

START

1498

CASE

CASE # 1498

I n d e x.

Direct. Cross. Redirect. Recross.

George A. Brambill,	7	17	33
Addison Gardner,	41	46	
Joseph J. Reiher,	47		

CASE # 1498

I n d e x .

Direct. Cross. Redirect. Recross.

George A. Brambill,	54		
Llewellyn C. Collins,	62	69	92
Arthur Wolfe,	96	99	
John H. Atkins,	100	104	
Charles D. Lloyd,	104	106	
Charles E. Purnell,	106	107	
George W. Atkins,	108	109	
Louis W. Osterwis,	109		
Frederick R. Moore,	112		

CASE #1498

COURT OF GENERAL SESSIONS OF THE PEACE,
CITY AND COUNTY OF NEW YORK, PART II.

-----X
THE PEOPLE OF THE STATE OF NEW YORK,

vs,

LEWELLYN G. COLLINS,
impleaded with P. SHERRIDAN BALL.

Before
HON. WARREN W. FOSTER, J.,
and a Jury.

-----X
New York, February 27th, 1912, etc.

Indicted for Grand Larceny in the Second Degree.

Indictment filed April 26th, 1911.

A p p e a r a n c e s:

For the People: ASST. DIST. ATTORNEY T. CHANNON PRESS.

For the Defendant: CHARLES E. TONEY, ESQ.

A jury was duly impaneled and sworn.

James E. Lynch,
Official Stenographer.

1498
CASE # 1498

Assistant District Attorney Press opened the case on behalf of the People, as follows:

May it please the Court, Mr. Foreman and Gentlemen of the Jury: The defendant in this case, Llewellyn O. Collins, has been jointly indicted by the Grand Jury of this county with one P. Sheridan Ball for grand larceny in the second degree, in that, on the 18th day of March, 1909, in the County of New York, he fraudulently obtained possession from the complaining witness, George A. Brambill, the sum of \$300, in lawful money of the United States. There is also a second count in the indictment, the common law count of grand larceny in the second degree for the same offense.

I will ask your earnest attention in this case because of the dates and the various transactions that were engaged in in connection with this larceny.

A few days before the 17th of March, 1909, the defendant Collins called on George A. Brambill, the complaining witness, and asked him if he wanted to buy some property belonging to the Metropolitan Mercantile & Realty Company, a corporation existing under the laws of the State of New Jersey, and of which the defendant Collins was then assistant treasurer and secretary, and also one of the attorneys for the company. He gave a glowing description of the property and the opportunity which the complaining

CASE # 1498

witness would have in purchasing it. He then stated to him, we will prove, that he would send a man by the name of Fox to him next day, to go out and look at this property, which was situated in Rahway, New Jersey, and he gave to him on that occasion a map of the property. He asserted that the property was the property of the Metropolitan Mercantile & Realty Company and that it was absolutely free and clear of all encumbrances.

We will show that Fox in pursuance of this agreement, called on Brambill and that he took Brambill out to Rahway, New Jersey, and that Brambill there saw the property known as Lot No. 381, on a certain map which will be introduced in evidence. That the next day or the day after, Collins again called on Brambill and asked him if he was satisfied with the property, and Brambill said he was satisfied provided the property was free and clear of all encumbrances. He was assured by Collins that it was free and clear and that the title was in this Mercantile Company.

Brambill then suggested, we will prove, to the defendant, that he would have the property searched, and the defendant told him that there was no necessity for searching it, that he could take his word as a lawyer that it was free and clear, and before leaving he told the com-

CASE # 1498

plaining witness that he would send Fox to him with the deed and that he would get the deed from Fox on the delivery of the check for \$300.

We will prove that the check was delivered to Fox, and that subsequently the check was endorsed "Metropolitan Mercantile & Realty Company, L. C. Collins, Assistant Treasurer," and the deed was delivered, which is a free and clear deed, showing that the property was absolutely free and clear and unencumbered in any way, full title guaranteed.

We will show that at the time that this transaction took place, the title really was in one John H. Atkins. That on March 12, 1909, Atkins made a deed transferring the property to the Metropolitan Mercantile & Realty Company; that that deed was acknowledged July 6, 1910, and that it was not recorded until August 31, 1910, and that that deed on its face was subject to a mortgage for \$8,600 odd; that the witness to that deed from Atkins to the Metropolitan Mercantile & Realty Company was this defendant.

I should have stated to you that we will show you that the deed which was delivered at the instance of Collins by Fox to the complaining witness was dated the 17th day of March, 1909, and that it was acknowledged, strange to say, on the 27th day of February, 1909; in other words,

CASE # 1498

that the acknowledgement preceded the execution of the deed.

We will show you that there were actually two mortgages of record, both over \$8,000, against this property, even assuming, if you will, that title was vested at the time of delivery of the deed to Brambill in this company, and that one of them, the second mortgage, which was a purchase money mortgage when Atkins took the property from Wolfe, was actually in default for failure to pay the instalments provided for, one thousand every three months, and that shortly after the transfer to Brambill, foreclosure proceedings were started, and prosecuted successfully to the end, and that all prior to the recording of this deed by this Mercantile Company in New Jersey, so that the foreclosure proceedings which were commenced on the second mortgage were not against the Mercantile Company, for they did not know of the existence of the Mercantile Company, but were against Atkins, the real owner of the property at the date of the transfer of the property to Brambill.

On those facts we will ask that the indictment be sustained by a conviction.

