out during the first week? A Yes, sir.

Q Who drew that circular? A That is the counterpart of a

#203

circular of the company.

MR. DAVIS: I object.

THE COURT: Yes; I sustain the objection.

MR. OLCOTT: Strike that out.

Q Who drew it? A I don't know. That is a counterpart of the circular—

MR. DAVIS: Wait a moment, Mr. Keller. You have heard his Honor's ruling.

BY MR. OLCOTT:

Q It was sent out the first weeks of the business? A Yes, sir.

Q Who saw it before it was sent out, if you know? A Well, that was Mr. Kellogg's business, to attend to the circulars.

MR. DAVIS: I move to strike that out.

THE COURT: I will strike it out.

BY MR. OLCOTT:

Q Now, answer that question. A Who saw that circular before it went out?

Q Yes, to your knowledge, if you know. A Everybody that was working for the corporation.

Q Including this defendant?

MR. DAVIS: I object.

THE COURT: I sustain the objection.

MR. DAVIS: Go on the stand yourself, Mr.

203

Olcott, if you want to testify.

THE WITNESS: I wouldn't answer the question so broadly. That circular was used by the corporation. They were just as plentiful around the corporation office--

MR. DAVIS: I move to strike that out.

THE WITNESS: That circular was used by the corporation.

MR. DAVIS: Wait until his Honor passes upon my objection.

THE COURT: I will let that stand.

MR. DAVIS: Exception.

THE WITNESS: The circulars were plentiful around there--

MR. DAVIS: I object.

Objection overruled. Exception.

THE WITNESS: As we had thousands and thousands printed that were ordered.

BY MR. OLCOTT:

Q Who ordered the printing of this circular? A Mr. Kellogg.

MR. OLCOTT: I offer this in evidence.

MR. DAVIS: I object to its admission in evidence. I would like to cross-examine the witness a moment upon that.

THE COURT: You may do so.

BY MR. DAVIS:

Q Did you hear Mr. Kellogg order the printing of this circular?

A I did not. I can explain that.

MR. DAVIS: I object, on the ground that it is incompetent, irrelevant and immaterial.

THE COURT: The testimony of this witness is that it was used by the corporation, and was around the office of the corporation in great numbers, I understand.

MR. OLCOTT: Yes.

THE COURT: I will overrule the objection.

MR. DAVES: Exception.

THE COURT: The testimony is here that the particular part of the defendant was to look after the circulars, as I understand the testimony.

MR. OLCOTT: That is true, sir. He was in that business.

(The said paper is admitted in evidence and marked People's exhibit No. 16.)

BY MR. OLCOTT:

Q (handing paper) Look at the paper I now hand you, and tell me what that was. A This was the circular that was sent out; that is, it is the copy. The circulars were sent out

203

before the last October dividend day that was.

Q Sent out about when? A This went in with the dividend checks after the first of November, just before election.

Q And it was sent out either the latter part of October or the first of November? A The night of the 31st of October or the morning of the first of November, as soon as the checks were ready.

Q Do you know who drafted this circular? A Mr. Kellogg.

Q How do you know? A Because he drafted every circular.

Q Did you see the original of this circular in his handwriting?

A Yes, sir.

Q Where did you see it? A At 35 Broadway.

Q Before it was sent out to be printed? A When it was the first original; yes, sir.

Q Who showed it to you? A He did.

Q Where did he write it, if you know? A I don't know

MR. OLCOTT: I offer that in evidence.

MR. DAVIS: Objected to, on the same grounds.

Objection overruled. Exception.

(The said paper is admitted in evidence and marked People's exhibit No. 17.)

MR. ~~DAVIS~~ OLCOTT: I wish to read this. I am sorry to take up so much time reading, but it seems necessary.

203

(The People's counsel reads said paper to the jury.)

BY MR. OLCOTT:

Q Had you operated in fact— by you I mean the Dean combination, a combination called combination No. 7? A No. 7 was a company, a partnership combination.

Q One of these alleged to have been started under the partnership? A Yes, sir.

Q Had it earned 50 per cent, if you know? A It could not have earned anything.

Q (handing another paper) I hand you a paper now and ask you what that was. A That is just one of the circulars.

Q Sent out when? A This is not a circular. This is a market letter. For about two months we sent out market letters every Friday night.

Q That is one you sent out when? A On Friday after election day; Friday, November 6th. You will find the date on those circulars.

Q Who drew this? A Mr. Kellogg.

Q How do you know? A Because he did all the circular work.

Q When he brought down his manuscript circular, what did he do with it? A He generally handed it to Bernard, to correct the spelling and put it into proper English.

Q Was that done in your presence ordinarily? A No, sir.

77203

Q Did you see the manuscript at any time? A Oh, yes; yes, sir.

MR. OLCOTT: I offer this in evidence.

MR. DAVIS: Objected to on the same grounds.

THE COURT: Same ruling.

MR. DAVIS: Exception.

(The said paper is admitted in evidence
and marked People's exhibit No. 18.)

MR. OLCOTT: If you wish to read any of them,
Mr. Davis, there they are.

BY MR. OLCOTT:

Q What is the paper now shown you? A This is simply a dividend letter. We had bi-monthly dividends, and we always enclosed a letter with the dividend.

Q When was that sent out? A On the 16th of November.

Q Who wrote that? A Mr. Kellogg.

MR. OLCOTT: I offer it in evidence. Do you wish to see it, Mr. Davis?

MR. DAVIS: Did he (indicating witness) see him write it?

THE WITNESS: I give the same answer as I did in the case of the others. He did all the circular work.

MR. DAVIS: Objected to.

EXHIBIT #203

BY MR. OLCOTT:

Q Did you see it in manuscript before it was sent to the printer? A I can't swear to that one; no, sir.

Q You were present at the office every day? A Yes, sir.

Q Was any of this literature which was printed written by anybody else than Kellogg? A The original writing, no, sir.

MR. DAVIS: How can he say that?

THE WITNESS: Because nobody else could write a letter like him.

BY MR. OLCOTT:

Q But you have knowledge about it? A Yes.

Q You know every circular that was sent out by the corporation, do you not? A Yes, sir.

Q Was any circular sent out ~~that was~~ by the corporation that was not composed by Kellogg? A No, sir.

MR. OLCOTT: I offer this in evidence.

MR. DAVIS: I would like to cross-examine him.

THE COURT: Yes.

BY MR. DAVIS:

Q How do you know that? A I knew—

Q How do you know that? A (No answer.)

BY THE COURT:

Q Go on, and answer the question. A I knew Kellogg's style. I knew that I could not write a market letter in a hundred

years. I knew that Weinmann could not. Bernard certainly could not. He never saw a stock ticker until he went to work for E. S. Dean & Co. And they are fac similes of the E. S. Dean & Co. circulars.

BY MR. DAVIS:

Q That is how you know it? A Yes.

MR. DAVIS: I object to it.

BY THE COURT:

Q In the printed form in which it is now, how did it get into the possession of E. S. Dean & Co.? A They were printed.

Q I mean, where were they delivered, and from whom received; what was done with them? A A good many were received from Duncan & Keller. That is Mr. Kellogg's printing firm. Of course, they got a good deal of the business; that was his concern; and a good many more came from Brooks, a printer who had been doing the printing for E. S. Dean & Co.; and they were received in large packages, and the mail clerks, or girl who had charge of the mail and dividend checks would enclose a circular in every letter.

Q Can you state how the orders were given to these respective printers for the printing of these circulars; how they were given, and by whom? A Who gave the orders?

Q Yes. A Mr. Kellogg, up to the— I don't say right through the corporation, you know, but up to the time that he went

87

to 66, which was on the 5th or 6th of January, he attended to the printing, because it was to his benefit to do it. He could distribute the orders.

Q Do you know, without regard to its being to his benefit; can you state whether or not, as a fact, that he did?

A Yes; I can state, as a fact, that he gave the orders.

Q You have mentioned up to January. A Yes.

THE COURT: When was this circular; what time?

MR. OLCOTT: November 16th, he has already answered, sir.

THE COURT: I will allow it.

MR. DAVIS: May I ask him a question?

THE COURT: Certainly, Mr. Davis.

BY MR. DAVIS:

Q How do you know as a fact that Mr. Kellogg gave the orders?

A Because that was his duty. None of us interfered with each other. I never interfered with Mr. Weimann's mail, and Mr. Weinmann never interfered with the main office, and neither of us interfered with Mr. Kellogg's circulars.

MR. DAVIS: I press my objection to the admission of this circular.

BY THE COURT:

Q Did you ever hear Mr. Kellogg say anything about the writing or printing or reception of these circulars? A Yes, sir.

213

Q What did you hear him say? A He has often brought down a rough/ draft of a circular, written in pencil, and says, "Here is something; rush right off;" and he would say, "Let Bernard correct this;" like a proof reader; and Bernard would correct the spelling and all, and he would have him rush off 50,000 of them.

MR. DAVIS: I move to strike out that last answer, your Honor.

THE COURT: No; I will deny your motion.

MR. DAVIS: Your Honor will give me an exception?

THE COURT: Yes; and I will overrule your objection.

MR. DAVIS: Exception.

(The paper is admitted in evidence and marked People's exhibit No. 19.)

MR. OLCOTT: I will read this, if your Honor please, because it contains matter substantially different from the others.

(People's counsel reads said paper to the jury.)

BY MR. OLCOTT:

Q Had you, Mr. Keller, bought stocks between November 5th and 14th, as stated in the letter I have just read? A No, sir.

77 203

89

Q Had there been any investments whatever, such as are spoken of in the letter, for E. S. Dean & Company's customers?

A No, sir.

Q What per cent of dividend was declared accompanying this letter-- I am referring to People's exhibit 19-- do you remember? A I do not; no, sir. I would have to look at the books to see that.

Q Let me ask you, generally, the amount of the dividend-- between what per cents did they run during the whole course of the business?

MR. DAVIS: I object, your Honor.

MR. OLCOTT: That is, just giving the minimum and maximum figures.

MR. DAVIS: The point of my objection is this; that it is incompetent, irrelevant and immaterial, so far as having any bearing on my client is concerned.

THE COURT: Of E. S. Dean & Co.?

Mr. OLCOTT: Yes, sir.

THE COURT: I think the question is too vague.

MR. OLCOTT: He had just said that he couldn't tell without looking at the books what checks for dividends were sent out. I was simply asking for minimum and maximum figures, so that he could say

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203

between what figures the dividends were. I can introduce the book at the proper time.

THE COURT: I sustain the objection.

BY MR. OLCOTT:

Q (handing another paper to witness) What is the paper that I now hand you? A (after examining) This is ^a circular closed ^{ing} No. 7.

Q Is that circular sent out by the Dean Co.? A Yes, sir.

Q Do you know who wrote it? A Why, Mr. Kellogg.

Q When was it sent out? A That was sent out on the 20th of November.

MR. OLCOTT: I offer it in evidence.

MR. DAVES: I object to it on the same grounds.

Objection overruled. Exception.

(Admitted in evidence and marked People's exhibit No. 20.)

(People's counsel reads the said paper to the jury.)

THE COURT: We will suspend here.

Gentlemen of the jury, I repeat to you my admonition not to talk about this case among yourselves or to any other person, and not to form or express any opinion as to the guilt or innocence of this defendant until the case is finally sub-

203

mitted.

Adjourn Court until to-morrow at half past
ten o'clock.

Adjourned until Tuesday, March 13th, 1900,
at 10:30 a. m.

203

March 13, 1900.

TRIAL RESUMED.

SAMUEL KELLER, a witness in behalf of the People, his direct examination being continued, resumes the stand.

BY MR. OLCOTT:

Q I hand you that paper, and I ask you what that is. A That is the letter that accompanied the dividend on the 1st of December 1896.

QQ Who drew that, if you know. A Kellogg.

BY MR. DAVIS:

Q Are you testifying from your own knowledge, that you saw him draw it? A I did not see him draw it.

MR. DAVIS: Then I move to strike it out.

THE COURT: I think that is embraced under the previous ruling, Mr. Davis, that this witness testifies it was part of the business that this defendant should draw the circulars, and he has testified that so far as he knew, no other person drew circulars or composed them or wrote them, except this defendant.

The point is, Was this circular used in the business, as part of the business and as part of the transactions between the witness and this defendant and the other parties interested?

MR. DAVIS: He has made a definite statement, as of knowledge, that this defendant Kellogg drew that circular.

MR. OLCOTT: I will consent that that be stricken out.

THE COURT: If that be so, it should be stricken out.

MR. DAVIS: Then is my motion granted?

THE COURT: Yes; to that extent.

MR. OLCOTT: I offer the circular in evidence.

MR. DAVIS: Objected to as immaterial, irrelevant and incompetent.

MR. OLCOTT: He has said that this was the circular sent out by the Dean Company on December 1st, with the remittances upon that date. I introduce it as part of the acts of the conspiracy which I have proved by this witness--

BY THE COURT:

Q Was this circular a similar circular used in the office as part of the business carried on by the concern? A Yes, sir.

THE COURT: I will admit it.

Exception.

It is received and marked People's Exhibit No.

74203

21.

BY MR. OLCOTT:

Q I ask you to look at this book or pamphlet which I hand you and state what you know of that.

MR. DAVIS: I object to that question.

Objection sustained.

BY MR. OLCOTT:

Q Then I ask you whether you ever saw pamphlets similar to this in use in the business of the Dean Company. A I did.

Q When did you first see pamphlets similar to that? A In December 1896.

Q State the circumstances. A The corporation had been using the sixth annual statement---

Objected to. Objection overruled. Exception?

THE WITNESS: The corporation had been using the sixth annual statement of the company, E. S. Dean Company.

Q Permit me to interrupt you to ask you if you mean the book which has been marked for identification People's Exhibit No. 14? A I mean the book you just handed me.

Q Well, that is marked People's Exhibit 14 for identification. A Marked "E. S. Dean & Company" inside. This new book was gotten up by Mr. Kollogg, a contract given by Mr. Kollogg to his own firm, Duncan & Koller, and the first I know of the

302
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contract---

MR. DAVIS: No; do not be so anxious.

BY MR. OLCOTT:

Q When did you first see those books in use in the office?

A Some time in December. I saw great numbers of books and great numbers of packages.

Q Did you speak to Kellogg about it? A I did.

Q Recount the conversation.

BY MR. DAVIS:

Q When was this? A Some time in December.

BY MR. OLCOTT:

Q 1896? A 1896. I said, "You must be getting a million of these books." He said, "No; I have only gotten eight thousand dollars' worth." I said, "That is a big expense for the corporation for one contract for advertising matter." He said, "It is worth it." I looked through the book, and I saw that the names in the back were missing, fourteen hundred names.

Q What fourteen hundred names do you refer to? A Supposed to be fourteen hundred names in the back of the book, the sixth annual statement. And he said that some of the people whose names were in the back of that book had written to the corporation about using their names without authority.

I said, "We could not pay that eight thousand dollars

77203

right now." That was a bad time--December was--a big combination paid---there had been a big combination paid. And he said we could pay it in installments, which we did.

Q Anything else said at that time? A No; that is all.

Q When did you first learn who had printed that book?

A When I got the order to pay the money.

Q From whom? A From Kellogg, to pay Duncan--to pay Duncan.

Q Who was this man Duncan?

Objected to.

MR. OLCOTT: He has just said that this book was produced by the firm of Duncan & Keller, which he has described as Kellogg's own firm. I am asking what he means by that.

THE COURT: How is it material who Duncan was?

MR. OLCOTT: He was a partner with Keller in the co-partnership which the witness has stated was Kellogg's own firm.

Objection sustained.

BY MR. OLCOTT:

Q Who had printed that book for the corporation of the Dean Company? A For the corporation?

Q Yes. A Duncan & Keller.

Q You spoke a moment ago about Duncan & Keller being Kellogg's own firm. What did you mean by that?

ASE #203

Objected to. Objection overruled. Exception.

A Kellogg was in the printing business, had a printing establishment, and was publishing some magazine, some fashion bazaar. He told me that was his concern, and that Keller was his name--that is, the name he was using.

BY THE COURT:

Q In the printing concern? A Yes, sir.

BY MR. OLCOTT:

Q What was done with those books? A They were sent out to every customer, and everybody whose name we could get.

Q At what time, about? A December, right along from December.

Q Until what time? A Until he closed up in April 1897.

MR. OLCOTT: I offer the book in evidence.

MR. DAVIS: Objected to as immaterial, irrelevant and incompetent.

Objection overruled. Exception.

It is received and marked People's Exhibit No. 22.

MR. DAVIS: I move to strike out the testimony of the witness where he says that Kellogg gave the order for the printing, that Kellogg printed it in his own concern.

MR. OLCOTT: In connection with the book, I

#203

want to read a paragraph from People's Exhibit
No. 21:

"Now, let us request you, as a customer of perhaps a month, a year or six years standing, to present to your friends one of our sixth annual statements, a handsomely bound book, as a Christmas present. They will undoubtedly peruse it carefully and then they will consult you, and the result will be that they like yourself will soon be following the road to fortune by becoming a member of our Special Order Department."

BY MR. OLCOTT:

Q What is the paper which I now hand you? A That is a special letter sent out by the corporation about the middle of December.

Q Do you know of your own knowledge who composed it?

A Certainly.

Q Did you see the original draft of that circular? A Yes.

Q In whose handwriting was it? A Kellogg's.

Q You saw it at what time? A About the middle of December.

Q Before or after this was printed? A Before.

Q And was this circular sent to all the customers of the Dean Company? A Yes, sir.

Q 207 #203

MR. OLCOTT: I offer it in evidence.
object

MR. DAVIS: I upon the ground that it is im-
material, irrelevant and incompetent, and if the
original is in existence it ought to be produced.

The witness has testified that he saw the orig-
inal draft of the circular, and that it was in Kel-
logg's handwriting. They have not shown that the
original is not in existence, that it was lost and
cannot be found or produced.

THE COURT: The point, Mr. Davis, is as to
whether or not this was used in the business. The
original, I assume, was simply a written draft for
the use of the printers.

MR. DAVIS: It does not so appear.

THE COURT: I think we may fairly assume that.
The question is if this was adopted by the concern as
part of their business transactions. I will over-
rule the objection.

Exception.

It is received and marked People's Exhibit No.

23.

MR. OLCOTT: It may also be assumed that we
would introduce the original if we had it. But
this is introduced as simply sent out to the custom-

7-203

ers.

BY MR. OLCOTT:

- Q Do you know what became of that original that you saw in Kellogg's handwriting? A It was put in my drawer.
- Q And what became of that? A That and all my checks and other papers were taken out some time in March.
- Q Do you know by whom? A No, sir; I do not.
- Q Did you look for them? A I did.
- Q Ever able to find them? A Never.
- Q When did this occur? A Some time after the middle of March--between the middle of March and the end of March.
- Q What is that paper that I now hand you? A This is the letter for Special 10. Letter gotten up for subscriptions to Special Combination Number 10.
- Q When was that sent out, if it was sent out? A It was sent out the end of December.
- Q To whom? A Every customer.
- Q Was it sent out with People's Exhibit 23 or after it? A Oh, after.
- Q Do you know of your own particular knowledge who wrote that circular? A I can answer, the same as to all the others.
- Q But you don't remember seeing the original draft? A No. I can give you the reason for remembering that other

one so specially.

Q What was your reason?

Objected to. Question withdrawn.

MR. OLCOTT: I offer this in evidence.

MR. DAVIS: Objected to upon the same grounds.

Objection overruled. Exception.

It is received in evidence and marked People's
Exhibit No. 24.

BY MR. OLCOTT:

Q As matter of fact, had there been any investments of the
Dean Company's customers' money in Special Combination Number
9?

Objected to.

THE COURT: I do not see how Special Combination
No. 9 comes in. In the indictment there is an al-
leged Special Wheat Combination No. 2. How does
Special Combination No. 9 come in?

MR. OLCOTT: Does your Honor not think that as
to the general conduct of the business, under the
conspiracy count, it is material?

THE COURT: No. I sustain the objection.
I think we had better confine ourselves as closely
as possible to the matters set forth in the indict-
ment.

203

BY MR. OLCOTT:

Q I hand you this paper and ask you what it is. A This is the letter that followed the letter inviting subscriptions to Number 12.

Q To whom was this sent? A All the customers.

Q When was it sent out? A I could not tell you the date.

Q As nearly as you can. A I would have to guess at that.

Q I don't want you to guess, but tell us within what limits of time. A Oh, near March.

Q Near March? A Yes, sir.

BY MR. DAVIS:

Q Near March? A Yes, sir.

Q Is that a guess? A No; that is a fact.

Q A fact? A Yes.

Q I thought you would have to guess it. (No answer).

MR. OLCOTT: I offer it in evidence.

BY MR. OLCOTT:

Q Near March, 1897? A Yes.

MR. OLCOTT: Now, I offer it in evidence.

MR. DAVIS: I object to it upon the usual grounds.

Objection overruled. Exception.

It is received and marked People's Exhibit

No. 25.

203

BY THE COURT:

Q Do you know if that circular was sent out, and used in the business, the last one? A Yes, sir.

BY MR. OLCOTT:

Q What is that paper I hand you? A This letter went with the statement or drafts with dividends for the first two weeks in December 1896.

Q Do you know whether that went to all the customers of the Dean Company? A All the subscribers.

It is offered in evidence.

Same objection, ruling and exception.

It is received in evidence and marked People's Exhibit No. 26.

THE COURT: Do you not think there are enough of these in evidence as showing the general character of the business transacted?

MR. OLCOTT: I will accept your Honor's ruling if you feel I should not introduce any more. There are some statements in certain of them that differ from others. I have not introduced all that I possess. I have not planned to.

THE COURT: They all tend to show the general character of the business.

MR. OLCOTT: Clearly, only the different forms

7-203

of expression that I think perhaps are relevant. Under your Honor's ruling, I will omit to introduce all of those until we get down to Wheat Combination No. 2, upon which specifically the indictment is framed. That I will speak of later and in its chronological order.

Mr. Davis, I ask if you have produced this morning the original or duplicate original of the paper I called for yesterday.

MR. DAVIS: We produce no papers upon the side of the defense at this stage of the trial.

MR. OLCOTT: Then I ask to introduce the paper marked yesterday, People's Exhibit No. 9 for identification.

THE COURT: That is the press copy?

MR. OLCOTT: Yes, but which the People claim was a duplicate original given to one of the parties to the transaction and given in place of having a duplicate executed.

MR. DAVIS: It appears to be a press copy of something. We object to it upon the ground that it is irrelevant, immaterial and incompetent.

THE COURT: I will suspend my ruling for the moment.

203

BY THE COURT:

Q About this matter, state now what you stated before .

A There was a receipt given, of which that is a copy,
for the visionary assets of E. S. Dean & Co.

MR. DAVIS: I move to strike out that answer.

THE COURT: Strike out the answer containing
the word "visionary".

MR. DAVIS: May I get the motion in fuller?

My motion is to strike out the whole answer.

THE COURT: I grant your motion.

BY THE COURT:

Q Now, just state how that paper came to you. A In the
account of Goslin & Co. in the ledger, it appeared that Gos-
lin & Co. owed E. S. Dean & Co. \$185,000. and some odd dol-
lars, which constituted the assets of E. S. Dean & Co. to be
turned over to the corporation.

There was a receipt drawn up, of which that is a
copy, stating that Goslin & Co. had turned over to the cor-
poration stocks and bonds and assets amounting to one hundred
and eighty five thousand and some odd dollars. That receipt
was intended to relieve E. S. Dean & Co. and saddle the cor-
poration with the Goslin & Company account.

MR. DAVIS: I move to strike out that part of
the answer in which the witness says that the ra-

203

ceipt was intended to relieve E. S. Dean & Co. and to saddle the corporation with the Goslin account.

Motion denied. Exception.

BY THE COURT:

Q How was it executed? A How do you mean?

Q Who wrote the receipt? A The receipt was written by Goslin and signed by M. L. Bernard as President of the Dean Company and Goslin & Company for Goslin & Company.

MR. DAVIS: I move to strike out the answer.

Motion denied. Exception.

BY THE COURT:

Q What was done with the paper? A Mr. Kellogg got the original paper to relieve him of any liability of E. S. Dean & Company.

Q Did you see the original paper? A Yes, sir.

Q Did you see the writing on it? A It was written in typewriting.

Q It was typewritten? A Yes, sir. The signatures were in ink.

Q You saw the signatures? A Yes, sir.

Q Were they written in your presence? A Yes, sir.

Q And the original that was written was given, you say, to the defendant? A Yes, sir.