If your Honor please, at this stage I offer in evidence an exemplified copy of a map of the property owned by the Metropolitan Mercantile & Realty Company, situated

1498
CASE #

6

in the city of Rahway, New Jersey, July, 1907, F. J. Hubbard, Civil Engineer, Plainfield, New Jersey, which exemplified copy was first certified by Frank H. Smith, Registrar of the County of Union, State of New Jersey as a certain map made by F. J. Hubbard and known as "Map of Property owned by the Metropolitan Mercantile & Realty Company" situated in the city of Rahway, New Jersey, July, 1907, which he states he has compared with that filed and which was duly filed on March 20, 1908, in the said Registrar's office, and which certification is certified by Edward S. Atwater, presiding Judge of the Court of Common Pleas in the County of Union, on the 28th day of February, in the year of Our Lord, one thousand nine hundred and eleven, and the seal of which court is duly certified to by James C. Calvert, Clerk of the Court of Common Pleas of Union County, on the 28th day of February, in the year of Our Lord, one thousand, nine hundred and eleven.

MR. TONEY: I object to the introduction of this on the ground that there is no evidence produced that the lots in question are enumerated in this plot.

THE COURT: Well, I can take it subject to that objection and subject to motion to strike out if it is not afterwards connected with the case. You may make such motion in due course, gentlemen, if it is not relevant.

MR. PRESS: Precisely, your Honor.

CASE # 1498

MR. TONEY: Exception.

(Marked People's Exhibit I).

G E O R G E A. B R A W B I L L, called and duly sworn as
a witness on behalf of the People, testified as follows:

(Residence 59 West 135th street).

DIRECT EXAMINATION BY MR. PRESS:

Q What is your business? A Merchant tailor.

Q Where is your place of business? A 59 West 135th
street.

Q In the County of New York? A Yes, sir.

Q Do you know the defendant Collins? A I do, sir.

Q Did you see him on or before the 17th day of March,
1909? A Yes, sir, I have known him for years previous to
that.

Q Well, when was it that you first talked with him, if
you did talk with him about the purchase of property in New
Jersey? A It was the latter part of February or the early
part of March, one evening he came up to my store and asked me
if I would loan the Metropolitan Company about five hundred
dollars or more, because they were very much in need of cash
money. I told him, "Why, Mr. Collins, I can't loan the
company any money," but I said "I have invested already with you
some one hundred dollars or more, but if your company has any

CASE # 1498

property that you have free and clear I might buy it. So he said "We have tracts of land in Plainfield, New Jersey. We have also a tract in Sag Harbor, and we are selling another tract, lots, a tract of land in Rahway, New Jersey". He said "You might go over and see them." I said "Well, I will go over to see the tract of land in Rahway" and he told me he would send Mr. Fox, their agent, to take me over there and see this tract of land.

Fox called a few days later and took me over there to see the land and I liked it very much and I told Mr. Fox so and asked him to send Mr. Collins up and we can make a bargain for a price.

Q Now, one moment. At the time you had your first conversation with him in relation to the purchase of the land did he give you any map of the property? A I asked him then to let me see what the tract of land looked like, a picture of it, and he gave me that map.

Q Is this the map he gave you? A That's the one.

Q Look at it? A That is it.

MR. PRESS: I offer this in evidence.

(Marked People's Exhibit 2.)

Q Now, did you have this map with you when you went to Rahway, New Jersey, with Fox? A Yes, sir.

Q And did you at the time you were going over the property check off the lot that you were going to purchase? A I did.

CASE # 1498

9

I checked off two. They were 380 and 381 on Milton avenue, two lots.

MR. TONEY: I object, if your Honor please, to this testimony as to what he did in the absence of this defendant and ask to have it stricken out.

THE COURT: Well, the objection comes too late. You should object when a question is asked and before it is answered.

MR. PRESS: But regardless of that, this is the agency.

THE COURT: Well, I am not called upon to rule. There is nothing before me now.

Q Can you show me on this map given you by the defendant what property was checked off by you?

MR. TONEY: Now, I object to that on the ground the question is based upon evidence given by the witness in the absence of the defendant.

THE COURT: Wait a moment. Strike out the question. I did not understand the question was completed.

Q (Question repeated by stenographer.)

BY MR. PRESS:

Q (Continuing) At the time that you were with Fox on the property in Rahway, New Jersey? A Yes, sir.

MR. TONEY: I object to that upon the ground that it is based upon a statement of fact or something that this witness did when the defendant was not present.

CASE # 1498

THE COURT: We will take it subject to motion to strike out if not connected.

MR. TONEY: Exception.

A These, 380 and 381.

Q 380 and 381? A Yes, sir.

MR. TONEY: I move to strike out the answer, ~~from~~ upon the same ground.

Motion denied. Exception.

Q On your return from New Jersey, when did you next, or after your return from New Jersey when did you next see the defendant Collins? A A few days after Mr. Collins came up to my store again and told me that Fox said that I liked the property very much and I asked him the price of it. He said "Well, Mr. Fox told you."

Q Referring to "them", when you say "them" what do you mean? A The two lots.

Q What two lots? A 380 and 381. I said "Mr. Fox wanted \$500 each for them" and I said "That is out of the question but anyway before I make any offer I want to know the particulars in regard to this property, for it is quite customary that persons buying lots from companies and the companies not paying for them, even though the lot purchaser pays, they lose their property, and I wish to know all the particulars, does your company own them outright?" He said "Why, we do, and we will give you a deed to that effect". I said "Well, I prefer to

CASE # 1498

have the Title Guarantee & Trust Company search the title to that property." He said it was not necessary, because he, as a lawyer, had been over the whole record and he commenced to tell me from Queen Elizabeth's time down to the present time, he had searched and everything was free and clear.

Q Now, ultimately what did you do with him? A Well, so I said "Well if that be the case I am going to take your word as a man" I says "I will make you an offer of \$300 each, I will pay cash for one and the other I will pay on the installment plan", and he said "Well, he will let me know." And he went down to the office and a few days after came back and said that since the company was in need of money that they will accept the offer and that he would send Mr. Fox with the deed and I should make a check for \$300 payable for one lot.

Q Which lot was that for? A That was 381, on the corner.

Q 381? A 381, and the other I would pay on the installment plan for. I gave him a check for \$300, Fox.

Q Is this the check you gave to Fox (indicating)?

A That's the check on the Northern Bank, March 18, 1909.

MR. PRESS: I offer this check in evidence.

(Marked People's Exhibit 3.)

Q What was that check for? A For the lot.

Q What was the amount of it? A \$300.

CASE # 1498

Q Now, at the time that you delivered that check to Fox did he deliver to you that deed? A Yes, sir, he gave me this deed.

MR. TONEY: I object as incompetent, immaterial and irrelevant, what Fox did. There is no evidence that Fox was connected here.

THE COURT: Well, of course Mr. District Attorney, you have got to connect this?

MR. PRESS: Well, your Honor, I have connected it. I will show you where and how. In the first instance Collins calls on this man and tells him he will send Fox to him to take him over to the property. He sent Fox and Fox goes over the property; subsequently he calls on this complaining witness, Collins does, and says "Mr. Fox tells me that you went over the property with him" and then they discuss the purchase of the property.

THE COURT: Well, we will take it subject to a motion to strike out.

MR. TONEY: If your Honor please, I would like to suggest that even conceded that he has testified to that there is no evidence that this man represented himself to be Fox was connected with the company.

THE COURT: I will deny your motion at this time. I have ruled. We will take it and you may subsequently show that it is ^{not} connected and then I will strike it out.

CASE # 1498

Q Now, this was delivered to you? A Yes, by Fox.

MR. PRESS: I now offer this deed in evidence.

MR. TONEY: I move to strike out the answer on the same ground.

Motion denied. Exception.

(Marked People's Exhibit 4.)

Q Now, how long after the delivery of this deed by Fox, People's Exhibit 4, was it that you saw Collins, the defendant again? A I think it was the latter part of May, 1910 or early in June, 1910, when another purchaser of lots ---

Q (Interrupting) Never mind. In consequence of what you heard? A In consequence of what I heard.

Q (Continuing) Did you call on the defendant Collins? A I did.

Q Where did you call on him? A I went down to the Metropolitan Mercantile & Realty Company's office.

Q Where was that? A 46th street and Eighth avenue.

Q Yes. A Saw Mr. Collins, told him what I heard, that there was something wrong about the title of the lots over in New Jersey and wished him to explain to me what was the trouble.

Q Did you at that time have your deed with you? A No, sir, I had not the deed. I left the deed at home in my safe.

Q What did he say to you? A He said there was some little trouble about the title and that it would be cleared up

CASE # 1498

in about ten days time. I spoke of what the trouble was, and then I said "I am told there is a mortgage against your tract of land?" He said "Well, there is some little trouble and we will have that straightened out pretty soon." He says "You need not be afraid because we have anyway a clause in every purchase paper whereby we can release ten or more lots even if we have any trouble in the whole tract, and you need not be afraid about losing your lots, we will release your lots." He said he will do that in about ten days or so, and I came back to him in about ten days time and he made some other excuse, and the excuse was that I should see Mr. Atkins, because Atkins knew more about it than he did.

Q Now, where was it that you paid this money to Fox, this \$300?

A In my store.

MR. TONEY: I object to that, what he paid Fox as incompetent, immaterial and irrelevant.

Q Where is your store? A 59 West 135th street, City of New York.

MR. TONEY: Wait until the Court rules before you answer.

THE COURT: Yes. I will overrule the objection. You may have an objection and exception noted.

MR. TONEY: Exception.

Q Was that all the conversation that you had with Collins in relation to this property? A I had several conversa-

CASE # 1498

tions with him after that.

Q Can you tell the Court and jury just exactly what he said? A Well --

MR. TONEY: I object to that unless he states the time and place of the conversation.

Q About the time and place, if you can remember? A Well, weeks after, because I made several calls to see Mr. Atkins. Mr. Collins referred me to Atkins.

MR. TONEY: I object to this as not responsive.

THE COURT: Then strike it out; fix the date.

Q When did you call to the best of your recollection on Collins after that? A A couple -- about twenty days after.

MR. TONEY: Now I object. That does not fix any time.

Q After when? A The latter part of June, it was 1910.

Q 1910? A Yes, sir.

Q What did you say to him then and what did he say to you? A I said "Now, I have been down here to see Mr. Atkins time and again as you have referred me to him, and I can't see him; I really wish to have these lots released, since you claim that there is a clause that they can be released". He always referred me to Atkins saying that Atkins knew more about it than he did, and that's the way he put me off.

Q That was the entire conversation practically that you

CASE # 1498

had? A Yes, sir, with Mr. Collins.

MR. PRESS: Now, this map, gentlemen of the jury, I have already explained, lot 381.

THE COURT: Well, you might hand that to the jury for their careful examination.

MR. TONEY: I object to the submission of this map.

THE COURT: Why, it has been received in evidence.

MR. TONEY: Your Honor's ruling was that they were to connect these lots and he shows that now to the jury.

MR. PRESS: They are in evidence.

THE COURT: Yes, they are in evidence.

MR. PRESS: Gentlemen, I also show you the map which was delivered to him at the time; I also show you check; I also draw your attention to the deed which is dated the 17th day of March in the year 1909, between the Metropolitan Mercantile & Realty Company, a corporation existing under of the laws of the State New Jersey, with general offices at 46th street and Eighth avenue in the Borough of Manhattan, City of New York and State of New York, of the first part, and George A. Brambill, of the City of New York, county of New York and State of New York, party of the second part (reading).