Q Then how did this what is called a press copy come to be

#203

taken? A That was taken out of the letter book and put in the safe of the corporation.

Q I mean were there impressions of this receipt which was given to the defendant, taken in a letter press book? A Yes, sir.

Q In your presence? A Yes, sir.

Q And who, if anybody, received this letter press copy? A The President of the corporation.

Q Bernard? A Yes.

Q He received this? A Yes.

Q And the defendant took the original? A Took the one on writing paper.

Q What did the president of the corporation do with it?

It
A Put in the safe.
^

Q I understood you to say that he took it out of the letter press book. A The sheet itself was taken out of the letter press book, and then that was put in an envelope in the safe.

THE COURT: I understand, Mr. District Attorney, that you claim that it was to operate as a duplicate between the two.

MR. OLCOTT: We claim that, and adduce it from the fact that instead of being left in the letter book it was taken out and put in the safe as

203

an original paper would be treated; but beside that, I think under the rule in cases that are familiar to your Honor, but which at the moment I cannot recall, this, as a part of the records of the Dean Company, can be put as part of the surrounding transactions, as part of the res gestae.

It was done at the moment, so to say, when the company and the corporation were merged under the plan, as this witness has stated, of Kellogg, the defendant, and was part of the res gestae of the conspiracy.

THE COURT: I will overrule the objection.

Exception.

The paper marked People's Exhibit 9 for identification is now received in evidence as People's Exhibit No. 9.

BY MR. OLCOTT:

Q As matter of fact, were any securities, bonds or stocks examined that day?

Objected to. Objection overruled.

Exception.

A No, sir.

Q Was any property of any sort turned over to the corporation by Goslin & Co.?

Objected to. Objection overruled. Exception.

A Nothing at all.

Q Nor at any other time during the existence of the corporation? A No, sir.

Q You stated yesterday that E. S. Dean & Co. had a bank account in the Gansevoort Bank, with twelve hundred dollars in it.

A Over twelve hundred.

Q Twelve hundred and something. A Twelve hundred and some odd dollars.

Q When you assumed the management of the E. S. Dean Company what did you do with that money?

Objected to. Objection overruled. Exception.

A We got a check from Mr. Kellogg.

Q Signed how? A E. S. Dean & Co.

Q For what amount? A This twelve hundred and few dollars.

Q Drawn on what bank? A Gansevoort Bank.

Q What did you do with that check? A We deposited it to the credit of the corporation.

Q Where? A At the same bank.

Q Opened an account at the Gansevoort Bank? A Yes, sir.

Q Was that the account that you used during the course of the business of the Dean Company? A Just for a few days.

Q Describe what happened then about the bank account. A

We opened a bank account with Theodore W. Myers & Company.

Q Did you have any conversation with Mr. Kellogg about opening that account? A Yes, sir.

Q I ask you the conversation you had with Kellogg. State the conversation. A I told Kellogg that the Gansevoort Bank would not take our out of town checks, and I would leave a pretty fair balance up there, and think that on the strength of that the Gansevoort would take our collections, but they would not do it.

They send us word through our president that they did not want the account. I had to cash the check some place, and I gave it to Theodore Myers & Co.

Q Did you converse with Kellogg before doing it, about that? A Yes, sir.

Q State all you said to him about it. A I just stated I told him that the Gansevoort Bank would not take our out of town collections, and if we had to wait until we got returns we would be short of money right away. The dividend day was Monday. He went up to see them.

Q This was upon what date that you said this to Kellogg?

A Monday or Tuesday.

Q That is October 12th? A 12th or 13th of October. He went up to the bank--

Objected to.

Q What did he say he would do, if anything? A He would go

17203

up there and take Bernard with him.

Q He told you so? A Yes, sir.

Q What did he do then, if anything? A He went up there.

Q You did not go with him? A No.

Q I only ask you to tell what you personally know. A I personally know that he went up there with Bernard to the Gansevoort Bank.

Q How do you know? You were not there.

MR. DAVIS: Never mind. I will take his statement.

MR. OLCOTT: I will not.

A The corporation needed money ---

BY MR. OLCOTT:

Q I ask you to tell how much of all that you personally saw with your own eyes.

MR. DAVIS: I move to strike out the last answer.

THE COURT: Motion granted.

BY MR. OLCOTT:

Q (Question repeated). A I saw Kellogg and Bernard leave the office and go up to the bank, and I saw Bernard when he came back from the bank, and had my conversation---

MR. DAVIS: I move to strike out the answer.

MR. OLCOTT: I have no objection.

The answer is stricken out by direction of the Court.

BY MR. OLCOTT:

Q (Question repeated). A I have answered.

Q The answer has been stricken out. Now, tell us what you personally saw with your own eyes. A I cannot answer any other way.

BY THE COURT:

Q Let us see, so that there will be no misunderstanding about it. This Gansevoort Bank was uptown on the West Side, was it not? A Yes, sir.

Q You did not see them go into the bank, did you? A No, sir.

Q Then when you say you saw them leave the place and go up to the bank, you state something you could not have seen.

A That is right.

Q Now, state what you saw with your own eyes and what you heard with your own ears, with reference to that transaction.

A Now I understand you. I saw them leave the office, 35 Broadway, Kellogg and Bernard.

BY MR. OLCOTT:

Q Immediately before leaving the office what, if anything, did Kellogg say? A I said to Kellogg that the Gansevoort Bank would not have our account, that they would not let us

203

draw against uncollected deposits, checks and drafts.

Q What did he say to you? A He said, "I will go up and fix it with Bernard".

Q Tell me whose signature is upon the paper which I now hand you. A Kellogg's.

Q Whose writing, I would say? A Kellogg's writing.

Q The words, "E. S. Dean & Co." are written by Kellogg?

A Yes, sir--the signature, not the body.

Q What is that paper? A That is the balance in the Gansevoort Bank.

Q The check you have just spoken of? A Yes, sir.

Q On the Gansevoort Bank? A Yes, sir.

MR. OLCOTT: I offer it in evidence.

MR. DAVIS: I would like to cross examine..

BY MR. DAVIS:

Q What part of this check that you have just referred to is in the handwriting of the defendant--Mr. Kellogg? A I just had a hurried glance at it. The signature, I recognized it.

Q Only the signature is in Kellogg's handwriting? Is not that true? A "E. S. Dean & Co."

Q The signature? A Yes, sir.

Q Who has endorsed it? A I endorsed it.

Q Your handwriting? A Yes, sir.

7-203

Q What name is on the back which you wrote? A "J. Lamberg, Treasurer."

Q Who is he? A He was Treasurer of the corporation.

Q You signed his name? A Yes, sir.

BY MR. OLCOTT:

Q Where were the funds received from this check put?

MR. DAVIS: He said they were put in the Gansevoort Bank.

THE WITNESS: That was what I explained before.

The Gansevoort Bank would not take our account. We put that with Theodore Myers & Co.

BY MR. OLCOTT:

Q To whose credit? A Credit of the corporation.

Q The E. S. Dean Company? A Yes, sir.

Q Had you known the firm of Theodore W. Myers & Co. before these transactions? A Known them? Knew of them?

Q Yes. Q Know members of them.

Q Had you had any dealings with the firm of Theodore W. Myers & Co.? A No, sir.

Q When was it that you opened the account with Theodore W. Myers & Co. for the E. S. Dean Company? A About the 13th of October 1896.

The check is offered in evidence.

MR. DAVIS: Objected to as incompetent, immat-

erial and irrelevant.

Objection overruled. Exception.

It is received in evidence and marked People's
Exhibit No. 27.

BY MR. OLCOTT:

Q Thereafter did you conduct further business with Theodore W. Myers & Co. with reference to that account? What did you do about the account? A I opened an account with Theodore W. Myers & Co., and gave them all the moneys that came in those few days' mail of the first week of the corporation's existence.

Q How long did that account of the E. S. Dean Company with Theodore Myers & Co. continue? A The opening account?

Q Yes. A Just a few days.

Q What did you do then? A Mr. Myers told me that the Manhattan Company---

Objected to. Objection sustained.

THE WITNESS: Then I went around to the United States National Bank where I was known.

Q What did you do there? A Opened an account with the United States National in the name of the corporation.

Q How long did that account continue? A That continued a long time--some time in January.

Q Did the corporation have any other bank accounts than those

203

you have named, in the course of its existence? A Yes, sir

Q Where? A Leather Manufacturers'.

Q From what date to what date? A Some time in January to the end--The German National Bank also, up on the Bowery.

Q When was that account opened? A That was in December-- didn't last---didn't keep it there very long. They objected, and we closed it out.

Q How many days did it last? A Might say not over three weeks.

Q From October 12th, you said yesterday, Kellogg came daily to the offices of the E. S. Dean Company until what date?

A Why, he was there daily, every day.

Q Until the Company failed? A Until the Saturday the Company failed.

Q That is, Saturday, April 3rd? A Yes, sir.

Q How long would he stay there? A Well, different periods.

Q Describe them as nearas you can remember. A Up to the time that he opened the register business at 66 Broadway he was at 35 Broadway pretty nearly all the time during business hours.

Q When was it that he opened this register at 66 Broadway?

A It was the first week in January 1897.

Q What did he do after that with relation to his visits to the office of The Dean Company? A Then he would only come

203

in to get the amount of the morning receipts, and occasionally would drop in for lunch or in the afternoon, to see how the business was.

Q How long did he stay on each morning after January, beginning with January? A He would stay around until the receipts were totalled.

Q At what hour would that be? A He would stay around about an hour in the morning and about an hour for lunch, and then in the afternoon he would drop in and we would go uptown together.

Q Did you ever have any conversation with him about other dealings with Myers & Co. than your bank account?

Objected to as immaterial and irrelevant.

Objection sustained.

MR. OLCOTT: If your Honor please, I want to find out from this witness whether the process of going to Myers and having Myers act as brokers of the concern was discussed between Keller & Kellogg, and that will lead up to the essential part of the facts alleged, because it will relate to the transactions under Wheat Combination Number 2.

MR. DAVIS: Your Honor will observe the wide scope of the question.

THE COURT: Yes, but while it may be competent

17-203

for you to show a conversation between the witness and the defendant with reference to the account, I do not think it is competent to show the fact whether or not he had another account with Myers & Co. unless it is involved from the manner of doing business by the defendant and his colleagues in the corporation.

MR. OLCOTT: I did not make my question clear, or your Honor did not hear it fully, because I was addressing myself not to the question about another account with Myers, but to a question about something else relating to Myers than the account, and I wished without leading him to bring up the other matters I have just referred to.

Q. Question repeated as follows: Did you have any conversation with him about other dealings with Myers & Co. than your bank account?

THE COURT: With this defendant?

MR. OLCOTT: Yes.

MR. DAVIS: My objection is directed against the general character of the question. It may refer to dealings not in a business way, dealings entirely outside of his business, and even though it were a conversation between this witness and this

17-203

defendant, it would not be relevant to this charge.

THE COURT: My ruling will stand.

BY MR. OLCOTT:

Q At any time during the life of the corporation did you have a conversation with the defendant Kellogg about having any transactions with Myers & Co., in the nature of brokerage transactions? A Yes, sir.

Q When? A February and March 1897.

Q State the conversation, the first one.

BY MR. DAVIS:

Q Did that conversation extend over two months--he said February and March. A I had several conversations in February and March.

BY MR. OLCOTT:

Q I therefore ask you to state when the first conversation was, and when, as nearly as you can fix it? A When we started the big Sugar Combination--

MR. DAVIS: I object. He is asked for a conversation.

THE WITNESS: That will lead up to it.

THE COURT: Strike that out.

BY MR. OLCOTT:

Q State the time by date. A Some time in February. I was paying them, Theodore W. Myers & Co. large commissions, and

I told Kellogg that I had paid a great sum for commissions one day, and he said we ought to save that money.

Q What did you say? A I told him it was worth it, to have a reliable house that we used for reference, and the commissions that we paid were not so exorbitant when we came to figure on the receipts. It was a good advertisement.

He objected to paying so much money, thousands of dollars, and I told him I could not find any other concern that would do it for ^{any} less, that we had to trade with a legitimate Stock Exchange House, and I looked around and tried two or three other houses, and I could not make any better dealing, they all wanted one-eighth commission each way, the rules of the Stock Exchange.

BY THE COURT:

Q What was Myers' commission? A One-eighth each way, on stocks.

Q That was one-eighth per cent? A \$12.50 on every hundred shares.

Q One-eighth per cent? A \$25. for the round trade. Buying one hundred and selling one hundred was \$25.00.

BY MR. OLCOTT:

Q Your transactions with them had begun in October? A Yes, sir.

BY THE COURT:

203

Q Bearing in mind your former testimony, do I understand you correctly that if there were a 'thousand dollars' worth of stock purchased and sold in one transaction through this brokerage concern, they would take one-eighth of that one thousand dollars in commissions? A It is not dollars. If it is a thousand shares of stock bought and sold at the same time, the corporation would pay Myers \$250.

Q On a thousand shares? A Yes, sir.

Q Without regard to the actual or nominal value of the shares?

A It makes no difference.

Q A share is a share? A A share is a share, whether quoted at ten dollars or Standard Oil at five hundred.

Q It is rated at one hundred dollars? A Yes, sir.

Q Par value? A Yes, sir, par value.

Q So if you bought a thousand shares and sold the same thousand shares immediately, that was---? A A loss of \$250.

Q When they have the sale and when they have the purchase?

A Yes, sir, and visa versa. If we sold a thousand and bought it, it was the same thing, \$250. on a thousand and \$25. on a hundred.

Q If you reversed it? A Yes, sir.

BY MR. OLCOTT:

Q Before you began your brokerage transactions with Myers & Company---

MR. DAVIS: On that point we do not deny that the witness is telling the truth, as to the way it is done.

BY MR. OLCOTT:

Q Before you began your brokerage transactions with Myers & Co. in October 1896, had you had any conversation with Kellogg on the subject? A No.

Q Did Kellogg know you were buying and selling stocks from Myers & Co.?

Objected to. Objection overruled. Exception.

A Yes, sir.

Q Did you have any conversation with him at any time during October on the subject? A Yes.

Q When? A Right after we opened the account there.

Q What did you say to him and what did he say to you on the subject? A I told him that Charlie had introduced me to a good concern, and that I would--

Q By "Charlie" meaning whom? A Weinmann had introduced me to a good concern, and that I would be able to have the books kept all right, that I could buy and sell by paying full price. Well, he said that he had never paid those commissions to Goslin & Co., \$25. on a hundred.

Then I held out for my right by saying that we had to have a legitimate Stock Exchange house in case of any trouble.

203

and I carried the point, and he was satisfied. I took him over--

Q Did you take Kellogg to Myers & Co.? A Right after that, yes, sir.

Q During the month of October 1896? A Some time during the month of October 1896.

MR. DAVIS: Took who?

MR. OLCOTT: Took Kellogg over there.

BY MR. OLCOTT:

Q Whom did you see at Myers & Co.? A Saw E. H. Myers and everybody else.

Q What conversation ensued? A I just introduced him as Mr. Kellogg to Myers.

Q Did you say anything about Kellogg to Myers? A I said he was all right.

BY MR. DAVIS:

Q Let us have it all out. A I said Kellogg was all right if he wanted to do any trading or anything. That was to E. H. Myers.

Q Is that the one known as "Eddie"? A Yes; Eddie Myers.

BY MR. OLCOTT:

Q Describe your transactions with the house of Myers & Co.? A Which ones?

Q All of them from the beginning. A Oh--

203

Q The transactions, of course I mean, for the E. S. Dean Company. A In general?

Q Yes. A Oh, I would go in and give an order to buy.

BY MR. DAVIS:

Q What is that? A I would go into Myers & Co.'s office and give an order to buy and sell as much as I needed to make up the profits on a certain combination.

BY MR. OLCOTT:

Q You say you gave an order to buy and sell. Describe exactly what order you gave. A I would say, "Buy a thousand Sugar and sell a thousand Sugar at the market."

MR. DAVIS: I wish to make a formal motion to strike out the answer given by the witness to the last question.

Motion denied. Exception.

THE WITNESS: I would say, "Buy a thousand Sugar and sell a thousand Sugar at the market; and here is a check for ten thousand dollars"--or five thousand dollars, whatever amount of Sugar--if I bought two thousand shares of Sugar I would give him twenty thousand dollars, and he would buy and sell a thousand shares of Sugar, and I would get the trade, and if it was a thousand shares and I gave him a five thousand dollar check or a ten thousand dollar check, I would get back the difference in money.

Q When ? A As soon as he could get it from the bank.

BY THE COURT:

Q What difference? A The difference between ten thousand dollars margin and the cost of buying and selling the shares of stock.

Q The commission? A Yes, sir; the commission.

Q As you described before? A Yes.

Q On these occasions and in these transactions, would there be any difference in the sale--in the purchase, we will say, and then in the sale? Do you understand? Would you lose or would you gain? A We could not either.

Q Neither lose nor gain? A Neither one.

Q Do I understand you correctly then, that you would buy at a given figure and sell at the same figure? A Yes.

Q And the loss that you would be to--? A Would be the commissions.

Q Would be the commissions? A Yes.

Q And did that form part of one continuing transaction? A How do you mean?

Q One transaction disposed of right there, or go over a day or a week? A Oh, no; never went over. If it went over we were gambling. You know what I mean--we were speculating

BY MR. OLCOTT:

Q You don't mean you had any moral dislike to speculating?

7-203

Q What is the name on the Street for what sort of transaction?

A That is washing trades.

Q What papers were furnished to you by Myers & Co. in connection with that transaction? A We got a purchase slip for a thousand--I am making this as an example--a purchase slip for a thousand and a sales slip for a thousand.

Q At what figures comparatively? A Well, at the same figures.

Q Was the purchase slip a different piece of paper from the sales slip? A Identical papers, but some times some houses use a different colored purchase slip than for sales.

Q I mean to say your contemporaneous purchase and sale was not on the same slip of paper? A Oh, no.

Q What did you do with those slips of paper? A I saved them.

Q Ever use them in any way? A Yes.

Q In what way? A Well---

MR. DAVIS: I object to it upon the ground that it is immaterial, irrelevant and incompetent.

Objection overruled. Exception.

THE WITNESS: We kept two sets of purchase and sales books. One was used for purchase slips and the other was used for sales slips.

BY THE COURT:

Q I wish to ask you one more question. If you gave to this

7203

brokerage firm a check, as you say, for ten thousand dollars for the purchase of stock, and you bought the stock at the same time, what time would intervene between your giving the check for the purchase of the stock and your receiving the check for the sale of ^{the} stock from the same brokerage firm?

A We never received any check. We got the currency.

Q What time would intervene from your delivering your check to your receipt of the currency, less your commission? A Some times the Stock Exchange house would want the stock to be cleared, go through the clearing house, so it would be more than quarter past two, later than quarter past two, when we got the money, but some days when there was no clearing, like on a Friday or Saturday, why you could get the money right away.

BY MR. OLCOTT:

Q Is that one of the purchase and sales books which you have just referred to? A Yes, sir; that is one of them.

Q Was that kept under your direction? A Yes, sir, I bought the book, and in Mr. Farron's handwriting. He was under me.

Q Did you see that book every day in use in The Dean Company?

A No; only write them up when we got a bunch of them.

Q From what papers was that book written up? A Purchase and sales slips.

Q These slips you have been speaking of? A Yes, sir.

203

MR. OLCOTT: I offer this book in evidence.

Objected to. Objection sustained.

The book is marked Exhibit No. 28 for Identification.

BY MR. OLCOTT:

Q Look at the book which I now hand you, and tell me what that is. A That is a purchase and sales book.

Q Another one? A That is a special one.

Q By whom was that kept? A The same man, Farron.

Q Under whose direction or supervision? A Under mine.

Q How often did you see that book? A Well, only used it once.

Q When was that? A That was about--

MR. DAVIS: I object as immaterial and irrelevant, on the point of identification.

THE COURT: I will allow it to stand.

THE WITNESS: On or about the 16th of March 1897.

BY MR. OLCOTT:

Q When did you last see that book? A That book was kept on the--

MR. DAVIS: The witness is not proceeding to answer that question, and therefore I have to be on my guard. I ask that your Honor caution him to an-

7-203

swer that question directly if he can.

THE COURT: Direct your answers to the questions put to you.

THE WITNESS: Yes, sir.

MR. OLCOTT: I withdraw the question. I am not sure whether the witness understands what I mean.

BY MR. OLCOTT:

Q What I want to know is when you last saw that book in the offices of The Dean Company. A The 3rd of April 1897.

Q Where was it then? A On the desk.

Q Did it have all of the entries that are now in it? In other words, was it exactly in the same condition as it is at the present time? A Some of these--no, sir; no, sir.

Q You have stated that the book was used on March 16th, 1897.

A Yes, sir.

Q Were there any entries made, if you know of your own knowledge, subsequent to that time?

Objected to. Objection overruled.

Exception.

A I did not see them made.

Q Are there any entries in that book that were not there when you last saw the book in the offices of The Dean Company on April 3rd, 1897?

17-203

Objected to. Objection overruled. Exception.

A Yes, sir.

Q Which entries are those?

Objected to.

THE COURT: You cannot disclose the contents of the entries.

MR. OLCOTT: May he describe them by the number of the lines?

THE COURT: He may describe the pages as containing entries, but not the entries themselves.

THE WITNESS: There is only one page.

BY MR. OLCOTT:

Q There is only one page of entries in the entire book?

A Yes, sir; that is all.

Q Which lines upon that page were there when you saw the book on April 3rd, 1897? A The last ten thousand shares.

MR. DAVIS: I move to strike that out.

THE COURT: Strike it out.

BY MR. OLCOTT:

Q You did not listen to the Recorder. He told you to describe it only by the number of the lines. A What will I do?

Q Describe by the number of the lines on that page, those which were inserted after April 3rd, 1897? A The last line and eighteen other lines, commencing the 9th of March---

203

from the 10th of March to the end. First entry 10th of March, inclusive.

Q When did you first see that book with these eighteen lines written in? A Oh, that was long after the failure.

Q By whose direction, if you know, were those eighteen lines written in? A Mine.

Q You directed Farron to write them in? A Yes.

Q Was that after a conversation with Kellogg on the subject?
A No, sir.

MR. OLCOTT: I offer the book in evidence.

Objected to. Objection sustained.

The book is marked People's Exhibit No. 29
for identification.

Another book is marked People's Exhibit No. 30
for identification.

Q I show you a book marked People's Exhibit 30 for identification, and ask you if you recognize the handwriting which that book contains. A Yes, sir.

Q Whose handwriting is that? A Farron's.

Q When did you last see that book in the offices of the E. S. Dean Company? A Oh, let us see. This was one of the regular books of The E. S. Dean Company.

BY MR. DAVIS:

Q Why don't you answer the question.

BY THE COURT:

Q When did you last see it? (No answer).

MR. DAVIS: I move to strike out his last answer
Motion granted.

THE WITNESS: April 3, 1897.

BY MR. OLCOTT:

Q Was that, if you know, one of the regular books of account
of the E. S. Dean Company? A Yes, sir.

Q Where was it kept? A Kept in the safe.

Q When did you first see it? A In February. I ordered the
book.

Q How often did you see it between February 1897 and April 3
1897? A I saw it every day that I was there.

Q Were the entries in it, if you know, made as they now stand,
prior to April 3rd, 1897? A Yes, sir.

MR. DAVIS: I object. He did not make the
entries.

MR. OLCOTT: He saw the book on April 3rd,
1897.

THE COURT: I will sustain the objection and
the answer will be stricken out.

BY MR. OLCOTT:

Q You say you saw that book on April 3rd, 1897, in the offices
of the Company, did you? A Yes, sir.

Q Did you then look at it? A Yes, sir.
Q Look through it? A Yes, sir.
Q Look through the book now, if you please, and tell me whether or not there are any entries in that book other than those which you saw there on April 3rd, 1897. A Yes, sir.

Q Which entry?

BY MR. DAVIS:

Q I object. Have you looked through the book? A There is only one page.

BY MR. OLCOTT:

Q Which entry?

Objected to.

THE COURT: Do not read the entry. You may describe it without reading its contents.

A March 8th to March 20th inclusive. Seven entries.
BY MR. OLCOTT:

Q On page what? A There is only one page in the purchase and sales book.

Q The page extends all along? A Yes--there are two March 8ths there.

Q There are seven entries altogether? A Seven entries---
March 8th, in the name of Barrett & Co.---

MR. DAVIS: I object, and move to strike that out.

THE COURT: Strike it out.