Q Do you know John Fox? A Yes, sir.

Q How long had you known him? A I had known Mr. Fox for about a year previous to the time he called on me.

CASE # 1498

Q Is he alive or dead to-day? A He is dead.

MR. PRESS: You may examine.

CROSS EXAMINATION BY MR. TONEY:

Q Mr. Brambill, when was it you say you went to Rahway to look at the lots in question? A Either the latter part of February or the early part of March.

Q What sort of looking place is this? A I might describe it as being situated in the northwestern part of the place, a high plateau, near a lake, a lake and a river, a lake on the south and a river on the north, a high rolling land, a plateau.

Q What sort of looking place was this, cleared off? A Yes, sir, it was cleared. Well, I really couldn't tell then because there was snow on the ground.

Q Snow on the ground, that's all you saw?

BY THE COURT:

Q The question is was it wooded or not? A There was a little woods near where the property was, but not where my lots were, they were perfectly clear of all woods.

BY MR. TONEY:

Q You say there was just a field of snow? A There was a little snow on the ground, not very much.

Q And that's about all? A Not more than that.

Q A clear field? A Not a clear field.

CASE # 1498

Q Well, what? A I am saying that the plateau, it was about, the lots I bought were about sixty feet from this lake, and there were stakes defining the roads. There were stakes on Madison avenue running from east to west, I think, about 300 feet, and then it turned around Russell street. There were other stakes defining what is known on the map as Russell street, and it was explained to me by Mr. Fox as Russell street.

Q I did not ask you that. Just state what you saw.

MR. TONEY: I ask to have the reference to Fox stricken out.

THE COURT: Yes.

A Well, there were stakes forming a semicircle, that show that the corner corresponded with the map I had in my hand. There were stakes making a semi-circle.

Q Anything else? A So far as I can remember I think that is all.

Q And you say the stakes marked out the streets?

A Yes, sir, there were stakes that marked out the streets.

Q Anything else that you saw? A There may have been other things that I can't now remember.

Q There was nothing that you recall having seen?

A At this time.

Q What were on the stakes, the names of the streets?

A No, not at all.

CASE # 1498

Q Anything on the stakes? A Not that I remember.

Q The lots were not staked off? A The lots were staked off, yes.

Q How far apart were the stakes? A Twenty-five feet on the front.

Q Twenty-five feet all over the entire tract? A No, I am speaking of the two lots I was immediately concerned in.

Q Oh, just your two lots were staked off and nobody else's were? A They certainly were.

Q I asked you what you saw? A I saw on those lots stakes.

Q But you didn't see stakes anywhere else? A Yes, all over the tract of land there were stakes.

Q Well, all the lots were staked out then on the entire tract of land? A I don't know if all were, but there were many stakes around defining streets and some lots, I presume.

Q Didn't I understand you to say that the only stakes you saw there were ~~mark~~ marking out the streets? A I am saying that the stakes I saw on these particular lots, they were 25 feet apart, those two lots.

MR. TONEY: I ask that your Honor direct the witness to answer the question.

THE COURT: Repeat the question.

Q (Question repeated by stenographer) A No.

CASE # 1498

Q Then you did see something else also? A I saw stakes all over the whole tract of land.

Q What were the stakes there for? A Well, that was not my business, I don't know.

Q How far apart did you say these stakes were? A All over the tract of land, I don't know how far apart they were, but I am speaking particularly of those two lots I bought.

Q How far apart did they seem to be to you? A I didn't measure them.

Q I beg your pardon? A I did not measure them.

Q You saw them, didn't you? A Yes, sir, I did.

Q Well, you have some idea as to how far apart they were? A Well, I really couldn't tell how far they were apart. I was not interested in those. I was simply interested in those two lots I bought.

Q When I first asked you if the stakes that you spoke of marked out the street you said they did? A Well, certainly, because --

Q (Continuing) And I asked you further if you saw anything else and you said you didn't remember; you said that you didn't recall that the stakes marked out the streets then.

A Other things besides stakes, I understood you.

Q You said that, and when I pick up this map then you remember that they marked out the lots? A I said I didn't notice other things except the stakes, so far as I can

CASE #1498

remember.

Q Was anything on the stakes? A Not that I know of.

Q There was nothing on the stakes? A So far as I know.

Q How then did you fix on that tract of ground the exact number of the lots that you were going to take? A Well, because Mr. Fox told me, after I showed him my map with those two lots.

MR. TONEY: I object to what Mr. Fox told him.

THE COURT: You have asked him.

MR. TONEY: Very well.

A He told me those were 380 and 381, those lots I bought. I didn't want any other lots but those.

Q How did he tell you that was the number, what did he say about it? A Because we saw the maps and I told him.

Q You saw the maps? A Yes, and I told him just what kind of, now near I wished to get to the river, and I didn't want any other lots further up. I wanted just those two I saw on the map, and he took me on the spot and the spot pleased me and that's why I decided on them.

Q But there was no number on them? A I can't remember.

Q So that you don't know whether those two lots that you now refer to are the once referred to in that deed? A I do know.

CASE # 1498

Q How do you know it? A Because I stood right on them, and other times I have been there since then and I have had them shown to me, that these were 380 and 381 time and again after by members of the company.

Q There was nothing on the lots marking them out, as being the numbers that you now claim they were? A I don't know whether there were anything on the stakes or not, but I do know I stood on that tract of land and members of the company from time to time told me that they were 380 and 381, and I got a deed to that effect.

Q When did you say you first talked with Mr. Collins about having your lots released? A About a year and two or three months after, either the latter part of May or early in June, 1910.

Q I ask you to fix the time? A Well, either the latter part of May or early in June, 1910.

Q Now, about when was it that you first had the conversation that you claim you had with Mr. Collins? A Which conversation?

Q Concerning the purchase of these lots? A The latter part of February or early in March, 1909.

Q Where did you see Mr. Collins? A He came to my store in 59 West 135th street.

Q Had you previous to that time talked to anybody who purported to represent the Metropolitan Mercantile & Realty

CASE # 1498

Company, concerning the sale of some of these lots to you?

A No, sir.

Q Never before? A Never before.

Q Didn't you ask Mr. Collins at that time whether or not the property was mortgaged? A Which time, of the first conversation?

Q Yes, the first time you talked to him? A No.

Q Did not ask him anything about it? A Not then. I asked him, I wished to go over and see the tract of land first.

Q Did you see Mr. Collins after you saw the tract of land? A Yes, I told you a little while ago I saw him many times since.

Q Did you see Mr. Collins after you saw the tract of land, and the time you claim you paid money for those lots?

A I saw him a few days after I had been over to see the tract of land and asked him all the particulars that surrounded the tract of land, whether it was free and clear or not. I wished him to tell me.

Q When did you talk to him about that, what did you say to him after you had gone over and seen the lots? A I said to him, "Now, Mr. Collins I have been over and I have seen those lots, and I like them very much 380 and 381, but before I make any offer for them I really want to find out whether your company really owns them or not." I said "I

CASE # 1498

24

have seen and read of cases where persons have paid for lots from companies, and by the company not paying for them, they lose those lots, I don't want that to be so in my case, which means I had better go to the Title Guarantee & Trust Company and have them search the title". Mr. Collins said to me, "It is not necessary, Brambill, I have been over that record myself, I have searched the title", and he went on to say from time immemorial, I don't know just when, down to the present day, they were perfectly free and clear, and he would give me a deed to that effect. He also said that he would give me a deed stating that they were free and clear, and if they were not free and clear he would really be knocking at the prison gates, should he give such a deed. I said "Well, if that be the case I will buy the lots." I made an offer then. I said "Your man wanted \$500 each for them, that is on the installment plan, but I will pay you \$600 for the two lots, making a large cash payment", so I made the offer of \$300 each, and he said he will take it down to the other officers and see whether it would be acceptable or not. Either the next day or a couple of days after that he came back and said the company needed money and for that reason he would accept my offer, and that offer was I should pay \$300 cash for one lot, 381, the one on the corner, he said he would give me a deed for that and the other I would pay on the installment plan, and I have been paying on it, and paid \$190 over the \$300.

ESTIMATED
1498
CASE #1498

Q Now, Mr. Brambill --
BY MR. PRESS:

Q (Interposing-) Oh, you did, one moment, you what?
A I paid \$190 on the other lot, on the installment, over that \$300.

Q After the delivery of this deed? A Yes, sir.
BY MR. TONEY:

Q Now, Mr. Brambill, isn't it a fact that at the time you talked with Mr. Collins about the condition of this property, that you said to him "I understand that all the property that the company owns has mortgages upon it?" A No, I never had any such thought. I could not say it, I never would have purchased the property.

Q You knew the 46th street property was mortgaged, didn't you? A No, sir, ~~you~~ knew nothing about it.

Q You were a stockholder? A Yes.

Q Did you ever attend any stockholders meetings?
A No, sir, because they never notified me of meetings.

Q As a matter of fact, you know that it is common knowledge among the stockholders that the company and other people, that nearly all of the property held by the Metropolitan Mercantile & Realty Company was under a mortgage?

MR. PRESS: I object to what is common knowledge.

THE COURT: Objection sustained. You may ask whether he knew or not.

CASE # 1498

MR. PRESS: He has asked him that.

THE COURT: Well, I am not so certain, if he knew it was, common knowledge.

MR. PRESS: But it is not about this property at all, your Honor.

THE COURT: Well then, of course I sustain the objection.

Q As a matter of fact, Mr. Collins told you when he talked with you about giving you a deed to that property that the Rahway tract was mortgaged, didn't he? A I know he told me it was free and clear.

Q And didn't he tell you that the mortgage upon which that property was held, under which that property was held, would be or had a clause in it whereby one acre of ground or sixteen lots might be released upon payment of \$400? A No, sir, nothing of the kind of that conversation.

Q And Mr. Brambill, didn't you tell me so shortly after that? Just a minute, upon one occasion when you came to the company's office, and came by my office and sat talking to me while you were waiting to see some officer of the company? A But don't you remember, sir, that that was the time ---

MR. TONEY: Now, I object to the witness cross examining me.

THE COURT: Well, you will not be compelled to answer.

A That was in 19--

CASE # 1498

THE COURT: Put a question if you wish to do so.

(Last question repeated by the stenographer.)

A That was in October or November, 1910, after the company had lost the tract of land and I had been to Mr. Atkins time and again to see if he couldn't in some way refund me my money.

Q Yes, exactly, so that you did tell me so at that time?

A In 1910 that he told me?

Q Yes. A Just one moment, do not get ---

BY MR. PRESS:

Q Go on? A I am saying that this was told you, that Mr. Atkins had a conversation with me in 1910, after I had found out that there was something wrong with the title.

BY MR. TONEY:

Q Now, I ask you again if you didn't tell me at that time when you called on me? A What time was that?

Q That was in the early part of 1910? A No, I never called on you in 1910.

Q Did you tell me at any time? A In October.

Q Did you tell me so at any time? A I will tell you what I told you then, In October or November 1910, I called to that office. I said, "Mr. Attorney, I have been to the Metropolitan Company time and again and I can't get no redress about this money I paid in." I said "Now, Mr. Collins represented to me that the tract of land being free and clear that I was

1498

CASE # 1498

about to purchase, and here it is over a year and I am trying to get" ---

MR. TONEY: Now, your Honor, this is not responsive,

MR. PRESS: Your Honor, the witness has been asked about a conversation he had with the attorney in this case and he is now recounting the conversation he did have with the attorney, but counsel does not want it that way.