MR. DAVIS: Did Mr. Olcott ask you that?

MR. OLCOTT: He was quite right. The dates he mentioned were not sufficient to describe it as there are two March 8ths.

BY MR. OLCOTT:

Q Tell me, by the lines of the page, which lines you refer to.

A Commencing from the bottom of the page, 15th, 16th, 18th, 18th, 19th, 20th and 21st lines, inclusive.

Another book is marked for identification

People's Exhibit No. 31.

Q Look at People's Exhibit 31 for identification. Do you know whose handwriting is contained in that book? A Mr. Farron's.

Q Was he one of the officers of the company? A He was the secretary and treasurer.

Q From what time until when? A From some time in January, early in January, until the company closed up.

Q Was that book kept at the offices of The Dean Company?

A Yes.

Q Were any entries made in that, if you know, prior to April 3rd, 1897? A All the entries in this book were made the end of March 1897.

MR. DAVIS: I move to strike that answer out.

The witness is not competent to state that.

203

Motion granted.

BY MR. OLCOTT:

Q When did you last see the book at the offices of the Dean Company? A The last day of the corporation's existence.

Q That was April 3rd, 1897? A Yes, sir.

Q Were the entries which you now see in that book in it on that day? A Yes, sir.

Q Who directed that those entries should be made? A I directed it.

Q To Farron? A Yes, sir.

Q Were any papers given to Farron at the time? A The purchase and sales slips.

Q What purchase and sales slips? A The slips that we got from Theodore W. Myers & Co. for the purchase and sale of wheat.

Q You spoke of an occasion a few minutes ago, in February 1897, when Kellogg conversed with you about the commissions that were being paid to Myers. Were there any conversations with Kellogg, between Kellogg and yourself, subsequent to February, on that subject? A In March.

Q What date in March? A I could not tell you the exact date.

Q What did Kellogg say then to you? A I had paid out a larger sum than ever before for commissions. I had sent

a great many thousands of dollars to Chicago for commissions.

MR. DAVIS: Is this all what Kellogg said?

I move to strike out the answer so far given.

MR. OLCOTT: I have no objection.

THE COURT: Then the motion is granted.

BY MR. OLCOTT:

Q Just state only what was said between Kellogg and yourself.

A Kellogg said that I was spending too much money for commissions. I told him I had to do it, it was a much larger business than anybody anticipated, and we had to make larger trades, and the larger the trades the more the commissions. And I carried my point. I paid the commissions.

Q During all this time had Myers & Co. been acting in any other way than that you have mentioned for The E. S. Dean Company? A For the corporation?

Q Yes. A They were the brokers for the corporation.

Q Had they done anything else for you? A They had cashed checks for us, and they would be reference if we needed them.

Q They acted as the reference of the corporation? A Yes, sir.

Q Did you refer people to them? A Yes, sir.

Q How often? A As often as the people would come on to New York or write to us for a Stock Exchange reference.

Q How often was that? A That was very often.

Q Be as specific as you can on that subject. A Say one hundred times.

Q Was it as much as that? A Easy.

Q You have described how you got moneys from Myers & Co. in cash. Why didn't you send you the money in checks?

Objected to.

THE COURT: The question is objectionable in form. Objection sustained.

BY MR. OLCOTT:

Q Did you make any request of Myers & Co. as to how the money should be sent back to the Dean Company? A Yes, sir.

Q What was that request?

Objected to. Objection overruled. Exception.

A I told Eddie Myers that we had always rather have the currency than the checks.

Q What would you do with the currency when it came back from Eddie Myers?

Objected to. Objection overruled. Exception.

A Well, it would go into our sinking fund.

Q What was the sinking fund? Don't joke about it. A I am telling you exactly the conversation. We called our sinking fund our profits, our divisions. That was termed a sinking fund by us three.

- Q By which three? A Kellogg, Weinmann and myself. And this money would come in, and when it got large enough, when the sum would be large enough to have a division we would have it.
- Q Were there any regular days of division? A The bank account was divided as a rule on Saturdays, the bank balance.
- Q Divided in what form? How would you divide it? A If we were dividing fifteen thousand dollars, we would each get a five thousand dollar check.
- Q Drawn to whom? A "Bearer" or "M. L. Bernard, President," and he would endorse it.
- Q Checks were either drawn to the bearer or drawn to the order of the president? A Yes, sir, or to Miss Crowfoot, the cashier. Some times they would not all be there. Some times Bernard would be away.

BY MR. DAVIS:

- Q When the division was going on? A I am not speaking of the division now.

BY MR. OLCOTT:

- Q Bernard didn't get any division? Bernard got a salary.

BY THE COURT:

- Q Is that so? A He was a salaried man.

BY MR. OLCOTT:

- Q How much salary was paid to Bernard? A He got \$100. a

203

week a perquisites.

Q What were the amounts of the perquisites? A Depended upon how good the week was. If it was a good week, he got \$100. extra. Some times he would only get \$25. or \$50.

Q Upon what did the amount of the perquisites depend? A Upon the receipts.

Q Did he get a percentage, do you mean? A No. If it was an extraordinary good week, a good sum divided, I would say, "Well, Bernard ought to get something." And I would tell Kellogg, "I gave Bernard \$100. to-day," and he said, "That is all right."

(The answer is repeated by the stenographer).

BY THE COURT:

Q Is that correct? A I said, I would tell Kellogg, "I gave Myron \$100. to-day," and he said, "That is all right."

BY MR. OLCOTT:

Q When you speak of the receipts of the week being good, what receipts do you mean? A The net receipts. After paying dividends and expenses the balance was net receipts.

Q The balance received from whom? A Customers, subscribers.

Q Sent to you to invest in these combinations? A Yes, sir, or the Special Order Department.

Q Did the Dean Company have any other source of income except the moneys entrusted to them by the customers? A None at

203

all.

Q Ever make any real speculation with money? A There were one hundred shares once in a while.

Q In which the customers' money was invested? A No--yes, we would pay the commissions out of the customers' money. We would put up a few hundred dollars of customers' money and trade in a few hundred shares every once in a while.

Q Did you ever earn on the Stock Exchange any money for customers?

Objected to. Objection sustained.

Q To what amount did you in the aggregate speculate with customers' money on the Stock Exchange?

Objected to. Objection overruled.

Exception.

A We never made a profit at all.

Upon motion, the answer was stricken out.

THE COURT: Answer the question.

BY MR. OLCOTT:

Q (Question repeated). A Not over two thousand dollars.

Q You have spoken of net profits, and you have described the net profits as being the moneys received from the customers, less expenses. Tell us all the expenses that you had.

Objected to. Objection overruled.

Exception.

77-203

A You want to know all the expenses?

Q Yes. A Clerk hire, rent, telephone, stock ticker, rent for typewriter, printing, stationery, salaries--of course, I said that before--protection money--

BY MR. DAVIS:

Q What? A Protection.

BY MR. OLCOTT:

Q Have you stated all the expenses? A Postage, agents' commissions, rentals for out of town offices, salaries to agents and fixed charges--fixed salaries for agents in addition to their commissions--did I say advertising?

Q I am not sure, but say it now.

MR. DAVIS: You did not say it.

A Oh, and the office expenses of a paper.

BY MR. DAVIS:

Q Stationery? A The office expenses of a paper that was run by what they called "The Wall Street Reporter."

BY THE COURT:

Q That is, subscribing for it? A No; it was owned--the expenses of maintaining it were paid by the Dean Company. It was owned by Mr. Kellogg and a man named Seaman.

Q What was the name of the paper?

MR. DAVIS: I move to strike out that answer.

Motion denied. Exception.

203

THE WITNESS: I am fairly sure it was the "Wall Street Reporter". I read so many papers I am apt to get the heading wrong, but I am fairly sure it was "The Wall Street Reporter."

Q How long was that paper run by Kellogg?

Objected to.

MR. OLCOTT: Question withdrawn.

17 203

A1

143

Q How long did the Dean corporation continue to pay Kellogg for the maintenance of that paper?

THE COURT: The testimony is that they did not pay Kellogg. That it was a disbursement from the moneys received by the Dean corporation--- is that so?

THE WITNESS: Yes, sir.

BY THE COURT:

Q How long did they continue to pay that out as a disbursement?

Objected to; objection overruled; exception.

A This Mr. Seaman was a regular visitor---

Objected to.

BY MR. OLCOTT:

Q How long? A Pretty near all the time that we were in business, six months.

Q What are these agents' commissions that you speak of?

A Well, if an agent-- can I give an illustration?

Objected to; objection sustained.

Q How many agents did the corporation have?

Objected to; objection sustained.

Q Describe what you mean by the term of protection. A Mr. Kellogg asked me for \$500.

Q What did he say when he asked you for it? A He said that

203

he had to fix the postal people.

Q When was this? A The first five hundred was in January.

Q 1897? A Yes, sir.

Q Tell us all he said about that. A He said, "I have to fix the postal people, because our mail is getting so big they are having trouble, and I am in the inside and I know what is coming off; the \$500 will fix it---- \$500 a month--- and so of course I gave him \$500 and charged it up to the expenses of profit and loss.

BY MR. DAVIS:

Q A month? A That month.

BY MR. OLCOTT:

Q When did you next converse with him about that?

A February.

Q What was said then? A The same thing, that he wanted \$500 to fix the postal people, so he got \$500 more.

Q Did you have another conversation with him on the same subject? A In March--- we really began to have trouble with the post-office people. Some newspapers commenced to pound the Dean Company, and that set the postal authorities afoot; they wanted to make some inquiries.

MR. DAVIS: I move to strike out the last of the answer.

THE COURT: Strike out that part of the answer

commencing with the words "and that set the postal authorities afoot."

MR. DAVIS: And also where he speaks about some newspapers pouncing the Dean Company.

THE COURT: We grant your motion.

BY MR. OLCOTT:

Q What did Kellogg say on the subject to you? A Kellogg said it will take more money now than heretofore, because the post-office people are hot. I then said if they were to raid us in our present position and the books in an incomplete state, it would be very disastrous to all of them, would rather pay any price they asked than be closed up now, because everything was in a chaotic state.

Q When was this conversation? A March, early in March.

Q Anything else said? A Yes, sir, he said, "Give me \$500 now and I will see what I can do with him," and so we gave him \$500 more, and in a week or so he came back and said he had fixed it all right for a week. I told him to try and fix it to give us a couple of weeks longer, that we were getting in good shape, and Farran was working day and night, and the books were getting in good shape. So he said he could fix it for \$2000 with those people, so of course he got the \$2000.

Q In what form did you pay that? A In money, cash.

203

Q You handed it to him? A Yes, sir.

Q And about when was that? A That was the latter part of March, not the extreme latter part, but after the 15th.

Q Did he ever talk to you again about that? A No, that was all---- never paid any more money than that.

Q You have no personal knowledge of what he did with that money, have you? A Oh, no.

Q Do you remember any other conversation you had with Kellogg in March? A At the time that this--- that I am speaking of, when I paid out the \$2000 and wanted two weeks more, he said he could get two weeks more from the postal people, but we couldn't run any longer than that, but he said "I will get up a circular and we will rush this out and all the money that comes in, as it is going to be our final deal, we will keep all that money and put it in the register business, because that will be the biggest business in this country after awhile.

When I knew I had two weeks--- that the Company had two weeks more of life, we had plenty of time to get out this circular, which he got out, and send it out and get replies before the expiration of the two weeks, that is, get remittances. At the end of this month of March there was a combination maturing, so we would have been compelled to have on hand a great amount of money to pay the maturing obli-

203

tions of this combination.

Q Which combination was that? A I think ~~that~~ was the last, sugar, 12.

Q Now you have spoken of Kellogg, having spoken to you of getting up a new circular. After that did you talk about the new circular? A He brought down a circular for wheat Number 2.

Q Did you see it? A Oh, yes.

Q In whose handwriting was it? A His own.

Q What was done with it? A It was given to Bernard to correct and put into proper English.

Q Then what was done with it? A It was sent to the printers, and rushed.

Q Look at the paper I ~~new~~ hand you and state what that is?

A This is the wheat letter of special Number 2, the last letter sent out by the corporation.

Q Is that the circular that you have just been speaking of?

A Yes, sir.

Q To whom was this sent? A To every customer.

Q When? A Right after the 15th of March, between the 15th and 20th of the month.

Q And this is the printing of the circular which you have just described as having been brought down to you by Kellogg in his own handwriting? A Yes, sir.

203

Offered in evidence.

Objected to, same grounds;

Same ruling.

Exception.

(Received, and marked "People's Exhibit 32").

MR. OLCOTT: I will read that, because it is wheat combination Number 2, the specific allegation in the indictment.

Mr. Olcott reads Exhibit Number 2 to the jury.

The Court admonished the jury in accordance with Section 415 of the Code of Criminal Procedure, and takes a recess until 2 P. M.

A F T E R R E C E S S .

S A M U E L K E L L E R, (Direct Examination resumed)

BY MR. OLCOTT:

Q People's Exhibit 32 was sent out when? A Let us see it.

Q That is the circular on wheat Number 2 that I read to the jury. A After the 15th of March.

Q How much money was received in response to that circular?

Objected to; objection overruled; exception.

A About \$150,000 in round numbers.

77-203

Q I show you pages 20 to 65, inclusive, of a book I now hand you, and ask you who made those entries? A Made by different parties.

Q Who? A Bernard's handwriting appears here.

Q Whose else? A A lady, Miss Wurtz.

Q Miss or Mrs. Wurtz? A I only knew her by the name of Florie Wurtz.

Q Who was she? A She was a clerk with the corporation.

Q Was that book kept in the ordinary course of business of the corporation? A Yes, sir, that is the receipt book of morning's mail, where they were classified----

Q Was it kept under your direction? A Yes, sir.

Q Was it seen by you each day? A Yes, sir.

Q And examined by you each day? A Totals.

Q Was it seen by Kellogg to your knowledge on each of the days that are entered on the pages to which I have called your attention? A Not every day.

Q How often was it examined by him in your presence? A About four times a week.

Q Do you remember--- examine the book if necessary and refresh your recollection--- when it was last examined by Kellogg in your presence? A The 31st of March.

MR. OLCOTT: I offer this book in evidence.

Objected to; objection overruled; exception.

213

MR. OLCOTT: I only desire to offer pages 20 to 65 which I have referred to.

MR. DAVIS: I object to the admission in evidence of those pages.

Objection overruled; exception.

(Received, and marked "People's Exhibit 33."

The exhibit Number will appear upon Page 20).

BY MR. OLCOTT:

Q Now, tell us what pages 20 to 65, inclusive, contain, what those entries are?

Objected to.

THE COURT: Do they not speak for themselves?

MR. OLCOTT: I don't think they speak for themselves as to what the moneys were received for, and that is the design of my question.

THE COURT: Well, they show what moneys were received.

MR. OLCOTT: On certain dates from March 19th to April 1st, inclusive.

THE COURT: Is it not a question of computation?

MR. OLCOTT: Yes, sir, but I didn't mean that. I don't think there is anything mentioned there as to the combination.

203

THE COURT: The purpose.

MR. OLCOTT: Yes, the combination; it may appear there for which combination it was received, but I think not.

BY THE COURT:

Q Is this the first day, March 20th? A 19th.

THE COURT: I think it proper to suggest to you that you may ask the witness what the figures number 2 denote.

BY MR. OLCOTT:

Q I find in the first column of each of the pages, on each of the lines, the figure "2". What does that denote?

Objected to; objection overruled; exception.

A Wheat Number 2.

Q I find in the next to the last column on page 20, and continued throughout the entries, on one line the letters "C K." What does that mean?

Objected to.

THE COURT: I do not think it is material.

I will sustain the objection.

BY MR. OLCOTT:

Q Do all of the entries from pages 20 to 65, inclusive, furnish a record of the moneys received for wheat combination number 2?

#203

Objected to.

THE COURT: As far as this witness knows.

BY MR. OLCOTT:

Q As far as you know?

Objected to; objection overruled; exception.

A All the moneys commencing at page 20 to the end of this series, page 65, is wheat number 2, according to the heading.

Q Moneys received in wheat number 2? A Yes, sir.

Q What was done with those moneys in the first instance?

Objected to.

THE COURT: By whom?

BY MR. OLCOTT:

Q By you, Mr. Keller?

Objected to; objection overruled; exception.

THE COURT: This money was received by the corporation.

MR. OLCOTT: I will withdraw the question.

BY MR. OLCOTT:

Q What was done by the corporation with those moneys received?

Objected to; objection overruled; exception.

A The moneys were deposited in the bank.

Q In what bank? A Leather Manufacturers.

Q Did you have any conversation at any time during March, with Kellogg, as to what should be done with those moneys; I mean

203

after they were deposited in the corporation's bank account?

A I did.

Q When, during that month? A You are speaking of number 2?

Q Yes. A About the 21st and 22nd of March.

Q What was that conversation? A I said that the money was not coming in very fast, the first three or four days, and if we expected to pay out the sugar combination, we will have to have better receipts in the wheat. Then he said, "Don't pay any of the drafts, 23d and 24th of March--- when the first three or four days' receipts were slow, he said, "Don't pay any of those drafts or the next dividend, and all this money we will keep, we will put it into the register at 66, and let this thing go to the devil, and you can have plenty of time to get your books in shape, and get your contracts and all. We are in on the register, you, Charlie and I."

Q By Charlie, he referred to whom? A Weinmann.

Q What did you say to him? A I couldn't speak---

MR. DAVIS: Couldn't speak?

THE WITNESS: I had not finished--- I couldn't speak positively about the books being in shape, so I suggested that we wait a couple of days and see how the mail would be. So he said, "All right;" and the mail got to be pretty heavy around the 25th, 6th and 27th--- 26th, 7th and 8th, and then he sug-

#203

gested that we take out sixty--- ninety thousand--- let's see--- seventy thousand dollars, out of the receipts, which would make the capital of the register company one hundred instead of thirty. Meanwhile drafts were pouring in, and I commenced to pay them. He came up and argued very strongly with me not to pay any drafts.

BY MR. OLCOTT:

Q What did he say? A He said, "Don't pay these drafts, because the money--- if you are going up, the money you are paying out can be used for settling the troubles after they start much better than by trades, by contracts--- but I continued to pay, and I paid up to twelve o'clock of April 3d.

Q When you say you paid up these drafts until twelve o'clock April 3d, what drafts had you reference to? A The drafts that were sent out for dividends, the drafts that were coming in from all parts of the United States.

Q Upon prior combinations? A Prior combinations; and customers had the option to draw their money whenever they felt like it, and the drafts were extremely heavy.

Q You spoke a moment ago of contracts and trades that Kellogg spoke to you about; what did you mean by that? A About the 26th of March I had started in to prepare the loss for the wheat combination.

77 203

- Q Had you conferred with Kellogg about that? A Yes, sir.
- Q What had you said to him about that? A I told him I had made arrangements with Theodore Myers & Company to wash a lot of wheat--- I didn't tell Myers & Company I was going to wash them--- that I had made arrangements with Theodore Myers & Company to wash a lot of wheat.
- Q That was what you said to Kellogg? A Yes, sir.
- Q What does "washa lot of wheat" mean? A Buy and sell a few million bushels.
- Q At what time? A About the 27th of March----
- Q I don't mean that; you said to buy and sell a few million bushels; do you mean buy and sell contemporaneously?
- A Simultaneously. I then started in and got my first contract.
- Q What did you do about that contract that you call it?
- A I went over to Myers and started off with about a million.
- Q You say, "started off with about a million"; that is clear to you, but not to me. A I said, "Myers, buy a million bushels of wheat and sell a million for me."
- Q Did they do it? A Which he did, and gave me the contracts.
- Q What day was that? A About the 27th of March, the 26th or 27th.

203

Q Did you give Myers & Company any money at that time?

A Yes, sir.

Q What is the paper I now hand you? A That is a check for--

MR. DAVIS: No--- it is a check.

BY MR. OLCOTT:

Q It is a check? A Yes.

Q Of the Dean Company? A Yes.

Q What did you do with that check? A I gave it to Theodore Myers & Company.

Q On this occasion you have last spoken of? A On the wheat, yes.

Q Was that check paid? A By whom?

Q By your bank? A Why, certainly.

The check is offered in evidence.

Same objection; same ruling; exception.

(Received and marked "People's Exhibit 34").

BY MR. OLCOTT:

Q You say Myers bought a million bushels and sold the million bushels? A Yes, sir.

Q Did they send anything to you? A They sent me the contract.

Q When you say contract, what do you mean? A Slips showing that they bought and slips showing that they sold.

Q Separate slips? A Yes.

203

Q Did the slips contain the names of the brokers from whom they bought?

Objected to.

THE COURT: I think the slips ought to be produced. I sustain the objection.

MR. OLCOTT: I withdraw the question.

BY MR. OLCOTT:

Q Did Theodore Myers & Company send you anything else on that day? A Sent me \$24,000.

Q In what form? A Money.

Q Did you receive it at the office of the Dean Company, 35 Broadway? A Yes, sir, that twenty-four I received at the Dean Company's office.

Q On the same day that you gave Myers this check?

A Yes, sir.

BY MR. DAVIS:

Q In bills did you say? A In money.

BY MR. OLCOTT:

Q Do you remember in what denomination? A All large bills, nothing under five hundred.

Q What did you do with that money? A I divided it.

Q Where? A In the office.

Q Between whom? A Kellogg and myself.

Q How much did you give to Kellogg? A Half of it.

157
EX-117
101 #203

Q In the same form in which you received it from Myers?

A Same form.

Q Was Weinmann there? A He was in Europe.

Q Was this check, "People's Exhibit 34," drawn against the money which is represented on "People's Exhibit 33?"

Objected to.

THE COURT: I do not understand that.

MR. OLCOTT: "People's Exhibit 33" is the remittance book of moneys received from customers in response to the circular.

THE COURT: Was it drawn against the moneys received as indicated by him?

MR. OLCOTT: Yes.

THE COURT: The question is somewhat vague.

BY MR. OLCOTT:

Q Was it drawn against moneys received from customers as you have described last in wheat number 2?

Objected to; objection overruled; exception.

A Yes, sir.

MR. DAVIS: That is that check which you put in evidence was drawn against money in that bank.

MR. OLCOTT: Yes.

BY MR. OLCOTT:

Q After March 27th did you have any other dealings in wheat?

7-203

A I did.

Objected to.

THE COURT: As part of this number 2 combination?

THE WITNESS: Yes.

Objection overruled; exception.

BY MR. OLCOTT:

Q With what brokers? A Theodore Myers & Company, and Robert Lindbloom & Company, James F. Barrett & Company--- that is all.

Q Describe the next transaction, what day was it? A Must have been the next day.

MR. DAVIS: The 25th?

THE WITNESS: The 28th. Unless it was on a Sunday, it was the 28th.

BY MR. OLCOTT:

Q It was the next business day, as you remember? A The next business day. Well, I did the very same thing, only I don't know the amount.

BY MR. OLCOTT:

Q Where did you make the transaction? A At Theodore Myers' office.

Q Whom did you see there? A Mr. Myers.

BY MR. DAVIS:

#203

Q Which Myers was that? A Eddie Myers. I don't know how much wheat I told him to buy and sell that day.

BY MR. OLCOTT:

Q Is there anything that you know of which would refresh your recollection? A Yes, sir, if I saw the check.

Q I hand you a paper and ask you whether that refreshes your recollection? A That is the same magnitude, the same amount of wheat.

Q Does that refresh your recollection as to the date?

A The 29th.

Q What did you say to Mr. Edward H. Myers? A I told him to buy and sell the wheat for me.

Q Did he do it? A He did.

Q Did he send you anything that day? A Sent me the slips.

Q Send you anything else that day? A No; I got the money myself that day.

Q When? A That same day.

Q On the same visit? A No, sir, after I got my slips.

Q Where did you get the money? A Theodore Myers' office.

Q In what form? A Large bills.

Q What amount? A About \$24,000.

Q So that on both of those occasions you got exactly or about \$24,000? A About \$24,000.

Q What was the balance? A The commission.

#203

- Q To whom? A Theodore W. Myers & Company.
- Q What did you do with this last \$24,000, or thereabouts, that you got on March 29th? A I put part of it in the drawer and the rest I divided it.
- Q How much did you put in the drawer? A The odd money, whatever was over \$20,000.
- Q What is that drawer? That is the first time you have spoken of it I think. A The drawer was a separate institution. All the drafts that were sent out, that the corporation sent out, on the corporation---

MR. DAVIS: I object and move to strike out the answer thus far given.

Motion denied; exception.