MR. TONEY: If your Honor please, I asked him a definite question.

THE COURT: Well, strike out the answer and ask him another question. I have stricken out the answer because it seems to me perhaps not responsive.

MR. TONEY: I ask your Honor to direct him to answer the question yes or no.

THE COURT: If you can answer yes or no, you may do so.

A My answer is that in October or November, 1910, I called to your office.

Q And you did make that statement? A What statement.

Q So that you did tell me in October, 1910, you say?

A What? That there was a mortgage? I learned that in 1910, I told you that, yes, sir, I learned there was a mortgage in 1910.

Q Didn't you tell me in 1910 that when Collins talked with you about selling you that property he gave you a deed

CASE # 1498

and that --- A (Interrupting) No ---

Q (Interrupting) No, what? A He had no conversation about any mortgage when we were talking about purchasing. That was free and clear we talked about, otherwise I never would have purchased.

Q Didn't you tell me in October, 1910, when you called at my office that Mr. Collins had told you at the time that he negotiated the sale of that property to you, that the property was mortgaged? A No.

Q Now, just wait until I get through asking you the question? A Yes, sir.

Q That the property was mortgaged and there was a provision in the mortgage whereby fourteen lots or an acre of ground might be released? A No, sir.

Q From the mortgage? A No, sir.

Q And that you were to take that deed? A No, sir.

Q And keep it off the record? A No, sir.

Q Until there were enough lots paid for to release an acre of ground from that mortgage? A No, sir.

Q Now, you got the deed in March, 1909? A Yes, sir.

Q You say that you are a very particular man? A I did not say that.

Q And that you went into all details concerning the title to this property? You didn't ask him anything about whether it was free or clear? A I asked him whether the

CASE # 1498

property was free and clear before purchasing, I did.

Q You asked him all that about it? A Yes.

Q And you wanted a deed? A Yes, sir.

Q You asked him for a deed? A Yes, sir, free and clear. He promised to give me that.

Q You got the deed in March? When did you have the deed put on record, if at all? A It never was put on record.

Q Why did you not put that deed on record? A I didn't know it was really necessary. In fact I thought I would wait until I got both lots paid for and then I would go and have them recorded. I thought I would wait until both lots were paid for and then I would have them recorded together.

Q Isn't it a fact that the reason why you did not put that deed on record was because you told Collins, "I will hold the deed to this property until there was sufficient money paid in on account of these lots to have an acre of ground released", and didn't he promise you he would have the acre released in which your lots, the one which you had received the deed from, was situated? A Never had such a conversation, never, emphatically no.

Q And didn't you so tell me when you called on me in October, 1910? A No, sir, and you know it.

Q You never said anything about the lots at all, did you? A I did about the ~~tax~~ lots, yes.

CASE # 1498

Q You did speak about them? A Yes.

Q But nothing with regard to whether there was a mortgage?

A No, sir, and you know it as well as I do.

Q Did you say anything at that time about having the lot released from the ~~maxx~~ mortgage? A Yes.

Q Why did you do that? A Because, as I said, in May or June, 1910, when I went to Mr. Collins and asked him and told him I heard there was something wrong with the title, he told me then that he did not know all the facts, but that Mr. Atkins knew, and since then he learned from Mr. Atkins that there was a provision whereby there was some, there was a mortgage on it, but there was a provision whereby they could have released ten lots at a time and that in about ten days time he will have that done, so I can have my lots released, and that was in May or June, that's what I told you of.

Q Didn't you say to him, to Mr. Atkins, at the time you had the conversation with him, that Collins promised to have your lots released at the time you bought them? A Not at the time. We had no conversation. I told him that time -- because I knew nothing of this release clause you spoke of. We only learned of it in May or June, 1910, a year and a few months after.

Q When was it you had the conversation with Mr. Atkins concerning this property? A About twenty days after, the time I called on Mr. Collings in the latter part of May or the early

CASE # 1498

part of June, 1910.

Q You say early in June, 1910? A I had a conversation with Mr. Collins, and about twenty days after I saw Mr. Atkins. I made attempts to see him before but couldn't, but I did manage to see him in about twenty days, but made it about the latter part of June or early in July, 1910.

Q You saw Mr. Atkins? A Yes.

Q Where did you see him? A In his office, in 46th street and Eighth avenue.

Q When you went there who showed you into Mr. Atkins office? A I really can't remember who did that.

Q Did anybody? A Why, I am sure someone did, but I can't remember who.

Q Do you know a man by the name of Lloyd? A No I don't know him by that name.

Q You don't know Lloyd? A Not by that name.

Q What sort of a looking man was the man that showed you in? A I don't remember.

Q Do you recall whether it was a man or woman? A I don't remember.

Q So that you say at that time you did not say to Mr. Atkins that Mr. Collins had promised you when you bought those lots and received the deed that he would have the lot released from that mortgage as soon as enough lots had been sold to pay off, to pay for the release of an acre of ground?

CASE #1498

A No, I told him the whole transaction that we had, that I had with Mr. Collins.

Q I will ask you whether you did or not? A I told him the transaction we had.

MR. TONEY: I ask that he be instructed to answer the question.

THE COURT: Yes, he may.

(Previous question repeated by the stenographer.)

A No.

Q You never bought any real estate before, did you?

A No.

Q Never before? Do you own any other real estate?

A I do now.

Q But you did not at that time? A No.

Q That is all.

RE-DIRECT EXAMINATION BY MR. PRESS:

Q You have been asked about calling on counsel in this case? A Yes, sir.