THE WITNESS (Continuing) : All the drafts that were sent out upon the corporation, drawn on the corporation, were paid in currency from the drawer. Sometimes in case the drafts should run up into two or three thousand dollars, one batch coming in by a bank messenger instead of--- we would send over to the bank, draw \$5,000, charge it to the drawer, and pay these drafts.

- Q Where was the drawer? A In the cashier's desk.
- Q At 35 Broadway? A 35 Broadway.

- Q What did you do with the other \$20,000, the proceeds of this last transaction with Myers? A I divided it.
- Q When? A As soon as Mr. Kellogg came over.
- Q What day? A Either the 29th or 30th.
- Q How much did you give Kellogg? A Half, \$10,000.
- Q What did you do with the other half? A Kept it myself.
- Q Did you have any other wheat transaction? A With Myers?
- Q Yes. A May have had one more.
- Q You don't remember distinctly?

MR. DAVIS: I move to strike out the answer given by the witness to the last question.

Motion denied; exception.

BY MR. OLCOTT:

- Q I want just to ask you to look at that check again and say whether or not you have any correction to make in your testimony. A That check was never dated when it was given to me.

MR. DAVIS: I object and move to strike out the answer.

Motion denied; exception.

THE WITNESS (Continuing) : When I first intended to make these wheat deals, I took these checks signed by Bernard and Farran, leaving the date blank, because I didn't know what day I would

EXHIBIT #203

163

need to make a big trade. I figured that I could not lose all the wheat money, it was coming in too fast, unless I made another one, so I had this check in the check-book, had taken this check from the check-book and filled in the date myself, because that is my handwriting, "3-29."

MR. DAVIS: I move to strike out the answer.

Motion denied; exception.

BY MR. OLCOTT:

Q What transaction did you have with Lindbloom & Company that you have mentioned? A I explained to Myers about the excessive charge for commissions for simply buying and selling wheat, as wheat was not included in the rules of the Stock Exchange, and I knew I could get a cheaper rate if I only knew where to go, so I asked him one day where he did all this wheat for us, and he told us he did it at Lindbloom's

Q Asked whom? A Mr. Myers. And so he introduced me to Mr. Hibbard, who was the general manager of Lindbloom & Company, introduced me as a representative of a corporation. I made a deal with Mr. Hibbard, a cheaper rate for buying and selling grain than I was paying Theodore Myers.

Q Did you make a transaction?

MR. DAVIS: I object and move to strike out the answer to the last question.

Motion denied; exception.

BY MR. OLCOTT:

Q Did you make a wheat contract with Lindbloom & Company?

A I made a contract with him a couple of days after, ~~xxx~~ or early in April--- the end of March or early in April I made the first deal with Hibbard, it was to buy and sell a million I think.

Q A million what? A A million wheat, a million bushels. I gave him a check for \$25,000.

Q Whose check? A Must have been the corporation check--- let's see--- I gave him a check for \$25,000; he made the trade, sent the slips over to me, I was at Theodore Myers's private office; Hibbard gave Myers a check for the difference between the commissions and the face of my check, and Myers gave me the currency.

Q Did any check pass directly from Dean & Company to Lindbloom & Company or Hibbard, their agent? A Yes, sir.

MR. DAVIS: I move to strike out that answer.

Motion denied; exception.

BY MR. OLCOTT:

Q Now, I hand you this check which you have already spoken of, and ask you whether that was the check you gave Theodore W. Myers & Company on the second transaction with them.

A I may have given--- let us see--- I gave that check---

17203

I had that check certified--- if I had the stub, I could exactly tell what I did with it.

BY MR. OLCOTT:

Q We haven't got the stub, so we will have to do the best we can without it. State to the best of your remembrance what was done with that. A To the best of my remembrance I gave a check to Theodore W. Myers & Company for \$25,000.

Q The second one? A The second one.

Q Was that check paid by your bank? A Certainly.

Q You say yes? A Yes.

The check is offered in evidence.

Objected to; objection overruled; exception.

Q I hand you that paper and ask you whether that is a check of the Dean Company. A Yes, sir.

Q And who did you give that to? A That one to Theodore Myers & Company.

Q And was used by them for what, if you know?

Objected to.

Q In connection with any of these drafts you have spoken of?

Objected to.

THE COURT: If he knows--- I overrule the objection.

THE WITNESS: It was given in connection with trade.

BY MR. OLCOTT:

Q Which one? A Part of our wheat business.

Q Made through what broker?

Objected to; objection overruled; exception.

A Made through Robert Lindbloom & Company.

Q Did Myers & Company give you anything after you gave them this? A Gave me the difference in money.

Q How much? A I think \$10,000. They kept the balance as margin on some sugar trades we made with them about that day.

Q How was the \$10,000 given back to you? A Currency.

Q Where did it reach you? A I was over to the office.

Q In what denomination did you get it? A Large bills.

Q What did you do with it? A Put it into the drawer, drafts were coming in then.

The check is offered in evidence.

Objected to; objection overruled; exception.

(Received and marked "People's Exhibit 36").

100

167

MR. OLCOTT: I hand you three papers and ask if you can tell us what they are and for what they were used.

A. They are three checks of the corporation on the United States National Bank.

Q What was done with these checks? A. One was taken by myself, one was given to Mr. Weinmann, and this one--showing-- was given Mr. Kellogg.

Q You identify this one(indicating) as the one given Mr. Kellogg? A. Yes sir.

Q By whom? A. By me..

MR. OLCOTT: I offer those three checks in evidence, if your Honor please.

Objected to.

Objection overruled. Exception.

The said three checks are admitted in evidence, marked respectively, People's Exhibits, Nos. 37, 38 and 39.

MR. OLCOTT: People's Exhibit No. 37 is the one which the witness says was given to Mr. Kellogg.

The date of Exhibit No. 37 is October 29. The date of Exhibit No. 38, is October 24th, and the date of Exhibit No. 39 is October 22nd.

Q Who were these checks drawn? A. They were drawn on Saturday the 24th of October, 1896.

Q Do you remember that distinctly? A. Yes sir, very.

Q BY MR. DAVIS: They were all drawn in October? A. October 24th, 1896.

BY MR. OLCOTT:

Q They are dated on different dates, can you explain that?

A. I can.

Q Please do so.

Objected to.

Objection overruled. Exception.

A. This Saturday was the first Saturday that we divided any of the moneys. We paid Mr. Kellogg his \$10,000 and there was enough left for each of us to be entitled to \$3,400, but as I had promised Mr. Parker, the president of this bank to keep a good balance with him, if he would let me open an account there, I asked Kellogg if he would not keep back his check for a few days because he had just gotten \$10,000, and he said he would hold it a few days until I told him we were easy; and he held his check. You see that was paid at a later date because these were drawn by someone else.

MR. DAVIS: I move to strike out the answer.

THE COURT: Strike it out as not responsible.

MR. OLCOTT: You mean the last part?

THE COURT: The last part of the answer.

MR. DAVIS: I move to strike out the whole answer.

THE COURT: I think that is proper.

MR. OLCOTT: You think it should be stricken out, is

your Honor please?

THE COURT: Yes..

MR. OLCOTT: I call your Honor's attention, before you make a final ruling to the fact that the checks are numbered 2100, 2101 and 2102, and we shall show by the stub book which will be subsequently introduced in evidence that they were actually taken out from three successive places in the check book.

Now they appear to be dated on different dates and one, the Kellogg check, is dated as far ahead as October 29th, 1896.. Yet this witness says that they were written on the same date, namely on October 24, 1896, and he is borne out by the numbers of the places from which they were taken in the check book, in the fact that they were drawn at an earlier date.

It seems to me that the people have a right to show that there was a reason for dating them on other than the date upon which they were drawn.

THE COURT: The witness has stated that the defendant had obtained his \$10,000 and, in order to keep his promise with the president of the

203

170

bank that they were to keep up a good balance there, he was requested to retain his check for some days before it was presented. That is his answer as I understand it. All after that is not responsible.

MR. OLCOTT: I quite agree with your Honor as to the last part of the answer but I was addressing myself to the motion of Mr. Davis to strike it all out.

THE COURT: I leave that out as to his explanation, after that.

MR. DAVIS: Will your Honor kindly give me an exception to the ruling as you have made it?

THE COURT: Yes..

MR. OLCOTT: Can you explain why the check, people's Exhibit 39 bears date October 22, although you say it was drawn on October 24th?

Objected to..

Objection overruled. Exception.

A.. Can I talk?

Q Yes.. A.. Just filled in the date--Miss Crowfoot filled in the date under instructions. We didn't want it to seem that we were drawing the whole \$6,800 out in one day.

(People's counsel reads Exhibits Nos. 37, 38 and 39 to the jury.)

30203

MR. OLCOTT: No. 2101 has "Lang" on the back.

MR. DAVIS: Will your Honor admit that word "Lang" in evidence as being on the back of the check?

THE COURT: I do not see how that comes in.

MR. DAVIS: I wish your Honor would look at the check.

MR. OLCOTT: I have no concern whether it is admitted or not. I withdraw that portion of it.

THE COURT: Strike it out.

MR. OLCOTT: I am sorry to have read it. I read it without thinking of the fact that that was perhaps not admitted.

BY MR. OLCOTT:

Q (Handing papers) I hand you these three papers and ask you what they were and what was done with them, if you know of your own personal knowledge? A. That was a division on two weeks from the previous division we had.

Q And whom were these checks given to? A. Well we each got one--Weinmann, Kellogg and myself.

MR. OLCOTT: I offer these checks in evidence.

Objected to.

Objection overruled. Exception.

The said checks are admitted in evidence and marked People's Exhibits Nos. 40, 41 and 42 respectively.

172

MR. OLCOTT: (To the jury). You may examine them gentlemen if you desire to. I shall not take time to read them.

Q (Handing other papers to witness). I show you these three papers and ask you what they are? A. (After examining). I can make the same reply to those three.

Q What reply? A. That was the following Saturday.

Q The following Saturday to the last covered by the checks that have been offered, is it? A. Is that the 14th of November.

Q The 14th. A. Yes, that is right.

Q And to whom did those three checks go, if you know? A. We each had one.

Q When you say "each" whom do you mean? A. Weinmann, Kellogg and myself.

MR. OLCOTT: I offer these in evidence.

Objected to.

Objection overruled. Exception.

The said three checks are admitted in evidence and marked People's Exhibits Nos. 43, 44 and 45, and then passed to the jury.

BY MR. OLCOTT:

Q (Handing other papers to witness). I hand you three other checks and ask what was done with those, if you know?

A. That was a division.

Q When were these checks drawn? A. Let us see --

MR. DAVIS: What is the date?

203

MR. OLCOTT: I am just asking him when they were drawn. They bear three different dates. I will show them to you in a moment.

THE WITNESS: (After examining). I could not swear what date - they are different dates - unless I saw the check stubs.

Q Are you able to say whether or not they were drawn on the same day? A. Yes.

Q They were all drawn on the same day? A. They were all drawn on the same day; and cashed the same day.

Q And they were given to whom? A. We each got \$2.000 -- Kellogg, Weinmann and myself.

Q By "each" you mean -- A. Kellogg, Weinmann and myself.

MR. OLCOTT: I offer these in evidence.

Objected to.

Objection overruled. Exception.

The said three checks are admitted in evidence and marked People's Exhibits Nos. 46, 47 and 48.

Q (Handing other papers to witness). I hand you three other checks and ask you what they are and who got them? A.

(After examining). Those are three checks --

MR. DAVIS: What is the date? A. January 4th, two of them. One is January 6th. Those three checks were cashed, all three of them were cashed, and the money given to Kellogg to open the J. B. Kellogg register business, \$30.000.

17.4

BY MR. OLCOTT:

- Q Who were present at the time that was done? A. Mr. Weinmann, Mr. Kellogg and myself.
- Q What conversation did you have? A. About this \$30.000?
- Q Yes. A. He just said: "Why Jim here is the money for the register; theres Charles' share and my share and here is your ten;" and we each put in \$10.000 in the register.
- Q Had you had previous conversation about that? A. Why sure.
- Q And what was this thing that you called the register?
- A. Why that was a machine -- it was for high and low points in the stock market, and this man that invented the register had worked on it for a great many years until he had gotten a system so that if a stock touched a certain point and reacted to a certain point, and then went up again, it was time to buy or sell; according to the charts, like are being advertised now every day in the city.
- Q Was that the business that you refer to that Kellogg established in January at 66 Broadway? A. Yes sir.
- Q And did you and Weinmann purchase a share in that business?
- A. We were partners; Kellogg and Weinmann and myself were partners.
- Q With what provisional interest? A. We were to get a share of the profits after paying the inventor his salary and all the other incidental expenses.
- Q And was this money taken up by each of you from the Dean Company and put into the Kellogg -- A. Yes sir.

175

Q And what was the name of your firm that ran the market register? A. That was J. B. Kellogg & Company.

MR. OLCOTT: I offer these in evidence.

MR. DAVIS: Objected to. What are those dates again?

MR. OLCOTT: Two January 4th and one January 6th.

Objection overruled. Exception.

The said three checks are admitted in evidence and marked respectively People's Exhibits Nos. 49, 50 and 51.

BY MR. OLCOTT:

Q This transaction that you had just narrated took place on what day? If you know tell us. A. About the 5th of January 1897.

Q You say about the 5th? A. Yes; it may have been the 6th or 7th; but about the 5th.

Q Look at People's Exhibit No. 51, and tell me if you know when it was cashed. A. They were all cashed about the date -- they were all cashed on that day.

Q On what day? A. The 6th of January.

Q So you now say the 6th of January and not the 5th? A. I say about the 5th.

MR. Olcott: (To the jury). They are only different from the others in being drawn to M. L. Bernard, instead of to Miss Crowfoot, cashier, and by him endorsed.

Q (Handing other papers to witness). Look at these checks

176

I now hand you and tell me what was done with these?

A. (After examining). That was a division.

Q Did those checks or those proceeds go respectively to each of you? A. Yes; they ran right in rotation.

MR. DAVIS: What was that. A. I said yes sir.

BY MR. OLCOTT:

Q They were drawn on the same day? A. Yes sir.

Q They bear different dates I observe? A. That is all right.

Q What explanation can you give for that?

Objected to.

Objection overruled. Exception.

A. I wanted to keep a balance in the bank as much as I could, so that when we cashed our out of town checks we just took our checks and cashed them as the account swelled.

MR. OLCOTT: I offer these in evidence.

Objected to on the same ground.

Objection overruled. Exception.

The said three checks are admitted in evidence and marked People's Exhibit Nos. 52, 53 and 54.

Q Are you able to remember and state in each case who cashed those checks -- who actually went to the bank and got the money? A. No. A great many could go, *you know*.

Q You mean you had a number of clerks in the office that were known at the bank? A. Yes sir.

Q (Handing other paper to witness). I now hand you check of the Dean Co., and ask if you remember what was done with

203

177

that? A. (After examining). If I had one for \$9.000 I could tell better. I have not got one for \$9.000.

Q Can you tell out of that anything else? A. No.

Q Do you know anything about what was done with that check?

A. No sir, nothing that I would swear to.

Q Lay that aside. A. (The witness complies).

Q (After handing paper to witness). I show you that check and ask you whether you know what was done with that?

A. Yes sir.

Q Well, what was that. A. That was a division check.

Q You say that was a division check? A. Yes sir.

Q It is made to the order of Theodore W. Myers & Co? A. Well we got the money from Theodore W. Myers & Co.

Q By what process? A. By having him cash it for me.

Q Who took it down to him? A. I did.

Q And you got what in return? A. \$15.000.

MR. DAVIS: How much? ~~A. Is'nt it \$15.000?~~

MR. OLCOTT: Yes. A. \$15.000.

MR. OLCOTT: I offer that in evidence if your Honor please, with this endorsement.

Objected to.

Objection overruled. Exception.

The said check is admitted in evidence and marked People's Exhibit No. 55.

(People's counsel reads the said check to the jury).

Q Why did you go to Myers & Co., to have that cashed?

203

Objected to.

Objection overruled. Exception.

A. I was busy watching--I had that check and was busy watching the many trades. I was trading with Theodore W. Myers & Co. then personally and I asked him if he would get me the money.

Q What did you do with the money? A. Why, I divided it.

Q When? A. That same day; at that time you know Mr. Kellogg's office was at No. 66 Broadway and I was very punctual about dividing at the right time.

Q What did you do with the money? A. Sent it down to him.

Q How much did you send to Kellogg? A. Five.

Q And by what boy do you remember? A. Sam.

Q Sam who? A. The name is Freedman or Freeman.

Q Freedman or Freeman? A. Yes sir.

Q Who was that? A. He was the office boy I had.

Q With the Dean Company? A. Yes sir.

Q That was March 1st; I show you this check (handing another paper) and ask what was done with that? A. That was put up with Myers & Co. in some trade; sugar, or some stock trade; the commissions taken out and the balance came back.

Q One of these "wash" trades you have spoken of? A. Yes sir.

Q And how did you get the balance that came back? A. Why, he gave it to me.

Q In what form? A. Money.

Q At or about the date of the date of that check? A. Yes sir, at or about that date.

Q And what did you do with the money? A. I divided it.

203

Q Who divided it? A. I did.

Q What share did Kellogg get? A. A third.

Q Did you hand the money to him? A. I sent it to him.

Q By whom? A. The boy.

Q Which boy? A. It must have been Sam, because I had confidence in him handling money.

MR. OLCOTT: I offer that in evidence.

Objected to.

Objection overruled. Exception.

The said check is admitted in evidence and marked People's Exhibit No. 56.

(People's counsel reads the said check to the jury).

Q. The last check that I will hand you at this point is this one (handing paper) and I ask you what was done with that?

A. That was a division. The money--

Q What was done with that? A. The check was given to Theodore W. Myers. \$15,000. We made some trade and we got the balance.

Q Was the balance paid to you? A. Yes sir; sent over to my office.

Q In what form? A. Oh, handed to me--I could not swear--money.

Q Did Kellogg get any share of that? A. He got his third.

Q. Whereabouts? A. If he was not at the office it was sent to him; I do not know; see?

Q Never mind if you don't remember definitely.

MR. DAVIS: I move to strike that out.

THE COURT. Motion granted.

MR. OLCOTT: I offer that in evidence.

Objected to.

Objection overruled. Exception.

The said check is admitted in evidence and marked
People's Exhibit No. 57.

Q Did you see Kellogg on the day of the failure? A. Yes sir.

Q April 3, 1897? A. Yes sir.

Q What conversation did you have with him then. A. He was
waiting at Theodore Myers & Co's office all that morning.

Q And where did you see him?

MR. DAVIS: I move to strike that out, your Honor.

MR. OSBORNE: No objection.

THE COURT: Strike it out.

A. At Theodore Myer's & Co's office.

Q You saw him there? A. Yes sir.

Q What conversation did you have with him? A. He asked me
what I was doing and I told him I was pushing as hard as I
could to get the wheat deals through and that I could not
cash any more checks because the dividend returns had not
been received, but I had gotten what money from Lindbloom--
the balance on my margin from Lindbloom, and I gave him
\$10,000--ten one thousand dollar bills--right between the
storm doors of Myers & Co.

Q That was the money that you have last spoken of? A. Yes sir.

Q Money that you had gotten from Lindbloom? A. Yes sir.

213

Q On what day was that? A. Third of April, 1897.

Q Saturday? A. Saturday.

Q What time of the day? A. Five minutes after twelve. I did not get the money until twelve o'clock.

Q Had you been to the office of the Dean Company that day?

A. Yes sir.

Q What occurred there that day? A. I instructed the cashier--

MR. DAVIS: I object to that.

MR. OLCOTT: The date of the failure. I think I am entitled--

THE COURT: Was the defendant present?

MR. OLCOTT: Was Kellogg present at the office that day? A. No sir.

MR. OLCOTT: But it was the date of the failure if Your Honor please. It seems to me that whatever transpired on that day we are entitled to show on the conspiracy theory.

THE COURT: I will sustain the objection unless you can show some special point; not as to what occurred in general, because things might have occurred there for which this defendant could not be held responsible.

Q Was the office of the Dean Company open ^{after} that day. A. It was closed that day by the sheriff.

Q (Handing paper) Tell me what the paper is I now show you?

A. That is a letter that Mr. Kellogg wrote to explain our first loss.

203

- Q When did he write that? A. At the end of April.
- Q Did you see the original? A. I did.
- Q Did he hand it to you? A. He handed it to me, yes sir.
- Q What conversation did you have with him then? A. Why I said, "This is the wind up; if we make a first loss we are gone."
- Q What did he say to that? A. He said "We are gone anyhow; the Post Office people were going to close us up."
- Q Was this circular sent out--to whom? A. We intended to send them out you know; but we had to close up. We knew that we were going to close up by the time that circular was ready.
- Q Was the circular ever sent out? A. Some of them, yes sir.
- Q To whom? A. Customers.
- Q But not all of them? A. No.

MR. OLCOTT: I offer this in evidence.

MR. DAVIS: I object to the admission of this document in evidence, your Honor.

Objection overruled. Exception.

The said paper is admitted in evidence and marked People's Exhibit No. 58.

(People's counsel reads the said paper to the jury).

- Q Now go back in October 1896 and tell me whether you ever went anywhere with Kellogg during that month, when he made an investment of any for himself? A. October?
- Q Yes. A. Well towards the end of October.
- Q About what date, about the 26th? A. Around the 26th of October. The papers were very much--

MR. DAVIS: Objected to.

203

Q State what Kellogg said to you? A. Kellogg said: "This looks like Bryan has got a chance;" we were talking politics and I told him that I did not think he had a chance in the world.

He said "I do not want to be wrong about this thing, because if Bryan is elected gold will go away up and currency will be at a discount; so I think I will buy some gold."

So he did not understand--he said he did not understand how to go about it and I had some friends in the business that I went around to see--acquaintances-- Zimmermann & Forshay, who were brokers.

Q Where? A. Corner of Wall Street and New, in the basement, down two or three steps.

Q Did you go there with Kellogg? A. No, I went there first and I asked Mr. Forshay how much the premium on gold would be.

Q Never mind what you asked in Kellogg's absence.

MR. DAVIS: Let him (Indicating the witness) go right on.

MR. OLCOTT: I was only anticipating your good objection.

MR. DAVIS: I have not the remotest intention of objecting.

A. I asked Kellogg how much gold he wanted to buy and he said about \$30,000. So Zimmermann & Forshay said they would sell \$30,000 in gold for \$250.00 premium. I went back and

30277

told him.

- Q Told whom? A. Kellogg, what I had learned; and I also told Kellogg that they would want certified checks or money in plain bank checks.

So the next morning Kellogg and I went around to Zimmermann & Forshay's and he called a cab and told him to wait--there was a cab stand right at the corner of New Street.

He told them to wait a few minutes and he went in and bought \$30,000 worth of gold and paid for it with certified checks; made up the coin, and I helped him carry it, the six bags of gold and we put them in the hansom and drove up to the Mercantile Vaults at 120 Broadway. It was not very far and I helped him carry in the bags.

Then he said "You go back and attend to your business."

- Q Do you know what name he gave to Zimmermann & Forshay in that transaction? A. Jacob Keller. The certified checks were "Jacob Keller."
- Q Did you see anybody write those checks? A. Oh no.
- Q Did you see the checks? A. Oh yes.
- Q In whose writing? A. Mr. Kellogg's.
- Q All of the writing on the checks? A. I only noticed the signature because it was like mine.
- Q And in whose handwriting was that? A. Mr. Kellogg's.
- Q Did you know before that he ever used that name? A. Keller?
- Q Yes, Keller. A. Yes I knew he had gone under that name

203

day or two before that.

Q Did he tell you? A. Yes. I asked him what his name was--I knew it could not be Kellogg and he says "It is something like yours."

MR. DAVIS: You knew it could not be Kellogg?

A. Certainly.

Q. (By Mr. Davis) Why? A. Why it could not be Kellogg?

MR. OLCOTT: Never mind; Mr. Davis can ask you at his proper time if he wants to about that. On that occasion did Kellogg say anything about where the money had come from that he was investing? A. Yes; "I am using this money"--this was only a couple of days after he got his \$10,000 you know.

Q I remember? A. He said "This is where this money is going."

Q "This money" --which money? A. This \$10,000 that he got.

Q Do you know anything about any other investments that Mr. Kellogg made thereafter, did he talk to you anything about them? A. Yes. I advised Kellogg to buy sugar and Reading--No; I take it back--Weinmann advised him to buy Reading. I advised him to buy sugar and Metropolitan Traction.