Q Whom did counsel represent at that time, if you know, when you called on him? A Which counsel?

Q This gentleman here? A Who did he represent?

Q Yes.

MR. TONEY: I object to that as incompetent, immaterial and irrelevant. I represent a lot of firms and did at that time.

CASE # 1498

MR. PRESS: Question withdrawn.

Q Then I ask you why did you call on this gentleman?

A Because I thought ---

MR. TONEY: I object to that on the ground that the question explains itself. He stated that he was waiting to see officers of this company and that's how he happened to come to my office.

THE COURT: Well, I will sustain the objection to the question.

Q Well, you did call on this gentleman, didn't you?

A I did, yes.

Q How many times did you call on him? A Just once.

Q On that once, and I want you ^{to} tell the conversation that you had with him at that time, what you said to him and what he said to you?

MR. TONEY: I object to that on the ground that he has already stated the conversation.

MR. PRESS: He has not, for it was stricken out.

THE COURT: He may answer.

A I told him of the whole transaction I had with Mr. Collins in regard to the purchasing of the lots and the subsequent conversation.

MR. TONEY: I object to that on the ground the witness is stating a conclusion, and not a conversation he had with me.

CASE # 1498

A I told him "Mr. Attorney, I bought two lots from the Metropolitan Mercantile & Realty Company through Mr. Collins, and since buying these lots I have found out it is over a year now, that the company has some trouble about their title to it, and I have been to Mr. Collins' office and he has referred me to Mr. Atkins and I really can't get any redress; I really *wish* to see if you would take up this case for me and see if I can't get some redress." That's all the conversation I had with him.

Q That is the entire conversation you had with counsel?

A Yes, sir.

Q That is all.

MR. PRESS: Now, I offer in evidence exemplified copy of deed, Arthur Wolfe to John H. Atkins, dated the 4th day of June in the year 1907.

THE COURT: Well, it covers this property, does it? It is with regard to the chain of title?

MR. PRESS: It is, your Honor, part of the chain of title, an exemplified copy.

MR. TONEY: I object to that on the ground that it has not been properly proven. It does not appear that it is the tract of ground in question.

THE COURT: Well, the District Attorney states that it is.

MR. PRESS: The description conforms with this map.

1500
CASE # 1498

THE COURT: How is it exemplified?

MR. TONEY: And it is not the best evidence.

MR. PRESS: I intend to offer other evidence, your Honor, but I want to put this in at this time. It is certified by Frank H. Smith, register of the County of Union, as a correct copy of the record of a certain deed made by Arthur Wolfe and John H. Atkins.

THE COURT: That is the certificate. Now, where is the exemplification?

MR. PRESS: The exemplification is by Edward S. Atwater, presiding Judge of the Court of Common Pleas, signed by Judge Atwater, and then certified by James C. Calvert, Clerk of the Common Pleas.

MR. TONEY: I object to it as not the best evidence. It comes from a foreign jurisdiction and is not evidence to be used in such a case.

THE COURT: Well, why not? What is the matter with it?

MR. TONEY: It is not the best evidence. He ought to subpoena or to have the Clerk here.

THE COURT: Well, we could not subpoena him. It is without the jurisdiction. Here is an exemplified copy.

MR. TONEY: It further does not appear that the lots in question are in that.

THE COURT: We always take these exemplified copies.

CASE # 1498

If the paper were recorded in the register's office in this county it would be sufficient to bring an exemplified copy.

MR. PRESS: And the description, your Honor, will be for the jury to look at, and also at the map.

THE COURT: Yes, I will receive it.

MR. TONEY: Exception.

(It is marked People's Exhibit 5 and read to the jury.)

MR. PRESS: Now, your Honor, I offer in evidence exemplified copy of a mortgage covering the same property exactly, by the same description as People's Exhibit 5, John H. Atkins to Arthur Wolfe, the same grantor, being a purchase money mortgage for \$8675, dated the blank day of June in the year of our Lord one thousand nine hundred and seven, and acknowledged on the 4th day of June one thousand nine hundred and seven, the same date as the delivery of the deed by Wolfe to Atkins.

MR. TONEY: I offer the same objection.

Same ruling and exception.

(It is marked in evidence People's Exhibit 6 and read to the jury by Mr. Press.)

MR. PRESS: I offer in evidence exemplified copy of assignment of the last mortgage for \$8675, which has just been offered in evidence and is known as People's

1598

CASE # 1498

38

Exhibit 6. This is signed Arthur Wolfe and Robert Plant, consideration one dollar. It is dated the 18th day of January, 1910, and acknowledged on the same date and recorded February 16, 1910, at 2:20 o'clock P. M.

Same objection. Same ruling and exception.

(Marked People's Exhibit 7.)

MR. PRESS: I offer in evidence exemplified copy of deed dated the 12th day of March, 1909 between John H. Atkins and Anna M. Atkins, his wife, of the Borough of Borough of Brooklyn, County of Kings, City of New York and State of New York, parties of the first part, and the Metropolitan Mercantile & Realty Company, a corporation existing under the laws of the State of New Jersey, with offices at 46th street and Eighth avenue, Borough of Manhattan, City of New York, County of New York and State of New York, which deed contains the same description as the preceding exhibits of property, in the City of Rahway, County of Union and State of New Jersey. The consideration is one dollar. This deed recites "Subject nevertheless to a certain mortgage to secure the payment of the sum of \$8876, now a lien on these premises." which is the original mortgage mentioned in the deed of Wolfe to Atkins, no mention being made in this deed of the purchase money mortgage given by Atkins to Wolfe.

MR. TONEY: I object to this.

CASE # 1498

MR. PRESS: I am giving the substance of the deed to the jury.