Q When was that? A. Well the sugar was towards the end of November.

Q 1896? A. 1896; the Metropolitan Traction was right about that time too. I went ~~to~~ with him to Theodore W. Myers & Co. and he bought 200 shares of sugar about the 24th or 25th of November.

7203

- Q Did you see him pay for it. A. Yes; he gave Myers a check for it, for about \$22,000.
- Q And he bought 200 shares of sugar? A. And he bought 200 shares of sugar, yes sir.
- Q Did Myers deliver a certificate representing that to you?
- A. Myers delivered two certificates of 100 shares each.
- Q In what name if you know? A. The name I could not--Myers could not deliver it to any name except the name on the certificate.
- Q Did you introduce Kellogg to Myers & Co. by any name.
- A. "Mr. Kellogg."
- Q As "Mr. Kellogg" you introduced him? A. Certainly.
- Q Did you go with him about any other investments? A. I bought 100 Metropolitan Traction with him.
- Q Did you go with him? A. Yes.
- Q Where? A. To Myers & Co..
- Q When, about that time you say? A. Around that time.
- Q When was "around that time"? A. Around the end of November.
- Q Did you see him pay for it? A. No sir.
- Q Did you see the stock delivered to him? A. No sir.
- Q (Handing book to witness) I hand you this book and ask you what it is. I am referring especially to pages one and three?
- MR. DAVIS: What is the question?
- MR. OLCOTT: I hand him a book and ask what it is.
- A. This is a special order department combination book.
- Q Of what, of the Bean Company? A. Corporation..

#203

187

- Q Of the Dean Corporation? A. Yes sir.
- Q Kept by whom? A. It was kept by one of the bookkeepers.
- Q Under whose direction? A. Ferrons.
- Q Under Ferron's direction? A. Yes sir.
- Q How often did you see that book? A. Every day.
- Q Saw it, the book, used in the course of the Dean business.
- A. Every day.
- Q You know the combinations? A. Know the different combinations, yes.

MR. OLCOTT: I offer the book in evidence.

MR. DAVIS: Objected to.

MR. OLCOTT: If the book shall be received I will give Mr. Davis a list of the pages as soon as I have a chance.

THE COURT: I sustain the objection.

MR. DAVIS: May I call your Honor's attention to the fact that that book is one which he has stated was used in the regular course of business of the corporation and one of the books he examined every day.

THE COURT: Yes; it was not kept under his direction but under the direction of Ferron.

- Q (By Mr. Olcott): Who advised or got up that book, Mr. Keller?

Objected to. Objection sustained.

MR. OLCOTT: I anticipated that probably--well excuse me.

203

Q You say under the direction of Mr. Ferron; did anybody else have any control over that book? A. I controlled--

Q Wait and see if there is an objection?

MR. DAVIS: Well I object to that.

Objection overruled. Exception.

A. I controlled the amounts of dividends.

Q What do you mean by that? A. Why every two weeks--

MR. DAVIS: I object to the question.

Objection overruled. Exception.

A. (Continuing) Every two weeks we declared a certain percentage of dividends, to keep up to our promise of bi-monthly dividends and I made those figures that appear on top here (indicating in book).

Q And did you give any instructions with regard to them? A. I wrote out about 5 per cent on--

MR. DAVIS: Now! I mean to say, I object.

MR. OLCOTT: He was not responsive so you had a right to interrupt him surely Mr. Davis.

Q Did you give any instructions or not regarding them? A. Yes I did.

Q To whom? A. To the secretary.

Q You have already said that you saw that book every day. Did you examine it to see whether your instructions given to the secretary were carried out? A. I only examined it on the 1st and 15th of the month.

74203

Q On these days did you examine it to see whether your instructions were carried out? A. Yes sir.

Q Did you find out whether they were or not? A. Certainly, yes sir.

Q Were they carried out? A. Yes sir.

MR. OLCOTT: Now I offer it in evidence, if your Honor please.

MR. DAVIS: Objected to.

THE COURT: I think it is not competent yet. I think that this book, having been under the charge of Farron, and under his direction, and having been examined by this witness only once in two weeks, that brings it—

MR. OLCOTT: I think that your Honor will find that once in two weeks were the only times that entries were made in it, and therefore it was examined by the witness whenever entries were made in it.

BY THE COURT:

Q Were entries made in it every day? A In this book?

Q Yes. A This was a bi-monthly book, the first and 15th.

THE COURT: Who is Farron?

MR. OLCOTT: Farron is in the city, so far as I know, sir.

THE COURT: Can he be produced?

(No response.)

BY THE COURT:

Q Is it (indicating book) in his handwriting? A No; he had charge of the books; we had several bookkeepers.

Q Whose handwriting is that? A One of the bookkeepers.

I don't know which one. Some girl.

BY MR. OLCOTT:

Q Isn't the entry on the top of the book in your handwriting?

A Yes; that is my handwriting.

Q Do you find any other entries in your handwriting? A I haven't looked.

THE COURT (to People's counsel):: What do you expect to prove by this book?

MR. OLCOTT: We expect to prove that the combinations entered in the book, already offered in evidence yesterday, of E. S. Dean & Co., known as combinations 229 and 230, were carried out in this book by the E. S. Dean Co., and not only along the lines, but with continuing figures, from the combinations of the book of E. S. Dean & Co.

BY THE COURT:

Q From what were these entries made, the entries in the book?

A I am just talking to you, now?

MR. DAVIS: Will your Honor allow me to take an exception to your Honor's question?

THE COURT: Yes.

THE WITNESS(to the Court): Shall I just explain to you?

BY THE COURT:

Q From what were those entries made? A I will have to explain to you, then. (In an undertone) You see, these entries here (indicating)--

203

3 192

Q You will have to speak out louder. A The names are the names of customers, taken from the ledger.

Q From the ledger?

MR. DAVIS: If your Honor will hear me just a moment upon that point.

THE COURT: Certainly.

MR. DAVIS: This witness is not connected in any way with this book by the evidence thus far, except to the extent of having made a few isolated marks or writings in it. It was not his book, nor was it kept by him.

THE COURT: I appreciate that. I wanted to ascertain just now the originality or the source of the entries in this book.

MR. DAVIS: Is he the best witness to ascertain that from?

THE COURT: If he knows.

THE WITNESS: I do know, because I got this book up.

BY THE COURT:

Q But the person who made the entries in that book, where did that person derive the knowledge to make the entries there?

A Oh, I got these books originally, and said it would be much simpler to have one of my old—

193
MR. DAVIS: Objected to.

BY THE COURT:

Q Leave that out, A What will I say?

Q You simply bought the books and stationery? A No; I bought the books because it was an improved method of keeping all these customers, instead of doing as the old company formerly did, each two weeks write down the names of the participants in combination 229, by making a trial balance cut, like this (indicating).

I could run six months without repeating myself, or repeating the names again. So I struck upon this trial balance book, and I told the girl— each one had a separate department— I said, "Now, if you take hold of these books, take the names from the little combination book slips you have to use every two weeks, writing down two or three thousand different names."

I said, "Put them in here, and let them remain in here permanently, and you can run this along for months." This one (indicating) ran along from November until we closed. That was an idea of mine. Then I said, "You can get your"—

THE COURT: Well, that is sufficient; that is all I wanted to know. No; the ruling will stand, Mr. Olcott'

194

MR. OLCOTT: It seems to me that Farron, who only wrote a few of those entries, and the girls, who, as he (indicating witness) says, wrote only a few others—

THE WITNESS: Farron made none of them.

MR. OLCOTT (continuing): The different girls who made entries could scarcely be called upon, except in the aggregate, to identify them. He (indicating witness) says that every time entries were made, he examined them, to see that his ~~the~~ directions were followed.

BY THE COURT:

Q Were they different persons? A Some of them were the names of the acquisitions to the combinations.

Q No, but the writing? A The writing— oh, yes; several people have written in this book.

MR. DAVIS: I submit, your Honor, that that does not change the rule.

THE COURT: What is the rule, Mr. Davis?

MR. DAVIS: They must produce the person or persons who made the entries; who had the book and kept it.

THE COURT: I want to get your understanding.

MR. DAVIS: That is my understanding of it,

7203

195

and I think it is very well established— in addition to the other principle that is laid down in the case of Budd vs. Robinson, 126 N. Y., I think it is; I have it here. It was held there that the books of a corporation are not binding upon strangers, or even stockholders, or even the directors.

THE COURT: That is true, so far as the liabilities to one or the other, or to the corporation, are concerned; but the point here is to show, by a course of dealing, that there was either a misappropriation, or that there was a larceny by what may be called the common law method, or that there was a conspiracy. It is not for the purpose of establishing a liability.

MR. DAVIS: A criminal liability.

THE COURT(continuing): For the purpose of showing the course of business which they indulged in, and which the District Attorney claims was the result of a conspiracy.

MR. DAVIS: Yes; but there is no essential difference between the method of establishing a criminal liability and establishing a civil liability. The theory of this action is that it is

302 #203

196

not an action of the corporation against the defendant; that is true; it is an action between two strangers to the corporation, and it is sought to hold one of them, the defendant, by introducing the books of the corporation.

THE People are plaintiffs in this criminal action. The defendants are strangers to the corporation. Now, it is sought to hold the defendant by producing the entries in books of the corporation.

But that was my additional objection. The main objection at present is, that the book is not properly proven by the proper persons; and whether it be one or twenty people who make the entries in the book, it does not matter; the same rule applies as to proof; and as to establishing the correctness of the entries, even granting that the correctness of the entries may be established, and that book has gone in, there is the other objection which I have just mentioned to your Honor, that this defendant could not be bound by the entries in the corporation's book.

THE WITNESS: Can I correct my answer?

MR. DAVIS: And, as my associate suggests,

7-203

197

the rule is, and ought to be, more strict in a criminal than in a civil case.

MR. OLCOTT: If your Honor will hear me a moment.

THE COURT: Yes.

MR. OLCOTT: Of course, the rule ought to be more strict in a criminal than in a civil case, where there is sought to be charged against a defendant any crime with relation to any of the specifications that are to be found in the various items in that book; but when, as we have alleged, and are in the course of proving, there is a criminal conspiracy, then it seems to me that the rule is properly and correctly stated in the case of the People vs. McKane, that anything which formed a part not only of the res gestae in point of time, but all the transactions which the conspiracy was formed to accomplish, is admissible, provided, of course, we prove the conspiracy; and we start with the fact that we cannot prove the conspiracy by this one witness alone; he must be corroborated; but the book I offer is a detail of the transaction of the conspiracy, and, in view of the fact of that conspiracy having been established, or be-

#203

198

ing about to be established by other witnesses, it seems to me that this book should go in as one of the various, devious operations that that conspiracy were transacting.

THE COURT: The basic question would be, first, the correctness of those entries.

MR. OLCOTT: Yes.

THE COURT: Even upon your theory, Mr. District Attorney, dependence would have to be placed upon the correctness of the entries, because, if the entries were not correct, you could not charge the defendant with participation in the conspiracy. Now, the testimony, so far, from this witness, does not tend to show that, so far as his knowledge is concerned, those entries are correct.

MR. OLCOTT: But, it is only the method, if your Honor please, that we are seeking to prove by this means. There is not a single figure-- I don't care whether the figure is 5, 8 or 15 per cent; I don't care whether the contribution of one of those persons is \$100 or \$25, or whether it be correct.

I want to show that they had a book in which they carried on the very combinations, by the very

203

199

numbers, and participated in by the very victim customers that are to be found in the combination book which was produced in evidence yesterday and charged to E. S. Dean & Co.; that it was carried on by the same system.

That corroborates, to some extent, the proof that we hope to introduce, that this was in reality the conspiracy of this very defendant; it was his own business that established these combinations. It was a corporation or aggregation of persons, acting under the guise of a corporation, which continued not only the business itself, but continued it under the exact business methods, and with the exact combinations.

Now, on the question of identifying the specific items, this witness says they were entered bi-monthly, at his direction, he giving, and, in one case at least, writing down, the percentage that would be carried out; that he looked at them afterwards, to see if his instructions were carried out, and found that drafts were carried out and everything done in relation to the combinations from that book after he had examined it; and it seems to me that that establishes the correctness of the

7203

entries, together with the fact that he knows who made each one of the entries.

MR. DAVIS: The entries, your Honor, were not made by this witness. The only person who can testify that they are correct entries, and that they were made correctly when they were made, is the person who made them. If they are transcriptions from other books or papers, that witness is the only one who can say that they were correctly made and accurately made, and I submit that, whether it is to be a civil or a criminal action, we are bound by the plain rules of evidence which relate to corporate books.

THE COURT: There is no question about that. There is no difference between the rules of evidence; there may be a difference in the point to be attained, not in the rules of evidence, so far as their application is concerned. I am of the opinion yet that the book is not properly proven.

So far as the witness's testimony as to the method is concerned, he has given that testimony, because that was a matter which lay in an oral transaction and conversation; but whether that method was carried out in its details, so far as

EX-203

the correctness of the entries is concerned, I think rests with some other witness than this witness, so far as his testimony goes. I sustain the objection.

MR. OLCOTT: I bow to your Honor's ruling.

BY MR. OLCOTT:

Q Now you may put that down, Mr. Keller (indicating book in question). A (Witness complies.)

Q Did either you or Kellogg or Weinmann ever put any money into this business, during its whole course?

Objected to. Objection overruled.

Exception.

THE COURT: I assume that you mean money in the nature of capital.

MR. OLCOTT: I mean money in the nature of capital, or contribution to the funds of the corporation.

A Temporarily, yes-- a temporary loan to the corporation.

Q When did Kellogg ever make such a loan? A Never made any.

Q He never made any? A Never did.

Q Which one of you did? A Weinmann made one, and I made a dozen of them; borrowed \$50,000 at one time from Theodore

W. Meyers & Co., because they had a run on the concern, and I borrowed \$50,000 from Meyers & Co., and stayed the run.

Q You were paid back that amount of money? A Yes, sir.

Q By the company? A I paid myself back.

Q And that money was not formed, in whole or in part--

MR. DAVIS: I object to your question.

MR. OLCOTT: I withdraw the question.

Q Kellogg did not make any? A No.

MR. OLCOTT: I have no reason for going into it at all, if you object, Mr. Davis.

Q Do you remember when the woman that you have called Flora Wurtz came into the business as an employe? A She came into the business in November, 1897.

Q Did you have any conversation with Kellogg about her? A I did.

Q Tell the conversation. A Kellogg was living at her house at the time that I saw him.

BY MR. DAVIS:

Q Is that the conversation? A I was going to start it off.

MR. DAVIS: I move to strike that out.

THE WITNESS: All right.

THE COURT: Strike it out.

THE WITNESS: I went to see Kellogg at his

house.

7203

MR. DAVIS: I move to strike that out.

THE COURT: I will let it stand.

MR. DAVIS: Exception.

THE WITNESS (continuing): Where I met Miss Wurtz.

BY MR. OLCOTT:

Q Where was that? A 125th street and St. Nicholas avenue.

Q Was that a private house? A An apartment.

Q Whose apartment, if you know?

MR. DAVIS: Your Honor, he was asked for a conversation.

MR. OLCOTT: Yes, and I interrupted him, because I wanted to find out whose place, if your Honor please. I thought it was proper to bring out all the details. I thought the conversation, when I asked the question, was held down town. I found it was not, and wanted to find out where it was held. Will your Honor permit me?

THE COURT: Yes.

BY MR. OLCOTT:

Q Go on and ~~ask~~ answer the question. A Miss Wurtz's name was on the door bell. Kellogg said he would like to get Miss Wurtz in business. She was not doing anything at the time. He asked if I had room or a place for her.

I told him yes, I had a place for her down at the office. I asked what she could do. He said she could write; that she was a pretty smart woman.

So I said to send her down, and I asked Kellogg how much I ought to pay her. She was his friend. He said, "\$25 a week will do;" so she came down in a day or two, and was put on the pay-roll. She had nothing to do for a day or two, until we found a place for her as mail clerk, in opening mail.

Q How long did she stay with you? A To the end.

Q What else did she do besides acting as mail clerk? A She helped Bernard open the mail, and took out the checks and post office orders and other remittances, and entered them in a book, and totalled them, and she would carry off the total with her on a slip of paper.

Q Do you remember Miss Moe, a stenographer? A Very well.

Q Did you ever have any conversation with Kellogg about her?

A She struck for a raise, and I didn't think she was worth it.

Q No; did you ever have any conversation with Kellogg about her? A Yes; I told Mr. Kellogg that Miss Moe had asked for a raise, and, as she was one of his clerks, I left it to him to raise her.

He didn't tell me to increase the salary right away,

203

but in a few days I got a note from Miss Moe, written by Kellogg.

Q You got what? A Miss Moe handed me a note. .

Q Written by whom? A Kellogg.

Q Where is that note? A That was taken with my checks and other things. My entire letter box was taken out.

Q Oh, that is what you spoke about this morning? A Yes, sir.

Q You don't know by whom? A No, I don't know.

Q Do you remember the contents of that letter? A Yes; it said—

MR. DAVIS: Objected to.

BY MR. OLCOTT:

Q Wait; I asked if you remembered. A Yes; I remember.

Q Will you tell the contents?

MR. DAVIS: I object.

THE COURT: There is not sufficient ground laid. Objection sustained.

BY MR. OLCOTT:

Q As a result of your reading that letter, did you do anything in relation to Miss Moe? A I raised her salary.

MR. DAVIS: Now, your Honor, I move to strike out all that evidence about Miss Moe.

THE COURT: ^{How} is that material?

MR. OLCOTT: To show that, in relation to this employe, Kellogg was exercising some control.

MR. DAVIS: I have written, I think, many letters in my time—

THE COURT: Even so— Pardon me, Mr. Davis. Even so, I suppose on the theory that he was exercising control over the ~~a~~ force of the corporation?

MR. OLCOTT: Yes, sir.

THE COURT: But I do not think that will do.

MR. OLCOTT: Coming after the testimony in regard to Miss Wurtz, who had gone in as a clerk, perhaps it might indicate nothing, but again it might indicate something. It is for the jury to determine.

THE COURT: Is there not sufficient testimony from this witness, so far as this witness is concerned, to indicate that he participated in the control?

MR. OLCOTT: Oh, yes, a great deal to indicate that he participated in the control.

THE COURT: I do not think it is necessary to go into that.

MR. DAVIS: That is, assuming he has told the

truth.

THE COURT: I said, as far as this witness is concerned. I am not assuming—

MR. DAVES: I simply said— I do not mean to intimate that your Honor meant anything. I simply did not hear that part of your remark.

THE COURT: I will grant the motion.

BY MR. OLCOTT:

Q Keller, had you, prior to your connection with the Dean Co., done any of this wash trade, as you call it? A No, sir.

Q When did you first hear of that method of transacting the business?

MR. DAVIS: Objected to.

MR. OLCOTT: I want to show that it was in his conversation with Kellogg on that day and on those days in September, when they were talking about continuing the business under the guise of the corporation, that it was first suggested to him.

THE COURT: If the matter arose between himself and Kellogg—

MR. OLCOTT: It certainly did. Of course, I don't want to lead him too much in the question.

MR. DAVIS: You mean the wash business?

MR. OLCOTT: Yes.

203

A From Charles Weinmann.

MR. OLCOTT: I consent to its being stricken out, if your Honor please.

MR. DAVIS: I didn't ask to have it stricken out.

MR. OLCOTT: But his Honor told me only to ask it if the matter arose between the witness and Kellogg.

THE COURT: I understood that the scope of the question was to be limited to any transaction or conversation between this witness and the defendant; otherwise, I would have excluded the question.

MR. OLCOTT: Certainly; and if I had known what his answer would be, I would not have put the question, after being warned by your Honor.

MR. DAVIS: I did not object to the question, nor do I object to the answer.

THE COURT: I think you did, Mr. Davis.

MR. DAVIS: No; I said, "I withdraw the objection." I did originally, and then I withdrew the objection.

THE COURT: That escaped my observation.

BY MR. OLCOTT:

208

- Q In September, 1896, did you have any conversation with Kellogg upon that subject? A Of washing trades?
- Q Yes. A The latter part of September.
- Q State what that conversation was. A He showed me these books of Goslin & Co., and over those books of Goslin & Co. we discussed the—
- Q You say "We discussed." I don't want that. I want to hear what you said and what he said. A He said that Goslin & Co.—

MR. DAVIS: Haven't we been all over that, your Honor? Is it not repeating?

MR. OLCOTT: I don't remember it.

THE COURT: We will see.

THE WITNESS: We had that yesterday.

MR. OLCOTT: If that is true, I have no further questions to ask this witness.

BY THE COURT:

Q Is it anything different from what you have said heretofore?

A No, sir, nothing different.

THE COURT: It is nothing different from what he has heretofore stated, he says.

MR. OLCOTT: Your witness, Mr. Davis. I forgot that he said that yesterday.

MR. DAVIS: If your Honor will adjourn at this

7-203

point, I can save time to-morrow.

THE COURT: Yes.

Gentlemen of the Jury, you will remember my admonition to you not to talk about the case, or form or express any opinion regarding the guilt or innocence of this defendant, until the case be finally submitted to you.

Adjourn Court until to-morrow morning; and, gentlemen, the rule in regard to convening at eleven o'clock for this case will stand until further notice.

17203

The Court

211

March 14, 1900.

TRIAL RESUMED.

SAMUEL KELLER, a witness for the People, resumed the stand.

Cross Examination.

BY MR. DAVIS:

Q Mr. Keller, you stated that you were a voluntary witness against the defendant. Is that true? A It is.

Q Is it true that you have not been promised any reward for the testimony given here? A It is.

Q What is it that induces you to offer yourself as a witness against the defendant? A When my attorneys were first employed by me after the trouble started, I was told there was nothing in the case, there was nothing to bother about, and I was dragged from one police court to another, and all the time, every time we got out of a police court, there was nothing in it, and you yourself said there was nothing in it, and I found out that we were being dragged from court to court, and all the time expecting the case to be thrown out of the police courts.

All this time my folks were worrying themselves to death, and I was worried and kept from going into business, and the first thing I knew, instead of there being nothing in it, I was held for the Grand Jury.

The next thing I know, there were indictments against

7203

me, and it looked more serious than it had up to that time.

I noticed that in the police court some of the witnesses tried to throw the onus of the whole thing on to me, witnesses that I had been giving money to for months and months. Neither Weinmann nor Kellogg were mentioned at all in the police court evidence. I was the whole thing, and I noticed that when I stopped giving money to these people, my own brother in law commenced to write threatening letters, and it looked like I was going to be the victim, and have to suffer for the whole concern.

I was willing enough to take my third, and I am willing now to take it.

I saw that if they all took the stand against me, I would be the only one to suffer. There was a good deal of money working against me, I had no ready money, and I thought I would not have a chance---

Q Why did you need money to get a chance? A As long as I could pay these people, these clerks, keep giving them money, they were all friendly. When I stopped giving them money, I lost their friendship.

Q What clerks do you refer to? A Principally Ferran and Veith and my own brother in law.

Q Bernard? A Yes, sir.

Q Anybody else? A That was enough.

7203

- Q Anybody else, I say? A No one that I can remember right now.
- Q Who were the other witnesses in the police court? A Ferran and Veith were the principal ones.
- Q Who were the other witnesses in the police court? A I don't remember the other witnesses.
- Q You don't remember any of them? A Oh, one or two of them. I remember Miss Kramer was a witness.
- Q What is her first name? A I don't know.
- Q Didn't she give testimony in the police court against you? A I think her testimony was impartial. I don't remember.
- Q You think her testimony was impartial? A Yes, sir.
- Q But you don't remember? A No, sir.
- Q Did she testify in the police court that you were the manager of the concern? A Yes, sir.
- Q Didn't she testify in the police court that the moneys were given to you? A I don't know whether she testified that the moneys were given to me.
- Q Didn't she testify in the police court that she opened the mail and passed over the money to Samuel Keller? A I don't remember that.
- Q Have you no recollection of any testimony which she gave which connected you directly with the receipt of the money which came into the corporation? A No, sir.

72-203

Q Were you there, and did you hear her testimony? A I was in the police court, but I was always suggesting questions to you and Mr. Levy, and I did not listen as attentively as if I had been doing nothing.

Q How do you know this other witness testified against you?

A Because I was specially interested in people I had been giving money to, and wanted to see how they would testify.

Q So you gave your attention to Ferran and to Veith when they testified, because you had given money to them? A

Yes, sir.

Q Why did you give them money? A Because they claimed they were out of work and they needed money, and I gave it to them

Q How much money did you give Veith? A I could not specify the exact amount.

Q How many hundreds of thousands of dollars did you give him?

A I never had hundreds of thousands of dollars.

Q How much money did you give him? Give us some estimate of it. A Between Veith and Ferran--

Q Veith, Veith. A Just a few hundred dollars.

Q How many?

BY THE COURT:

Q What is that name? A Miss Veith. She went under another name, White.

MR. DAVIS: I ask to strike that out.

MR. OLCOTT: I think it should stay in. It is an identification.

MR. DAVIS: I ask to have it stricken out, because it is a voluntary statement and not responsive.

THE COURT: Motion granted.

BY MR. DAVIS:

- Q I did not ask you what Miss Veith's other name was. I asked you how much money you gave her? A About two hundred dollars to Miss Lizzie White and Lizzie Veith.
- Q How much money did you give to Miss Veith? A About two hundred dollars to Miss Veith.
- Q Did you pay her any of that money while the proceedings in the police court were going on? A Yes, sir.
- Q How much of it? A Pretty nearly all of it, excepting fifty dollars I handed her one day on Broadway.
- Q How much money did you give Ferran? A That ran up over a thousand.
- Q How much of that was given to him during the hearing in the police court? A Pretty nearly all of it.
- Q Were you under any obligation to give them that money? A The only obligation--no, sir.
- Q Is it not a fact that you gave that money to those two witnesses so that they would testify favorably to you?

A No, sir.

Q Didn't you give them that money so that there testimony might be favorable to you? A No, sir.

Q Then why was it you stopped giving them money---? A I had no more money.

Q --after you heard their testimony? A No; I had stopped long before that.

Q You said you were particularly interested in hearing how those two people to whom you had given money would testify?

A Yes, sir.

Q You wanted to find out whether they would testify for you or against you? A No; I wanted to find out whether they would tell the truth.

Q Didn't you want to find out whether they would testify for you or against you? A I wanted to find out if they would tell the truth. I was willing for them to tell the truth.

Q Tell the truth as to what? A As to who composed The Dear Company.

Q Did they testify Mr. Kellogg was a member of that corporation or connected with it?

MR. OLCOTT: Objected to as not the best evidence.

Objection sustained. Exception.

BY MR. DAVIS:

Q You were listening to see whether they would connect Mr. Kellogg, who was then before the police magistrate, with the doings of the corporation, weren't you? A Not at all.

Q Not at all? A No; that was not any special purpose at all.

Q You don't mean to say they testified falsely? A In my knowledge of the company, yes, I do.

Q They testified falsely? A Yes, sir.

Q Did you give them the money that they might testify unfavorably? A How is that?

Q Did you give them the money that they might testify unfavorably? A No, sir; I gave--

Q Why did you give them the money? A I gave them the money because-they were out of work and broke.

Q It was just a charitable, humane interest that you had in them? A Yes, sir--I have another reason, , if you want to hear it.

Q Was your feeling of charity and humanity for them so deep that you gave Ferran a thousand dollars? A In installments, yes.

MR. OLCOTT: I ask that the witness be allowed to complete his former answer. He asked for the reason, and the witness said he had another reason.

20203

but he was interrupted by Mr. Davis, who asked him another question.

THE COURT: He premised the other by saying that if Mr. Davis wanted to hear it, he would state it. Mr. Davis evidently did not want to hear it.

MR. OLCOTT: Then I will bring it out.

MR. DAVIS: I do not want to hear anything that is voluntary.

THE COURT: You are right, Mr. Davis.

BY MR. DAVIS:

Q In what shape did you pay Veith the money that you gave her?

A Some in currency and some in checks. A good deal I paid by my attorney.

Q Who was your attorney? A Kronfeld of Kronfeld & Harris.

Q Have you any of those checks that you gave her? A Yes, sir.

Q You got them returned? A Yes, sir.

Q Where are they? A I can get them for you.

Q Where are they? A I have them laid away.

Q Where? A Downtown in an office.

Q Whose office? A In a desk in Black, Olcott, Gruber & Bonyng's office.

Q You have them there? A Yes, sir; I have them there.

Q Have you a desk there? A No, sir.

Q Whose desk are they in? A They are in some desk in the

20203

library. I do not know whose desk it is.

Q When did you see them last? A This morning.

Q How did you pay Ferran his money? A The same way as the Company checks, under the name of Smith, under the name of Ferran, and to Miss Lizzie White, in response to her letters for help in Ferran's behalf, made payable to the order of Miss White.

Q Have you got the checks? A Some of them.

Q Where? A The same place.

Q Now, did you pay any other witness who appeared in the police court for the prosecution? A Did I pay any of them?

Q Yes, did you pay any other? A I never paid any of them. I gave them money.

Q What? A I gave them money.

Q What other witness did you give money to? A I gave Miss Crowfoot some money when she was out of work.

Q How much? A About sixty or seventy dollars.

Q And when? A A year or so afterwards.

Q Did you give her any money while these proceedings were pending in the police court? A Yes, sir.

Q How much? A That is the money---she was here out of work when I gave it to her.

Q To whom else did you give money, of the witnesses?

A I gave--witnesses--no.

30203

- Q Well, did you give Miss Kramer any money? A No, sir.
- Q You never gave her any money? A While the police court proceeding was pending?
- Q Yes. A Not a cent.
- Q Prior to that did you give her any money? A Yes.
- Q How long prior to that? A The day before the company assigned.
- Q How much did you give her? A A thousand dollars.
- BY THE COURT:
- Q To whom? A Miss Kramer.
- BY MR. DAVIS:
- Q Augusta Kramer? A I do not know her first name.
- Q You have seen her here? A In this Court?
- Q Yes. A No, sir.
- Q Have you seen her outside the court? A No, sir.
- Q She was a witness in the police court, wasn't she? A Yes, sir.
- Q Is there any other witness to whom you gave money? A Is Bernard a witness?
- Q He is a defendant. A Oh, then I cannot mention any other.
- Q How about Jacob Lamberg? Had you given him any money?
- A No, sir.
- Q Have you given him any money recently? A Never gave him any money.

- Q How about Everman? A I never have seen Everman since the Company--
- Q Did you give him any money? A Never have seen him.
- Q Why was it you gave Augusta Kramer this one thousand dollars?
- A She was the most faithful clerk of The Dean Company, and I talked to Mr. Kellogg and said that I ought to give Miss Kramer some money, she would be thrown out of work, and I gave her a thousand dollars and told Mr. Kellogg about it, and he said that was all right.
- Q Is that all you gave her? A That is all.
- Q Before you purchased this business of E. S. Dean & Co. in October 1896, what business were you in? A We were running--in the brokerage business.
- Q What place? A 44 and 46 New street, and then moved--
- Q What was the name of it? A I think it was Sam Keller & Co. First it was---
- Q I mean immediately before you purchased-- A Sam Keller & Co., upstairs in 44 Broadway. That was immediately before we went into The Dean Company.
- Q How many offices did you have there? A Rooms or offices?
- Q Rooms. A Had about three.
- Q Who were interested in that business with you? A Charlie Weinmann and myself.
- Q Is that all? A That is all.

- Q Who were employed there with you? A There was a Jake Lamberg and a typewriter.
- Q What was the name of the typewriter? A Miss Metz.
- Q What is her name now? A I have not seen her in over three years.
- Q Who is Jake Lamberg? A Jake Lamberg is some relative of Charley Weinmann.
- Q What relation does he bear to Weinmann? A I do not know, sir.
- Q How long had you been associated with Weinmann in the business under the name of Sam Keller & Co.? A Just a few weeks, two or three.
- Q Two or three weeks? A Possibly four.
- Q What kind of business did you do? A Discretionary account.
- Q What is a discretionary account? A A discretionary account is moneys--handling moneys at our own discretion, investing them at our own discretion, and sending the profits, less our commissions, to the investors.
- Q Is that the only kind of business you did there? A That is all.
- Q How did you advertise that business? A I did not advertise it at all. Mr. Weinmann advertised it.
- Q Does it make any difference? A It makes this difference, that I did not know what the ads. were. I never paid any

attention to it. I was running the office.

Q How did Sam Keller & Co. advertise its business? A

I could not tell you, Mr. Davis.

Q Have you no idea? A I could not answer that question, because I could not remember a single ad. We did not have enough money to advertise, to tell you the truth.

Q Didn't you send out any circulars? A Yes.

Q Who drew those circulars? A The circulars were drawn--

Q Who drew the circulars? A Mr. Weinmann copied--they werenot drawn, at all.

Q Who drew the circulars? A Mr. Weinmann--no, Mr. Reach.

Q Who drew the circulars? Why are you hesitating? A

Well, we paid a man a certain amount of money each week to write a letter.

Q That is the man's name? A It was George Reach or George Ray.

Q Don't you know? A No, sir.

Q Don't you know Weinmann wrote those circulars, composed them and had them printed and sent out? A No, sir.

Q Do you know anything about it? A About what?

Q The circulars? A I have told you what I know about them, that we paid a man a few dollars a week. Wall street is full of man that write market letters, like Dow, Jones & Co.

Q Did you pay Dow, Jones & Co. for writing your market letters?

A We paid them for printing a weekly letter.

Q Did you pay them for writing any of your letters? A They don't write them. They give you printed letters that are stereotyped letters, and all they do is put the name of your firm on top.

Q Who composed the circulars sent out by Sam Keller & Co.?

A They were composed between George Ray and Charley Weinmann.

Q What do you mean by that, between George Ray and Charley Weinmann? A Well, George Ray, it was his business to write letters, and Charley Weinmann would make suggestions and changes.

Q Suggestions as to what? A Changes.

Q Changes as to what? A That I don't know.

Q What do you mean by changes? A Changes in the style of the firm.

Q In the name of the firm? A In the style of the firm's business.

Q Do you mean the business points as to the circular? A Yes, sir.

Q Why couldn't Ray do that? A That I don't know.

Q Why did Weinmann do it? A Because he had been in the business before.

Q He knew all about it. Is that the reason? A He said he

did.

Q Did he? A I don't know. He said he did.

Q You never had anything to do with the writing or composition of any of the circulars of Sam Keller & Co.? A No, sir.

Q But it was all between Weinmann and Ray? A Yes, sir.

Q Who paid Ray? A Sam Keller & Co.

Q How did they pay him? A Two or three or four dollars at a time. Didn't have much money.

Q In what way? A In currency.

Q Not by checks? A No, sir; had no bank account.

Q Who gave the cash to Ray? A The cashier.

Q Who was the cashier? A We made a Miss Veith--

Q Who was the cashier? A Miss Veith.

Q Miss Veith? A Yes, sir.

Q The same one of whom you have just been speaking? A Yes, sir.

Q How long has she been your cashier? A She was there about a week after we started, or two weeks.

Q How many of these circulars did you send out, Sam Keller & Co. send out? A Sent out very few.

Q How many? A A few hundred--about a thousand.

Q How many times? A Sent out about a thousand the first two weeks.

74203

- Q Where did you send them? A To customers--to prospective investors.
- Q Where? A All over this country, different towns.
- Q Out as far as California? A Yes, out as far as California.
- Q Did you send them to prospective customers in New York City?
- A I don't know.
- Q What? A I don't think we did.
- Q Don't you know you did not? A I don't think we did.
- Q Don't you know you did not? A I can't say. I don't know, because I did not have charge of that part of the business.
- Q Did you keep the books of Sam Keller & Co.? A Yes, sir.
- Q Did you have the names of the customers there? A In the books?
- Q Yes. A We had no customers.
- Q No customers at all? A No; we had no customers the first two weeks.
- Q You mean to say you had no business? A No; we started out to get business.
- Q But you did not get any^{business}? A No, sir.
- Q Under the style of Sam Keller & Co.? A Just a few days before we went into the corporation we got a few customers.
- Q Where did you get the names of the prospective purchasers to whom you sent the circulars? A We bought a list of

names.

Q From whom? A Some man. I don't know whom.

Q What is his name? A I don't know that. I did not buy it. Mr. Weinmann bought it. Those lists are for sale.

Q How much was paid for it? A I do not know.

Q Who paid for it? A He did.

Q You don't know how much? A No, sir/ Just a few dollars. Could not have been much, as we had no money.

Q Did you have a book there in which there was a list of those names to whom you sent these circulars? A We had a pad of names- sheets.

Q Don't you remember, from what you know of that list, that on it there was no name of any person living in New York City? A I never looked over the list.

Q Who attended to that? A Only Weinmann.

Q You were interested in it? A I was.

Q Were you doing an honest business there as Sam Keller & Co.? A Started out to do it.

Q Did you continue to do it? A We continued to do it as long as I was there, yes.

Q That business of Sam Keller & Co. was a perfectly honest business as long as you were there? A Yes, sir.

Q Do you say that because you did not have any business-- A We had a little business.

- Q --to be honest or dishonest? A We had a little business before I left there, and I traded, made the trades, and was lucky, and made money to pay dividends.
- Q Did you pay dividends? A We paid not more than two dividends before I left there.
- Q How much money did you pay out in dividends? A Forty or fifty dollars. Didn't have much money to pay. Didn't have much money coming in that required a dividend.
- Q How much money did your firm receive during its existence?
A That I don't know.
- Q Give us some idea of it. A I have an idea they received about fifty thousand dollars.
- Q Was that invested? A Up to the time I left--
- Q Was that invested? A I don't know.
- Q Who kept the books? A Of Sam Keller & Co.?
- Q Yes, who kept the books? Why don't you answer?
A You ask me of Sam Keller & Co.?
- Q You kept those books? You know what I am talking about.
A Miss McDonough.
- Q Was she your book-keeper? A Yes, sir; after I left.
- Q What was your position in this firm? A I am speaking of after I left Keller & Co.
- Q Did I ask you who kept the books after you left Keller & Co.? A You asked me before who kept the books, and I

said I did up to the time I left.

Q Why didn't you say so again when I asked you? A Because I thought you were going later on.

Q Who kept the books while you were connected with the firm of Keller & Co.? A Miss Veith and myself. First I, and then Miss Veith.

Q Was that fifty thousand dollars invested anywhere? A We never took in any fifty thousand dollars while I was there.

Q You said you took in about fifty thousand dollars. A Up to the time the company closed.

Q What company? A Keller & Co.

Q When was that? A Some time in April.

Q What time in April? A About a week after The Dean Company

Q Was that money ever invested? A All of it?

Q You answer my question. A Some of it.

Q How much of it was invested? A I do not know.

Q Who does know? A The man that was running the business.

Q Who? A Mr. Goslin.

Q Alfred Goslin? A Yes, sir.

Q The man who gave twelve thousand dollars cash bail here the other day? A I don't know how much he gave. The same man that was in here Monday morning.

Q He ran it? A Yes, sir.

#203

Q When did he begin to run it? A When we took hold of the--
when Weinmann and Kellogg and I went into the corporation
Kellogg had to find a place for Goslin.

Q When did Goslin take hold? A After the 12th.

Q Wait a moment.

MR. DAVIS: I ask to have the answer stricken
out. My question was when did Goslin take
hold of the affairs of Sam Keller & Co.

THE COURT: The witness says after the 12th.

MR. DAVIS: He volunteered more. He says
Kellogg had to find a place for Al Goslin.

THE COURT: After the 12th seems to be respons-
ive.

MR. DAVIS: That part is responsive, but the
other part is not.

THE COURT: Strike out the other part.

BY MR. DAVIS:

Q Will you answer if you can give a direct answer to any
question and keep your venom out of this case?

MR. OLCOTT: I object to that.

MR. DAVIS: I will withdraw it.

BY MR. DAVIS:

Q When did Al Goslin take hold of the affairs of your firm
of Sam Keller & Co.? A About the 12th of October 1896.

- Q That was the very time the corporation began, wasn't it?
- A Yes, sir.
- Q How long did Al Goslin continue to manage Sam Keller & Co.?
- A Up to the time that Sam Keller & Co. went out of business.
- Q When was that? A Some time after the 7th of April 1897.
- Q Sam Keller & Co. went out of business about the time the corporation went out of business, didn't it? A Yes, sir.
- Q You left 44 Broadway, Sam Keller & Co. and came over to the corporation and managed that, and Goslin went into Sam Keller & Co. at 44 New street? A No; 44 Broadway.
- Q And managed that; isn't that true? A Yes, sir.
- Q You and Goslin exchanged places? A Well, I don't understand it in that way.
- Q Well, Goslin went into your place and you went into the corporation? A I went into the corporation.
- Q Is that not true? Answer. Goslin went into your place and you went into the corporation? A Yes, sir.
- Q Or is it not a fact that Goslin went into your place and Weinmann's place in Sam Keller & Co., and you and Weinmann went into the corporation? A Yes, sir.
- Q So that left Goslin alone in Sam Keller & Co., didn't it?
- A Yes, sir.
- Q Managing it, I mean. A Yes, sir.
- Q Who did he keep there to assist him in the management of Sam

Keller & Co.? A That I don't know.

Q Don't you know any of the clerks that remained there? A
Yes, I do. Jake Lamberg was there.

Q Jake Lamberg? A Yes, sir.

Q Who else? A Miss McDonough, the book-keeper.

Q Who else? A Miss Veith, Miss Metz, the typewriter--
that is all I can remember.

Q Did Everman remain there? A That I don't know. I did not
know Everman very well.

Q I did not ask you that. A I don't know.

Q After Goslin took possession of the firm of Sam Keller &
Co., or to manage it--he went in there to manage it? A
Yes, sir.

Q Did you derive any of the profits of Sam Keller & Co.? A
Yes, sir.

Q How much did you take out? A I could not tell.

Q Why not? A Because I put in more than I took out.

Q How much did you take out? A I could not tell you the
exact figures.

Q Approximately. A About twelve thousand dollars.

Q When did you take that out? A Well, that would--I mean--

Q When, the time. A Oh, during the time of the life of the
company.

Q That was about how many weeks? A About seven months.

203

- Q Seven months? A Six or seven months.
- Q And how was that paid to you? A That was paid to me by check.
- Q To whose order? A Generally to my own order.
- Q How much did you put in? A Put in a great deal more than I drew out.
- Q Approximate how much. A I put in about four or five thousand dollars more than was charged to me.
- Q I did not ask you that. How much money did you put in that firm? A About four or five thousand more than I drew out.
- Q Tell us how much that is? A That was about twenty thousand dollars.
- Q How did you pay that? A Paid it in money.
- Q In bills? A Some times.
- Q I want to know how you paid it all. A Some times I gave a check on my own bank account, and some times I gave currency.
- Q How much currency did you give? A I could not separate--
- Q Approximate. A Possibly half and half.
- Q Ten thousand dollars of currency? A Yes, possibly.
- Q Where did you get the money? A I had it. My share of the corporation money.
- Q You got it from the corporation? A My share of it, yes, sir.

- Q It was corporation money? A Yes, sir.
- Q The Dean Company's money? A Yes, sir.
- Q It was not yours? A It was mine in a way.
- Q Was it yours? A Technically speaking, it belonged to the subscribers of the Dean Corporation.
- Q Only technically? A Yes.
- Q Technically it belonged to them? A Yes, sir.
- Q Is that right? A Why, it really did belong to them.
- Q Why did you say technically? A Because I was trying to separate your question, separate the meanings of your question.
- Q Didn't you understand my question? A I understand it now.
- Q Do you mean to say now that this was technically the money of the customers of the Dean Company? A It was the money of the Dean corporation, sent to the Dean corporation by customers, and divided as explained yesterday.
- Q Did that money belong to you? A Why, no, sir.
- Q Did you have any right to it? A No, sir.
- Q You stole it, didn't you? A You can put it that way.
- Q Didn't you steal it? A I suppose you can put it that way. I will admit--I am not trying to dodge any responsibility, Mr. Davis.
- Q Didn't you steal it? A Yes, sir.

- Q That stolen money you put in the firm of Sam Keller & Co. Is that true? A Some of it, when they were in a tight place for money.
- Q When they were in a tight place. Whom did you hand that money to in the firm of Sam Keller & Co.? A I generally sent it over there with some one of the boys or the girls.
- Q Which boys? A Couldn't tell you which one.
- Q Which girls? A The book-keeper of the company there, Miss McDonough.
- Q She would come there and get it? A Some times.
- Q Who would she see about it? A See me.
- Q What would she say? A She would say, "The firm needs money--drafts on them."
- Q What would you do? A I would give her some money.
- Q Some of the stolen money? A Yes, sir.
- Q She would take it back and give it to whom? A I do not know to whom. Probably put it in the bank.
- Q Who was to get the money? A She was.
- Q She was not running Keller & Co.? A She had power of attorney.
- Q She was not running Sam Keller & Co.? A No, sir.
- Q Why don't you say it was given to Goslin? A I don't know.
- Q Don't you know he got it? A No, sir.
- Q Don't you know he received it for the purposes of Sam

Keller & Co.? A I could not say that.

Q Wasn't he there managing Sam Keller & Co.? A Yes.

Q Do you mean to say that that girl came there on her own responsibility to get that ten thousand dollars of stolen money? A Certainly.

Q On her own responsibility? A Yes, sir.

Q You don't believe Goslin ever handled it, do you?

A I don't know that Goslin handled those little moneys.

Q Little moneys? A Yes.

Q Ten thousand dollars. A It is not in a lump. This runs over a period of six months.

Q What was the largest lump that you sent? A Two thousand dollars.

Q Didn't Miss McDonough come there and say that Mr. Goslin sent her over, that he needed money? A No, sir; she would come over and say she--no.

Q She did not? A No.

Q Don't you know that that money was used by Goslin in the affairs of Sam Keller & Co.? A That I knew.

Q There is no doubt about that, is there? A No doubt about that. It was used in Sam Keller & Co.'s business.

Q And he knew it was stolen money, didn't he? A Yes.

Q And he was, with you, through the agency of Sam Keller & Co., stealing other money of customers--weren't you? A

I will say--say it again.

Q (Question repeated). A Yes, sir.

Q And the firm of Sam Keller & Co. was a thieving concern, as well as the Dean corporation, wasn't it? A Yes, sir.

Q Lamberg's position in that firm was what? A In Keller & Co.?

Q Yes. A Had charge of the typewriters.

Q Typewriters? A The typewriters, mailing department.

Q How many typewriters were there? A I don't know how many.

Q Was there more than one? A Yes, sir.

Q Ten? A I don't know whether there was ten--more than one.

Q Five? A I guess there was about five.

Q What did he do as head of the Mailing Department?

A That I could not tell you.

Q What does a head of a Mailing Department in a concern like Keller & Co. do. A You asked me what he did.

Q Answer my last question. Please read it.

(Question repeated by the stenographer).

A He sees that all the letters are copied and put in envelopes and mailed.

Q Letters to whom? A Customers.

Q Concerning what? A Concerning the business of the company.

Q Go on. A And he sees that the circulars are all mailed.

Q Circulars to whom? A Customers.

Q Concerning what? A The business of the company.

203

- Q Anything else? A I guess that embraces all his duties.
- Q Did he know anything about the nature of the business that was being carried on by Sam Keller & Co.? A I could not speak for that.
- Q Why not? A Because I don't know what he knew.
- Q You have talked to him, haven't you? A Only salary days.
- Q Is that all? A When he was working for me--never worked for me excepting those two or three weeks.
- Q You talked to him about this business of Sam Keller & Co.?
- A No, sir; he was a little boy.
- Q How old? A I suppose about eighteen.
- Q How old is he now? A About three and a half years older.
- Q He was a little boy about eighteen? A Yes, sir.
- Q An innocent little boy? A That I could not tell you.
- Q Where did Sam Keller & Co. have its bank account? A I could not remember unless I saw one of their checks.
- Q Tell the jury where the bank account was. A I would if I could, Mr. Davis.
- Q Do you mean to say you can't recollect in what bank the firm of Sam Keller & Co. kept its bank account, yes or no. A No, sir; I cannot.
- Q You said that the firm of Sam Keller & Co. was doing the same sort of thieving business as the Dean corporation? A Yes, sir.

- Q What was the business that Sam Keller & Co. did? A Sam Keller & Co. sent out circular letters inviting subscriptions to be used in speculation.
- Q What kind of speculation? A In the market, stock or grain or wheat.
- Q What kind, what forms? A I don't understand that.
- Q What was the special character of the speculation into which you invited these customers?

MR. OLCOTT: I object. This witness has not said that he was with Sam Keller & Co. at that time. On the contrary, he has disclaimed it. Mr. Davis now asks him what was the nature of the business that he invited customers to do with it.

MR. DAVIS: The District Attorney has given the witness a suggestion which will put him on his guard.

MR. OLCOTT: I have not done so at all. The witness has already told the story as I stated it.

MR. DAVIS: I submit the question is proper, because he told us Sam Keller & Co. did the same kind of thieving business as the Dean Company did, and I want to find out what it was.

Objection overruled.

BY MR. DAVIS:

77203

Q (Question repeated). A The firm of Sam Keller & Co., the same parties that composed the firm of the corporation, sent out circulars---

MR. DAVIS: I move to strike that out.

Motion granted.

Q (Question repeated). A The firm of Sam Keller & Co?

Q You explain that. A I am going to right now. The firm of Sam Keller & Co. sent out circulars inviting subscriptions from these people whose names we had.

Q To do what? A To send money; inviting subscriptions. That means to send money, which the firm of Sam Keller & Co. would invest to the best of their ability, and make a profit for them.

Q Discretionary pools? A Yes.

Q Why couldn't you say that? A Well, I made it more lucid for you.

Q Have you? A Yes.

Q What you have described is a discretionary pool; isn't it?
A Yes.

Q How many of those discretionary pools did the firm of Sam Keller operate in? A I could not answer that question.

Q More than one? A I could not tell you how many.

Q Didn't you get up one every week there? A I don't know.

Q Who wrote the circular for those discretionary pools?

44203

A I don't know.

Q Don't you know that Weinmann did, or Ray, one or the other?

A No, sir. I have answered for the time I was over there. After that I don't know.

Q Do you mean to say you didn't go over to the office of Sam Keller & Co. after you assumed charge of the corporation? A Once in a while.

Q You don't mean to say you severed your connection with Sam Keller & Co. A No, sir; but it was my intention to do it.

MR. DAVIS: I move to strike that out.

THE COURT: Strike it out.

BY MR. DAVIS:

Q During all the time of the existence of the corporation, you were connected with the firm of Sam Keller & Co., were you not? A Yes, sir.

Q How often did you go over to the office of Sam Keller & Co. while you were in charge---? A While they were at 44 Broadway, you are speaking?

Q Yes. A Two or three times a week for a few months.

Q That extended over how many weeks? A Until they moved-- let us see. I am trying to think.

MR. DAVIS: I move to strike out the answer.

Q That extended over how many weeks? A I should say about

four or five weeks. Six weeks maybe.

Q Did they move from 44 Broadway? A Yes, sir.

Q To what place? A Lord's Court Building.

Q When was that? A That I could not tell you exactly.

Q Give me the month. A I should think it would be about January, around January.

Q 1897? A Yes, sir.

Q And how many rooms did they take there? A I do not know. I was only in there once to my knowledge.

Q Goslin still retained charge of it? A Yes.

Q Who were employed there at that time in Lord's Court Building? A To my knowledge--

Q What clerks were there? A Miss McDonough, and a lot of typewriters, young ladies.

Q Who were they? A I don't know them.

Q Give us some of their names. A There was a Miss Levy; I remember her.

Q Any others? A I guess that is all I could remember.

Q Miss Moe? A No, sir.

Q Is that all you can remember? A Yes, sir--oh, yes, I remember Miss Metz.

Q Anybody else? A No, sir.

Q Lamberg? A Oh, yes.

Q Lamberg was there? A Yes.

4203

Q Lamberg was gravitating between the corporation offices and Sam Keller & Co.? A What do you mean by gravitating?

Q Passing back and forth between the one and the other. A Yes, sir, he would come over there when necessary.

Q He was the secretary and treasurer of the corporation?

A Up to January.

Q He was a clerk in Sam Keller & Co.'s? A Yes, sir.

Q When Sam Keller & Co. failed how much did they owe to customers? A I never heard.

Q Did you ever see? A No, sir.

Q Were you ever told? A No, sir.

Q You guessed for us yesterday. Did you ever guess? A I have stopped guessing.

Q What? A I don't guess any more in answers.

Q Have you any idea how much Sam Keller & Co. owed when they failed? A No, sir.

Q Whether it was one hundred dollars or a thousand? A I know it must have been over a thousand.

Q Then you have some certain knowledge about it. A No certain knowledge.

Q You say you know it must be over a thousand. A I am certain that far.

Q Certain as to that? A Yes.

Q Was it five thousand? A I don't know.

#203

Q Was it six? A I don't know that.

Q Wasn't it four hundred thousand? A I don't know anything about that.

Q You don't know anything about it? A No, sir; not the amounts.

Q Although you were connected with that corporation down to the time it failed, you don't know how much money it owed its customers? A No, sir.

MR. OLCOTT: Are you talking about the corporation or the firm?

MR. DAVIS: The firm I mean.

THE WITNESS: No, sir. My time was all taken up with the corporation.

Q I did not ask you that.

MR. DAVIS: I move to strike it out.

MR. OLCOTT: There is no objection.

Motion granted.

BY MR. DAVIS:

Q Was it a hundred thousand? A I don't know.

Q Weinman was a member there, wasn't he, of Sam Keller & Co.?

A Yes.

Q All this time? A Yes.

Q Haven't you spoken to him since the beginning of this case about how much Sam Keller & Co. owed? A No, sir.

7-203

- Q to him
Never said a word about it? A No, sir.
- Q Have you never been interested to know how much the firm of Sam Keller & Co. owed when they failed? A No, sir.
- Q Never inquired of anybody? A No, sir.
- Q Never heard? A No, sir.
- Q Never saw? A No, sir.
- Q And don't know? A No, sir.
- Q Whether it is a thousand dollars or six hundred thousand dollars? A No, sir; I do not.
- Q How much money of the customers of Sam Keller & Co. did you steal? A None at all.
- Q Perhaps you object to the word "steal". How much money of the customers of Sam Keller & Co. did you take? A None at all.
- Q Receive? A About five thousand dollars less than I put in.
- Q Where did you have your bank account at this time, during the time Sam Keller & Co. had a bank account? A What period?
- Q During the time that Sam Keller & Co. had a bank account, where did you have yours? A I had one bank account at the Continental Bank.
- Q Where is that? A Corner of Nassau and Pine.
- Q Is that a private account? A Yes, sir.
- Q Private bank account? A Yes.

- Q Where else did you have an account? A Well, I don't think I had any other account.
- Q Don't you know? A Not at that time--- in February, I had another account, yes.
- Q Where? A At the Leather Manufacturers' Bank.
- Q Private account? A Yes.
- Q Where else did you have an account? A That is all.
- Q Then during the life of this corporation you had but two bank accounts, one at the Continental Bank and the other at the Leather Manufacturers' Bank. A Yes, sir; that I can remember.
- Q Did you have so many that you cannot remember them? A Oh, no, sir; I did not have many, because I had but little money.
- Q Do you think you might have had other bank accounts? A I don't think so.
- Q Aren't you sure you had but two? A I am pretty sure I had two.
- Q Aren't you absolutely sure? A Not absolutely sure, but I have given the name of the Continental Bank as correct.
- Q Aren't you positive that you had two, the Continental and the National Shoe and Leather Bank--the Leather Manufacturers!? A I am positive that I had an account at the Continental and that it did not pay them to keep it, and I

44-203

opened an account at the Leather Manufacturers'.

Q I did not ask you that. A I had one account at a time, I believe.

Q Where did you have your bank account before October 12th?

A I had no bank account.

Q After October 12th where did you have your first bank account? A Continental Bank.

Q Who introduced you there? A I don't remember.

Q You are sure you don't remember? A Yes, positive.

Q Who introduced you at the Leather Manufacturers'? A Mr. Ferran.

Q Who is he? A He was secretary and treasurer of the Dean corporation.

Q The firm of Sam Keller & Co. were preceded by another firm, were they not? A The brokerage business--the bucket shop business was preceded by a firm, but I could not tell you the style of the firm. I think it was E. Mortimer Pine. I could not tell you.

Q Just suspend. A I could not tell you the name of the firm.

Q You only think so? A Yes, sir.

Q You were in the firm? A Yes, sir; four of us in the firm.

Q Who were they? A There was Pine and Charley Weinmann and Bob Ammon.

- Q He is not here. You put your head over there, as if to indicate he was here. A No, sir.
- Q The last time you saw him was beside Mr. Goslin in Court?
- A He was an attorney.
- Q He was the attorney for Goslin? A Yes, sir.
- Q That was what made you look over there? A No, sir; I was just emphatic, that was all. And I guess that composed the firm.
- Q There was Bob Ammon? A Yes, sir.
- Q And Charley Weinmann? A Yes, sir.
- Q Sam Keller? A Yes, sir.
- Q And E. Mortimer Pine? A Yes, sir.
- Q You do not know what the name of the concern was? x
- A I don't remember the name of the firm. The name was changed twice in one week. I remember that, because the life of the firm was only two or three weeks.
- Q What was the first name of the firm? A What is that?
- Q What was the first name the firm took? A The first name of the firm was--I could not tell you.
- Q Wasn't it Robert Ammon & Co.--something like that? A No, sir.
- Q Ammon & Co.? A No, sir.
- Q What was it? A I can't tell you.
- Q Give us some idea. A If you want me to tell you what I

think, I think it was E. Mortimer Pine & Co.

Q Who was Mr. Pine? A He was a broker. I know very little of him.

Q Who did know him? A He was in business at 66 Broadway when I first met him.

Q With whom was he in business? A Mr. Weinmann.

Q Charles Weinmann? A Yes, sir.

Q Anybody else? A Not that I know of.

Q You were introduced to him by Weinmann? A Yes, sir.

Q That firm, you say, had an existence of three weeks--E. Mortimer Pine? A Yes, sir; about three or four weeks.

Q What kind of business did they do? A We were doing--taking trades and standing on them--called a bucket shop.

Q Any other kind of business? A That is all.

Q Send out any circulars? A Not that I know of.

Q Did Weinmann? A I don't know.

Q Do any advertising? A Did in "The Evening Sun".

Q Did you do any discretionary pool work? A None at all.

Q Sure of that? A Pretty sure--I don't know.

Q You don't know? A Ddn't remember.

Q How much capital did you have at that time, you four men together? A Six thousand dollars.

Q How much did you have? A \$1500.

Q Each one \$1500.? A Yes, sir; it was \$1500. apiece.

- Q Did Ammon have \$1500.? A Ammon had \$1500., I had \$1500. and Weinmann and Pine had \$3000. worth of fixtures.
- Q Before that it was what? A Before what?
- Q Before it became E. Mortimer Pine. A That is the inception of the business, I believe.
- Q Now, let me see. E. Mortimer Pine was succeeded by the firm of Sam Keller & Co.? A No--E. Mortimer Pine--I could not swear to that, Mr. Davis.
- Q You all left E. Mortimer Pine & Co.? A Ammon and I, with the assistance of Weinmann, first bought out E. Mortimer Pine.
- Q You, Weinmann and Ammon--? A Bought out E. Mortimer Pine.
- Q Ammon, the counsel of Goslin? A Robert A. Ammon.
- Q You gave Pine how much money? A A few hundred dollars. I don't remember exactly.
- Q Then the name of your firm was what? A Then it was changed, but I don't remember to what it was changed.
- Q Did Ammon's name appear in the firm name then? A No, sir.
- Q Sure? A Pretty sure.
- Q You cannot recall what that name is? A No, sir.
- Q Or give us any idea? A No, sir.
- Q What sort of business did you do under that new name? A The same business as we did under the name of Pine.
- Q Was the business under the name of Pine an honest business?

A Yes, sir.

Q Absolutely? A Yes, sir, absolutely. We paid everybody.

Q Dividends? A No, sir; it was not a dividend business.
It was a brokerage business.

Q Mere brokerage? A Yes, sir, a man came in and bought
stocks and sold them.

Q The firm that succeeded E. Mortimer Pine, did they do an honest
business? A Yes, sir.

Q An absolutely honest business? A Yes, sir.

Q How long were you in partnership with Ammon? A About a
month or less.

Q Did Goslin have anything to do with that? A I did not know
Goslin.

Q I say, did he have anything to do? A Nothing.

Q Didn't you know him at that time under the name of Bevin?
A Yes, sir--well, I did not know as early as that that Bevin
was Goslin.

Q Didn't you know the individual now called Goslin under the
name of Donald Bevin? A Yes, sir.

Q When did you first know him as Donald Bevin? A When I
was working for T. E. Ward & Co., manager--assistant manager.

Q Of what? A Of T. E. Ward & Co's office.

Q What business are they in? A Stock brokers.

Q What kind of stock brokers? A Stock brokers--only one

kind.

Q Only one kind? A Yes, sir. This young man came up there and traded.

Q Where was T. E. Ward's office at that time? A 1270 Broadway and 31 and 33 Broadway.

Q How long were you employed with them? A Something less than a year.

Q As assistant manager? A Yes, sir; on commissions.

Q Why did you leave there? A I was making more money than the firm.

Q Did you have trouble with T. E. Ward about that? A No, sir.

Q What year was that? A 1894.

Q Let us go back to the purchase of the firm of Dean & Company's assets. Who first told you that the business of E. S. Dean & Co. was for sale? A Mr. Weinmann.

Q Do you remember about when that was? A It was after the 15th of September and before the 1st of October.

Q Where was Weinmann when he told you that? A In the private office of this concern--this broker's office.

Q What broker's? A 44 and 46 New street.

Q What broker? A E. Mortimer Pine, or whatever the name was.

Q Who was present at the time? A Just Weinmann and I was talking.

77 203

- Q Only you two present? A Yes, sir.
- Q Did Weinmann tell you how much they wanted for the firm?
- A Not then.
- Q Did Weinmann propose at that time that you and he should look into the matter? A No, sir.
- Q Did Weinmann say anything about looking into it at all?
- A Weinmann and I had a conversation about the matter.
- Q Did Weinmann say anything about looking into the matter?
- A No, sir.
- Q Examining and proposing? A No, sir.
- Q Nothing at all? A No, sir.
- Q Just simply had a short conversation with you about it?
- A Yes, sir.
- Q Did you become interested in the proposition at that time?
- A No, sir; not that day.
- Q How long was the conversation? A Just a few minutes.
- Q Why would Weinmann speak to you about that, Mr. Keller?
- A Because he was my partner.
- Q At that time were E. Mortimer Pine & Co. doing a good business? A At that time the firm had changed, the successors of E. Mortimer Pine.
- Q Were they doing a good business? A Could not call it good because we were losing money. Doing a large business.
- Q Doing a large business, but losing money all the time?

77-203

A Yes, sir.

Q You had no money at that time? A \$1500. invested in that firm.

Q Did you have it actually, so you could put your hands on it?

A I had it in the drawer.

Q What drawer? A Cash drawer. We had the money in the cash drawer.

Q Your money? A Mr. Ammon's money and mine. We had \$3000.

Q At the time that Weinmann first spoke to you about E. S.

Dean & Co.? A We didn't have that money left then. We had lost a good deal of it.

Q You had lost all of it? A No, sir; not all of it.

Q Most of it? A Most of it.

Q You were so badly off financially you had to borrow some money from Goslin, didn't you? A No; I never borrowed any from Goslin.

Q Whom did you borrow it of at that time? A At that time?

Q Yes. A Didn't borrow from anybody. Mr. Ammon got \$2000. and put it in the firm.

Q Did you take that? A Why, we put it in the firm.

Q Didn't you take out the \$2,000.? A Well, I guess not. The customers took it.

Q Didn't Ammon charge you with taking it? A He did once--no, he charged me with taking part of it.

Q Had you in the police court? A Yes.

#203

Objected to.

THE WITNESS: I will answer that.

BY MR. DAVIS:

Q But you were discharged? A Yes, sir.

Q You were doing a big business, you say, there? A Pretty big.

Q But you were losing money? A Yes.

Q You were doing an honest business? A Yes.

Q How can brokers do a large business and lose money? A By being wrong on the market.

Q They can? A Yes, sir.

Q They get their commissions. A Yes, sir; but---

Q For every sale? A Yes, sir; but we were speculating. The firm was speculating with its own money.

Q With its own money? A Yes, sir.

Q How much? A Whatever we had.

Q Six thousand dollars? A We never had six thousand dollars in money.

Q How much did you have? A Three thousand dollars in money.

Q The firm was speculating with three thousand dollars?

A Yes, sir.

Q Weren't you speculating with your customers' money? A

Oh, no, sir.

Q Not a bit? A No, sir.

- Q Never? A Never.
- Q At this time when you were considering the proposition of E. S. Dean & Co., you really had no assets with which to buy, did you? A No, sir.
- Q You were in a pretty bad way financially? A Yes, sir; we did not have any money.
- Q You were what was known as broke, were you not? A I have never been broke, because I could always borrow money. A man that has credit is never broke.
- Q We will lay aside any ability to borrow money. Take that out. A Oh, I had no ready money.
- Q You had no ready money? A No, sir.
- Q No possible means of support at that time? A Why, certainly. I have had possible means of support all my life.
- Q You had no income at that time, did you? A No guaranteed income, no, sir.
- Q No income whatever from any legitimate business, had you? A No guaranteed income, no, sir.
- Q You hadn't enough to support your family at that time? A Always.
- Q At that time? A Always, yes, sir. I always kept out enough to support my family needs.
- Q Out of what? A If there was one hundred dollars, and we stood a chance to lose one hundred, I would get it down to

ninety so I would only lose ninety and keep ten for the family.

Q That is the way you did that? A Yes, sir.

Q You supported them right along? A Yes, sir; always.

Q In comfort? A Yes, sir.

Q When was the next conversation you had about the purchase of E. S. Dean & Company? A Well, Weinmann was interested in this.

Q When? A I am going to tell you.

Q Say when? A Within a day or two.

Q With whom did you have the conversation? A With Weinmann.

Q Where? A In the office.

Q Whose office? A This old 44 and 46 office.

Q Whose office was that? A The successors of Pine.

Q Whose name you don't remember? A Whose name I don't remember.

Q Was anybody else present? A Kellogg was there.

Q Was Kellogg present? A Yes, sir.

Q At the very second conversation you ever had about it?

A Yes, sir; the second. Yes, I could say yes.

Q Are you sure? A Well, it is pretty hard, you know, to remember every day and everything for three years and a half. I am doing the best I can.

Q You remember a good deal here apparently. Was that the very

4203

second conversation you had about this purchase?

A I will say it was the second or third.

Q I do not want you to put it in that way. It does not satisfy me. A I won't say the second positively.

Q Was it? A I won't say.

Q Had you been over to 35 Broadway, the office of Dean & Co.?

A No, sir.

Q Tell us the conversation you had there in the presence of Weinmann and Kellogg, what each one said. A Weinmann said it was a good chance to get into business if I could raise any money.

Q That was where the conversation opened? A Oh, we were talking about things in general.

Q I want the conversation. A I could not remember all this. He said here would be a good chance--we could get into business with Kellogg, if we had any money. And I said, "You know I haven't any money." He suggested that I draw on some friends in the West for money. I said I could not do it.

Q Who? A Weinmann. I told him that I would not draw for any more money, and of course there was no use talking about buying anything; we had no money to buy anything with, "and let it go at that, and I won't say any more about it."

Q Had you examined the proposition at all when you said--

#203

A Oh, no. I did not know how much money or anything else. I knew any money at all was a good deal of money.

Q Was any figure mentioned? A None at all.

Q That conversation was general? A Yes, sir.

Q Who was it wanted you to send out West? A Weinmann.

Q You said in your direct examination that lots of people thought you were rich. A Yes, sir.

Q You remember that? A Yes, sir.

Q What gave them that impression? A Because I always lived well, paid my debts as fast as I could, and had bought some mines out in the West, and lived well--always lived like I was rich.

Q Anything else in your life that gave them that impression besides what you have mentioned? A That is enough.

Q (Question repeated). A I have answered it.

Q You have not answered it. (Question repeated). A I wore good clothes and wore jewelry, and that gave the impression to the people that I was doing well and had money.

Q When you came from the South, from Georgia, you had a reputation then of having brought some money with you.

A Oh, no.

Q What? A No.

Q Didn't you have that reputation here, of having brought a lot of money from Georgia? A No.

CASE #203

- Q Didn't you try to convey the impression? A No, sir; I could not have done it, because I went to work.
- Q Let us go back to the purchase of E. S. Dean & Co. What was the next thing that happened with reference to this purchase? A Well, a day or two afterwards, Kellogg came over to this same office at 44--I can say the same of- fice. You would understand .
- Q No, I won't understand. A The same office at 44 and 46 New street.
- Q Who was there? A Weinmann and myself, talking in the pri- vate office.
- Q Did you expect Mr. Kellogg? A Yes, sir; Weinmann had ex- pected him.
- Q Weinmann had expected him? A Yes.
- Q How do you know that? A Because Weinmann, the night before, going up on the elevated--Weinmann had become very much impressed with the prospects from what he and Kellogg had discussed, and he said, "If we can get into this thing it is a good big business: Now, maybe we can fix it so we can get in without any money." So I said, "Let Kellogg come over and we will talk it over with him, the next day."
- Q When Kellogg came, you supposed he came at the solicitation of Weinmann? A I supposed so.
- Q No doubt about it? A Oh, there is a doubt. Certainly

7203

there is a doubt.

Q What date was that? A That was a few days after.

Q Give us the month. In September. After September 15th .
and before the 1st of October. 1896.

Q How long did that conversation last? A We had quite a
talk that day.

Q Will you tell us everything that was said and done? A
I will tell you everything I can remember. We started the
conversation by saying that we had no money, Weinmann and
I, and we could not buy into anything that would require
money, but we could give valuable experience. I was
an expert accountant--was my profession--and Weinmann was
very handy at the mails, answering letters, and we would go
in there and give our services for an interest in the busi-
ness.

Kellogg said that that was not good enough, he could
get fifty thousand for it right now as it stood, but he
would not want to turn it over to anyone that he did not
know well, and he knew Weinmann was all right.

I said, "There is no use of talking any money,
because we have not any. There is only one way that we
would come into that business, and that would be to come in
and give our services for an interest. Well, he would not
do that.

72203

- Q What did he say? A He said that he would not consider any proposition without ready cash, but he would be over to see us again. He liked Weinmann.
- Q You said you were an expert accountant? A Yes, sir.
- Q And Weinmann was an expert with the mail? A Yes, sir.
- Q And that you knew the business was big from what Weinmann had told you? A Yes, sir; from what Kellogg had told me.
- Q From what Kellogg had said--and you offered to put your experience as an accountant and Weinmann's as a mail man, writing letters, against what? A Against Kellogg's ability as a circular writer.
- Q Well, go on. A The next day he came over again.
- Q Kellogg? A Kellogg did.
- Q By appointment? A I don't know. I walked over to 35 Broadway with him.
- Q Anybody else? A Nobody. And I saw the crowd.
- Q What did you do there? A Noticed the crowd of girls, books and things.
- Q How many offices did you notice, how many rooms? A I saw three rooms on that first trip.
- Q How many employees? A Oh, probably fifteen or eighteen.
- Q What did you do there? A I just looked over a batch of letters that he had received that morning, and saw some bills and express orders, looked over circulars. He gave me one

of these books, those Sixth Annual Statements, and one of those blue circulars. And I said, "You are doing a big business," and he said, "Yes; but it is growing too fast, and I need someone to take the management."

Q You are sure he said that? A Yes, sir; pretty sure.

Q He said it was a big business? A Yes, sir.

Q And you saw it was a big business, didn't you? A Yes, sir.

Q He said then that, "It is growing too fast?" A Yes, sir.

Q What else did he say? A It has outgrown him--"I need someone to manage it, and take some of this work off my shoulders."

Q He did not feel equal to running the business as it was then, in its growing form, any longer; is that right? A He did not feel equal to running it all by himself.

Q And so he wanted to have you and Mr. Weinmann--- A Come in and help him.

203

263 1/2

Q At that time I think you have said you knew nothing about this form of business. A What is that--- I didn't hear that.

Q (Question repeated). A I knew very little about the business.

Q Did you tell him that,? A I was all right for the front of the office.

MR. Davis: I move to strike out the answer.

THE WITNESS: I did not tell him, no.

BY MR. DAVIS:

Q Did you tell Mr. Kellogg you didn't understand the business? A No, I told him I was an expert accountant, and he knew it.

Q Did you tell him you didn't understand that form of business? A I did not.

Q Perhaps you never heard of it before? A Well, yes.

Q You heard of it before? A Yes.

Q But didn't understand it? A I ~~didn't~~ understand the inner workings of it.

Q How many years down to that time had you been in this speculating sort of business? A Well, that is a general term--- speculating--- this sort of business--- which

203

264

business do you mean?

Q Do you find it difficult in dividing the honest from the dishonest business? A I have never been in any dishonest business up to the time I went into business with Weinmann.

Q Did Weinmann tempt you? A No, I don't need any--- I was seventeen years old.

Q I don't like to call Wall Street, because that may contain an odious comparison--- what I mean is, this business of stocks and bonds, and pools and combinations, how many years had you been in it down to that time? A I, have never been in any pools or combinations until the fall of 1896.

Q Well, you told us you had been with T. E. Ward. A That is different.

Q You told us you had been in other business--- you told the jury yesterday you had been trying to beat the market for twelve years and you got thrown down. A No, I didn't say that.

Q You said you had been trying to beat the market. A If you ask me how long I have been speculating, I will answer you.

Q You answer my question. A What is that?

203

265

- Q How many years have you been engaged in speculative business, stocks and bonds, wheat &c.? A Speculating?
- Q Answer the question, howmany, one, two or three or four, how many years? A I can't answer it unless you let me ask you a question.
- Q You answer it. A I won't, unless you let me ask you a question.
- Q question repeated--- answer that if you can. A I have been seven years in the speculating business exclusively, but I have speculated for twenty years--- for eighteen years.
- Q Speculated in what? A Provisions and oil and grain.
- Q Where? A Speculated in the South.
- Q What part of the South? A Alabama.
- Q Whereabouts? A Nashville, Memphis, Chicago, wherever they had markets, wherever I would be at the time.
- Q Were you in business in those various places?
- A No, sir.
- Q In none of them? A I was in business in Alabama.
- Q I thought so, and notwithstanding all that experience that you had, you say that when you met Mr. Kellogg was the first time that you understood the sort of business that he was doing? A Yes, sir.
- Q Then, he was introducing you to a new thing, wasn't he?
- A Practically.

77203

Q Prior to that you had heard of grain pools and stock pools, hadn't you? A Oh, in Wall Street?

Q Answer the question. A Yes, sir.

Q But you didn't understand them? Why, no—

Q That is enough. A Sure— you confuse the jury.

Q At that conversation, recurring to it, was any figure mentioned, I mean now the conversation at the office?

A Of 35 Broadway?

Q Yes, 35 Broadway— E. S. Dean & Company? A Yes, sir.

Q Was Weinmann with you? A Not at that time.

Q He was not there? A No.

Q How is it Weinmann was absent? A He was over in the other ~~office~~ business.

Q What business? A 44 & 46 New Street— or 44 Broadway.

Q How was it you came alone? A Because I was able to judge better than he, I understand books.

Q You came over to look at the books? A I wanted to look at them, but he wouldn't let me look at them that day.

Q Who wouldn't? A Kellogg.

Q Why did you want to look at them? A To form an idea of what business he was doing.

Q Why was that important? A I wanted to be able to make terms with him.

267

- Q You had not any money? A I admitted that several times.
- Q Well, you wanted to inspect the business, to see what it was, in order that you might make terms? A Certainly.
- Q What terms did you think of making with him? A He had all ready----
- Q What terms did you think of making? A Thought of making the terms to let Weinmann and myself come in there and attend to our respective duties and have a third interest in the concern.
- Q That was what you were thinking of? A Yes.
- Q Without any money? A Without any money.
- Q Kellogg wouldn't let you see the books until you had shown some money? A No, sir.
- Q What did he say about it? A He said, "I don't want to let you into this thing without any money. If you can get up \$20,000, I would rather let you in for twenty than let anybody else in for fifty."
- Q Are you sure he said that? A Sure.
- Q You remember that distinctly? A Distinctly.
- Q He did not embrace you when he said that? A No, he was not speaking of me.
- Q Wait a moment, I don't want any speeches, answer the question--- was there anybody present there besides you and Kellogg? A No, sir.

- Q What did he say to that? A I said "You might as well ask for a million as ask for twenty thousand."
- Q Why did you say that? A Because it was just as easy to get one as the other.
- Q Do you remember anything else that took place at that conversation? A No. I went over--- he said, "I will be over and see Charlie."
- Q You went over where? A Back to 4 and 46.
- Q Who was there when you got there? A Weinmann and Ammon.
- Q Anybody else? A I suppose the office was full of customers, but I don't remember.
- Q Did you tell Weinmann what had taken place in E. S. Dean & Company's office? A Yes, sir.
- Q What did you say to him? A I said, "Bill, Kellogg wants twenty thousand, and there is no use of our fooling around that thing; we cannot show any money."
- Q Who is Bill? A That was Weinmann--- that was his nickname.
- Q Bill? A BILL.
- Q Has he any other name? A His name is Charlie.
- Q You called him Bill? A Called him Bill because it is not his name.
- Q Has he any other name than Weinmann? A Never knew him by any other name.
- Q Didn't you say to Weinmann that he had sent you on a fool

errand? A Yes, sir, I told him--- yes, I told him it was a foolish---

Q Foolish errand? A Foolish errand.

Q Fool errand, you said, "The man over there wants \$20,000."

A \$20,000 in money.

Q What else? A In money, for a two-thirds interest.

Q Why did you consider that a fool errand? A Because Charlie knew I had no money, and I knew Charlie had no money.

Q The business was worth that from your investigation of it?

A Yes, the business was worth---

Q Worth many times that? A Not at that time, but it did become so after awhile.

Q You saw its possibilities at that time? A Oh, no, I hadn't seen the books at that time.

Q You did not know absolutely what the possibilities were because Kellogg wouldn't show you the books until you had shown up some money? A Not that day.

Q What did Weinmann say to that, when you had told him he had sent you on a fool errand? A He said he thought "We might be able to get in on your terms."

Q Whose terms? A Mine.

Q He didn't give up the idea of getting in on your terms?

A No, sir.

Q Your terms were, if I remember right, that you were to get

one-third of the profits? A Yes, sir.

Q That meant everything except dividends, one-third of everything except dividends? A One-third of the net receipts after paying every thing.

Q After paying dividends? A Expenses, everything-- net receipts.

Q What did you consider to be the net receipts? A The money of the subscribers were the gross receipts; the net receipts were these gross receipts less all moneys paid out.

Q You knew that moneys would be paid out of course?

A Yes, sir.

Q For clerk hire, for instance, for rent-- now, for what other purposes? A For running expenses, commissions to agents.

Q What else? A Salaries, postage stamps.

Q What else? A Advertising.

Q What else? A That is as far as I can go right now.

Q Is that as far as you can go-- didn't you know anything about dividends being paid out? A You have mentioned that yourself.

Q You did include that in your view? A Yes.

Q That there would be dividends paid out, is that right?

A Yes.

Q And so when you made your first proposition to Kellogg, it

was that you should come in, be the manager, give your services, for which you would receive one-third of the net profits? A Yes, sir.

Q And you knew at that time that the net profits would be obtained by deducting from the gross receipts from customers, the amounts paid out for expenses and dividends?

A Yes.

Q Is that right? A Yes.

Q Now, when did you make that proposition to him first?

A I made it first at the second meeting.

Q That was before you had seen his books? A Yes.

Q Before you had seen his books? A Yes.

Q Now, do you mean to tell this jury that after making that statement as to the dividends, that you did not know anything about the kind of business that Kellogg was doing in the E. S. Dean & Company? A Did I ever claim that I did not know?

Q I ask you that question? A I never said that I did not know what kind of a business he was doing.

Q You have never said that? A No, sir.

Q Well, now, you did not strike the bargain then?

A No, sir.

Q Tell us the next thing you did. A Kellogg came over to the office the next day, or the day after-- it was along towards the end of September then-- and said he would take

\$10,000.

Q To whom did he say that? A To Weinmann and myself.

Q Who else? A That is enough--- that is all. He would take \$10,000.

Q What did you say to that? A I said, "Let me look over the books," and he said, "All right."

Q What did you want to look over the books for? A I wanted to be sure that he was doing a good business before I gave up the business I was in. He let me look over the books.

Q He said he would take \$10,000? A Yes, sir.

Q You said, "Let me look over the books"? A Yes, sir.

Q And your reason for doing that was that you wanted to see what kind of a business he was doing before you would give up your own business, is that right? A Yes, sir.

Q Then you were contemplating giving \$10,000 for the business?

A No.

Q You had not that in mind at all? A No, sir, not at all.

Q Did you tell him you had no idea of paying \$10,000 at that time? A I told him I had no money at that time.

Q Wait a moment; did you tell Kellogg, when he said he would take \$10,000 and you said, "Let me look at the books", that you had no intention of paying the \$10,000? A No, sir.

Q You allowed him to believe that you might pay the \$10,000, did you? A No, sir, he never believed it.

MR. DAVIS: I didn't ask you that, and I move
it be stricken out.

Motion granted.

BY MR. DAVIS:

- Q You allowed him to believe that you might pay the \$10,000
if the examination of the books was satisfactory? A No.
- Q Did you tell him you wouldn't pay anything at that time?
A I didn't tell him whether I would or would not.
- Q You were bargaining? A Bargaining.
- Q You wanted to get your eyes on those books? A Yes, sir.
- Q That was what you were after? A Yes, sir.
- Q You were angling to do that? A I was.
- Q And so you did not tell him then that you would not pay
\$10,000? A No, sir.
- Q You thought that by keeping that from him you might get your
eyes on the books, is that right? A Yes.
- Q Was Charlie Weinmann in that little scheme with you to get
your eyes on the books? A Yes.
- Q And present at the conversation? A Yes.
- Q Did Kellogg agree to let you see the books? A Yes.
- Q Did you go to look at them? A I did.
- Q When? A That same day.
- Q Who went with you? A Kellogg.
- Q About when was that? A It was getting towards the end

September.

Q Was it after the 20th? A Yes, sir.

Q Did Weinmann go with you? A No, sir.

Q You examined the books? A Yes, sir.

Q You got an idea of what the business was? A Yes, sir.

Q You had obtained the information that you wanted?

A Yes, sir.

Q You had concluded that the business was worth something?

A Yes, sir.

Q How much did you think or conclude it was worth at that time? A I never concluded it was worth any amount, in dollars, could not figure on it.

Q You formed no estimate of the value of that business to you and Weinmann? A No, sir.

Q But you were struck, you were impressed with its possibilities? A Yes, sir.

Q And you certainly thought it was worth at least \$10,000, did you not? A I thought--- yes.

Q Even twenty? A Well, I don't know.

Q What? A I don't know about that.

Q Fifteen? A I don't know about that.

Q As it turned out? A I thought it was ten, because that was what I gave him.

Q While looking over the books you found some fault with the

77 203

275

way in which they were kept, did you not? A Yes, sir.

Q And you criticised the method? A Yes, sir.

Q You found it not a safe method? A I found it a very careless way of keeping books.

Q And you said it was a careless way to keep a discretionary pool account, didn't you? A I did not. I didn't use those words.

Q You did not? A I don't think I did.

Q You swear you did not? A I won't swear I did not, but I don't think I did, to the best of my recollection.

Q Didn't you testify yesterday as follows, "I said according to this book, Goslin & Company owe you a lot of money. He said 'We could fix that up all right with Al,' meaning Al Goslin, and I said it was a careless way to keep a discretionary pool account." Didn't you testify to that yesterday? A I did.

Q Didn't you go on and amplify and point out why it was a careless way by saying as follows, "In case something happened, when you had a run or anything like that and had to close down, you could not show what became of your money"?

A I said that.

Q It was true, wasn't it? A Yes.

Q What you said? A What I said is true.

Q That his way of keeping a discretionary pool account was

very careless? A Yes, sir.

Q And you saw that at a glance by examining the books?

A Certainly.

Q And yet you told the jury that down to that time you didn't know anything about this sort of business. A I never have said that.

Q Well, we will let the jury determine that. A All right.

Q You changed all that form of bookkeeping after you assumed charge? A Kept the combinations, the same system, with the exception of changing them into a trial balance book, to save work.

Q After examining the books and getting an idea of the business, did you make any proposition to Kellogg? A Yes, sir.

Q Where were you when you made it? A We were in the office.

Q What office? A 44 Broadway and 44 and 46 New Street.

Q Who were present? A Weinmann and I.

Q Anybody else? A That is all.

Q Kellogg was there? A You asked who was present with Kellogg, your question started out with that.

Q Kellogg was present with you and Weinmann? A Yes, sir.

Q Who made the proposition? A I did.

Q What did you say? A I said, "We will give you \$10,000 out."

277

of the first receipts that we can spare, and then you are to draw just your one-third interest the same as Charlie and myself," meaning Weinmann. We hemmed and hawed about that proposition some time. He said he would give me an answer the next day.

Q Have you included all the terms of your proposition?

A I don't understand that question.

Q Were there ~~not~~ some other terms other than those you have stated? A Oh, yes, there was different language used-- but I don't----

Q Were all the elements of the proposition--- you would give Kellogg--- who would give Kellogg? A Why, Weinmann and I would allow Kellogg \$10,000 out of the first receipts.

Q Out of the first receipts of what? A From the subscribers.

Q From what business? A The business of the corporation.

Q No corporation had been mentioned. A You never have asked me about it.

Q Had it been mentioned down to that time? A Why, certainly.

Q That is, \$10,000 for Kellogg, and then the ~~truth was~~ you were to get one-third? A We were to be equal partners share and share alike.

Q In what? A In the divisions of the net moneys of the corporation.

Q The net moneys of the corporation, to be obtained how?

203

A The moneys would be sent in by the subscribers; what we did not use for expenses and these other things you have mentioned, was net.

Q Don't be afraid of mentioning them, you are used to them.

A Well, what moneys were not paid out for agents' commissions, salaries and all incidental expenses, dividends, was net.

Q It was all customers' money? A Yes, sir.

Q And you deducted from that all expenses, including what you paid back to them in dividends? A Yes, sir.

Q And the resultant was the net amount to be divided?

A Yes, sir.

Q You were to get one-third, Weinmann was to get one-third, and Kellogg was to get one-third, is that right? A That is right.

Q How much was Goslin to get? A He had nothing at all to do with that.

Q You turned over Sam Kelbr & Company to him? A He was getting in lieu of---

Q No. A You asked me----

Q You turned over Sam Keller & Company to him? A No, only a quarter interest in it.

Q You have given us all the terms of the proposition you made?

A Yes, oh, except our respective duties, I have not mentioned

203

them.

Q You were to be the manager? A Front office man. Those were the terms. Weinmann was to take charge of the girls at the typewriters department and answer the mail, and Kellogg was to continue writing his circulars and see customers.

Q What else did you give Kellogg--- what else did you propose to give Kellogg in return for this two-thirds interest that you and Weinmann were to get from Kellogg? A Gave him \$10,000, a one-third interest.

Q A one-third interest? A Yes, sir. I did not give him, he was taking that. He was the man that was making the trade.

Q It is very well just as it is--- what were you to give him for this big business? A Give him \$10,000.

Q Where were you to get that? A I have just explained that.

Q Out of the business itself? A Yes, a one-third interest.

Q A one-third interest in the business itself? A Yes, after the deducting a ten thousand--- he was to get a ten thousand first.

Q Anything else? A And our services, and and a one-fourth interest in Goslin & Company.

Q Oh, Goslin & Company too? A Yes, sir.

Q With Goslin? A With Goslin, Weinmann and myself.

Q Goslin, Weinmann and yourself? A Yes, sir.

Q How did you keep Goslin out of this corporation? A Kellogg

203

kept him out.

Q Kellogg kept him out? A Yes.

Q Did you ask to have Goslin come in with you in the corporation? A No, sir.

Q Did Weinmann? A No, sir.

Q Did Goslin ask to come in? A Didn't ask me.

Q Did he ask anybody? A I don't know.

Q Nobody that you have heard? A No, sir.

Q Well, then, you proposed to Kellogg that he should give up a large business which he then had, with the exception of one-third, and give you and Weinmann two-thirds of it, and he was to get \$10,000 out of the first receipts of his own business and one-third of the net receipts, is that right? A There were other considerations.

Q You were to be general manager, Weinmann was to do something about the mail? A The principal consideration you have not asked me about.

Q What is the principal consideration? A We were to make a corporation.

Q Was that the principal consideration? A That was worth-- yes, sir.

Q Did he finally agree to those terms? A Oh, yes.

Q And the corporation then was suggested, was it? A Yes, sir.

Q And you called upon your attorneys about that, did you?

72203

- Q Who were those attorneys? A Kronfeld & Harris.
- Q Where is their office? A They were at 280 Broadway.
- Q Where are they now? A 320 Broadway.
- Q When did you see them last? A Well, it is no more Kronfeld & Harris, to begin with.
- Q Where are they? A I don't know where Harris is, Kronfeld is up at 320 Broadway.
- Q When did you see him last? A He was up to my house with his wife.
- Q When? A Some time in February.
- Q Who went with you to consult Kronfeld & Harris? A Weinmann.
- Q Were they your own and Weinmann's attorneys? A No, they were mine.
- Q They were not Kellogg's? A They were suing Kellogg at the time.
- Q Suing Kellogg? A Yes, sir.
- Q For what? A I don't know; because when I mentioned Kellogg's name to them, they said they knew him.
- Q Then, they were only your attorneys? A Only mine.
- Q Did you consult them about this business? A Just merely on the lines that were laid out to me.
- Q Did you consult them about this business? A Yes, sir.
- Q Upon what points did you consult them? A I told them the particulars of the purchase. I did not tell them the na-

ture of the business. I wanted a broad charter drawn, as suggested by Mr. Kellogg--- wanted corporation papers drawn.

Q Did you say that to Kronfeld & Harris, "As suggested by Mr. Kellogg", did you say that? A No, sir.

MR. DAVIS: Then I move to strike that out.

MR. OLCOTT: I consent that it be stricken out.

BY MR. DAVIS:

Q Tell us what the conversation was? A I said that, "We want to get up a million-dollar corporation as cheap as we can, because we have got to pay for the incorporating."

Q Who? A Charles and I, Weinmann and I--- that was one of our-- that was part of the terms of our agreement with Kellogg. He was not to pay any of the incorporating expenses.

Q That does not cost much. A No--- so he said he would figure on it and let me know that night, but he did not until next morning tell me how much the charges would be.

Q What did he tell you? A I don't remember how much the charges were. All I remember positively is that he said that the money for incorporating must be cash, that he would trust Weinmann and me for the legal fees, but the outlays must be cash.

Q Did he finally draw up the charter? A Yes, sir.

Q Certificate of incorporation? A Yes, sir, that was right near the end of September.

- Q Was it under the New Jersey law? A Yes, sir.
- Q Who paid him for that service? A The corporation paid it after awhile.
- Q Who paid the cash that was necessary to be deposited with the secretary of state? A Weinmann and I.
- Q How much was that? A I believe it was \$150.
- Q And how did you raise that money? A I can't remember exactly how we raised it.
- Q Let me refresh your recollection; didn't you pawn something to get it? A That is a question that has been in my mind a great deal lately, whether I pawned something for Weinmann at the beginning of the little business upstairs, or whether I pawned something to raise the money for this incorporation, and I have not been able to fix in my mind positively for which purpose this diamond ring was pawned.
- Q You did the pawning? A Yes, sir.
- Q Around about that time? A Well, that is the question that I cannot fix in my mind.
- Q Have you done your best to fix it in your mind?
- A Yes, sir, I have.
- Q Have you consulted Weinmann about it? A I haven't seen Weinmann.
- Q Did Weinmann pawn anything? A No.
- Q The best you can say is that you might have pawned the dia-

#203

mond ring. to pay these expenses, but you are not sure about it? A I am not positive.

Q Now, you said a little while ago that you were not broke at this time, that you could borrow money easily; do you remember saying that? A Yes, sir.

Q Is that true? A I could borrow what money I needed for running expenses, personal expenses.

Q Like pawning things; do you mean that way? A No, sir.

Q What? A No--- if I needed \$25, or something like that.

Q Suppose you needed \$150? A Then I would do the best I could to get it. I needed \$100 one day in a hurry, and I got it from Kellogg, and gave him a diamond ring as collateral.

Q Virtually pawning your jewels? A Yes, but not in a pawnshop.

Q This ring you speak of, that might have been pawned to pay for this incorporation, did you pawn that in a pawnshop?

A Yes, I pawned that in a pawnshop, that was Weinmann's ring that I pawned.

Q It was not your ring? A No, sir; I never said it was mine.

Q Was that ever taken out of pawn? A Yes.

Q After the incorporation? A Yes, sir.

Q As soon as you got in receipts? A As soon as we got easy.

Q When you got easy, you paid for the ring and paid your law-

CASE #203

285

yers? A Took out the ring, but the corporation paid the lawyers.

Q How much did you pay your lawyers? A For the work.

Q Yes. A I think their bill was \$209. You can see the entry in the book when you get to that. That is above the money paid to Jersey.

THE COURT: Above what money?

THE WITNESS: I mean in excess of the money paid--- fees--- that \$9 was for some little outlays. I think \$200 was the fee for incorporating.

BY MR. DAVIS:

Q Were Kronfeld & Harris in the office of Dean & Company at any time during these negotiations? A No, sir.

Q Who represented Mr. Kellogg or E. S. Dean & Company during the negotiations? A Mr. Kellogg himself.

Q Wasn't there anybody else? A Not that I know of.

Q Sure? A Sure--- pretty sure.

Q No lawyer at all? A No, sir.

Q Try to think. A I cannot think of any lawyer. To the best of my recollection, Mr. Kellogg left it all to Mr. Weinmann. He had great confidence in Mr. Weinmann.

Q Who drew the paper, the deed of conveyance, or bill of sale conveying the property from E. S. Dean & Company to the corporation? A Al. Goslin.

CASE #203

- Q Al. Goslin drew it? A Yes.
- Q Sure? A Positive.
- Q Did you see it? A See what?
- Q See the paper, the bill of sale? A You mean if the tissue paper here is---
- Q That is a receipt you refer to. I refer to a bill of sale transferring the business of E. S. Dean & Company to the corporation. A I don't ever remember any such thing.
- Q Don't remember that? A No, sir.
- Q Don't you know E. S. Dean & Company were represented at that time by a lawyer named Sweetser, who drew the bill of sale?
- A I don't remember that party at all.
- Q Do you know Mr. Sweetser? A I certainly do.
- Q Did you never see the bill of sale? A I don't remember.
- Q Did you ever hear of a bill of sale? A I don't remember that either.
- Q Don't you know that a bill of sale was drawn by Sweetser at Sweetser's office, and executed by Mrs. Dean and delivered to you? A I never knew there was a Mrs. Dean.
- Q You never knew that? A No, sir.
- Q How did you suppose the property of E. S. Dean & Company was transferred to the corporation, unless there was some writing about it? A There was nothing to transfer.
- Q That is your explanation of it? A Yes, sir.

CASE #203

- Q No customers account? A That could be transferred just by writing it off into another book.
- Q No furniture? A That was all there.
- Q No lease? A No. I never knew of a lease. I didn't know they had a lease on the property.
- Q Bank account? A There was no bank account. There was a check given for the balance in the bank.
- Q You would have this jury believe that there was no formal writing or bill of sale executed by the members of E. S. Dean & Company's firm transferring this business to the corporation? A I don't pretend to make the jury believe anything about this, because I don't remember.
- Q Did you see Mr. Sweetser in the course of those proceedings? A I don't remember seeing Mr. Sweetser until a long time after we were opened.

MR. DAVIS: I call upon Mr. Olcott to produce the bill of sale executed at this time, transferring the business and assets of E. S. Dean & Company to the corporation known as The E. S. Dean Company.

MR. OLCOTT: Personally I never saw it, and I personally never heard of its existence until this moment. I will not say it may not be in my of-

fice. I will enquire of Mr. Bard, and produce it this afternoon, if there is such a thing in existence.

BY MR. DAVIS:

Q You say you never heard of E. S. Dean? A Never knew there was such a person as E. S. Dean.

Q Who did you suppose E. S. Dean was? A Never cared who E. S. Dean was.

Q Did you make any inquiries as to who she was? A No, I thought it was just a trade-mark.

Q Trade-mark? A Yes, sir, copyright name, or something like that.

Q It was E. S. Dean & Company; did you enquire who the company was? A I didn't have to enquire; I knew.

Q You knew? A Why, yes.

Q Who was it? A It was James B. Kellogg.

Q The defendant? A Yes, sir.

Q How did you know that? A Because everybody knew it, and Weinmann told me. He was the only one supposed to be boss over there. Everybody knew that James B. Kellogg was E. S. Dean & Company.

Q You say you supposed him to be? A Why, everybody I ever spoke to about it knew that James B. Kellogg---

Q He was there at any rate, running the business? A Yes,

CASE #203