MR. TONEY: If your Honor please, he is reading something he says is not in the deed.

MR. PRESS: I say that it is subject nevertheless to a certain mortgage to secure the payment of \$8875.

THE COURT: That is in the deed?

MR. PRESS: Yes, sir.

MR. TONEY: He says something that is not in the deed.

THE COURT: I do not understand that. It is withdrawn I suppose?

MR. PRESS: This deed, as I have stated, is dated the 12th day of March, 1909. It is acknowledged on the 6th day of July, in the year 1910, and it was signed, sealed and delivered in the presence of L. C. Collins, the defendant, and was recorded August 31, 1910.

MR. TONEY: I make the same objection.

(Same ruling and exception.)

(Marked People's Exhibit 8.)

MR. PRESS: I offer in evidence an exemplified copy of the foreclosure proceeding in the State of New Jersey before the Hon. Mahlon Pitney, Chancellor of the State of New Jersey, which contains complaint in foreclosure, the order of the Master on bill etc, the final decree signed by Mahlon Pitney, which is the final decree.

CASE # 1498

It was filed June 15th 1910, and also the report of sale of the mortgaged premises, and also the order confirming the sale of the mortgaged premises, and which was brought to foreclose the sum of \$8675, the purchase money mortgage herein, and according to the complaint, is selling or asking rather for a judgment of foreclosure and sale, subject to the first mortgage on above described premises to secure payment of first mortgage in the sum of \$8675, now a lien on said premises, and which also shows (reading).

MR. TONEY: Same objection.

Same ruling and exception.

THE COURT: I assume these are all in the chain of title?

MR. PRESS: Yes, your Honor.

(Marked People's Exhibit 9.)

MR. PRESS: I offer in evidence exemplified copy of deed of the Master in chancery in the foreclosure proceeding shown by People's Exhibit 9, which is dated the first day of July in the year of our Lord 1910, by Robert J. Kirkland, then and still being Sheriff of the ~~city~~ said county of Union, to Robert Plaut, which also recites "Subject to first mortgage on above described premises to secure payment of the sum of \$8675, now a lien on said premises", acknowledged on the 15th day of September, 1910, and recorded on September 23, 1910.

159

CASE # 1498

Same objection. Same ruling and exception.

(Marked People's Exhibit 10.)

A D D I S O N G A R D N E R, called and duly sworn as a
witness on behalf of the People, testified as follows:

Address: 160 Broadway.

DIRECT EXAMINATION BY MR. PRESS:

Q Mr. Gardner, what is your business? A I am a
member of the bar.

Q Of what state? A State of New York.

Q How long have you been practicing at the bar of the
State of New York? A I was admitted on November 24,
1893.

Q And since that time have you been engaged in the
practice of law in the City and County of New York? A Yes.

Q Where is your office? A At present, 160 Broadway,
Borough of Manhattan.

Q During the time that you have been practicing at the
bar have you searched any titles to real estate? A Yes,
sir, I have searched a great many of them.

Q Inside the State of New York ~~and~~ and outside the State
of New York? A In New York and in New Jersey.

Q Now, I ask you did you search the title to the property
described in this deed, People's Exhibit 5, 6, 7, 8 and 10 and
as shown on the map People's Exhibit 1? A Yes, sir, I did.

CASE # 1498

Q Where? A At Elizabeth, New Jersey.

Q In what office there? A The county clerk and Register's office.

Q Will you state to his Honor and the Jury just when you started, or from what period you started your search and what you found? A I did my work on February 10th and 23rd 1911.

Q February 10th and? A February 10th and 23rd, 1911.

Q And how did you find the record? A Found the record as follows ---

MR. TONEY: Now, your Honor, I object to this on the ground it has no proper foundation for it.

THE COURT: You object to what?

MR. TONEY: I object to the testimony as an expert on the ground that he has not laid a proper foundation for it.

MR. PRESS: A lawyer practicing, your Honor.

THE COURT: Well, this is a New Jersey title, is it not?

MR. PRESS: And he has searched property in New Jersey as well as New York for years. I have shown that.

THE COURT: You have of record his familiarity with New Jersey real estate law and practice?

BY MR. PRESS:

Q You are thoroughly familiar with New Jersey real estate

CASE # 1498

law and practice? A Yes.

Q And have searched many titles there? A Yes.

THE COURT: Then he may answer the question.

Q Go on? A I first found a deed ---

Q You will begin, if you will, you went back of Arthur Wolfe to John H. Atkins, did you? A Yes.

Q Just give me from Arthur Wolfe to John H. Atkins, if you will? A I found a deed, Arthur Wolfe, unmarried, of the City of New York, to John H. Atkins, dated June 4, 1907, consideration \$500, acknowledged June 4, 1907, recorded June 19th.

Q Wait, yes. A Recorded June 19, 1907 in Liber 490 page 126, conveying the premises subject to mortgage of \$8875, covering plot of ground 46 1-4 acres. I then found a deed John H. Atkins of the City of New York to Arthur Wolfe. I beg your pardon, I mean a mortgage.

Q A mortgage Atkins to Wolfe? A Yes, dated June blank 1907, consideration \$8675., acknowledged June 4, 1907 recorded June 19, 1907, in Liber 436 of mortgages page 162.

Q Yes, next? A I then found a deed, John H. Atkins to Anna M. Atkins, his wife.

Q Wait one moment. Did you find any assignment there? A Yes, I found that this mortgage had been assigned to Robert Plaut.

Q Yes. A And the assignment was in the regular form and was

45
159

CASE # 1498

recorded in book 46 page 389 of assignments.

Q Yes. A Then I found a deed John H. Atkins and Anna M. Atkins his wife of Brooklyn, Kings County, New York, to the Metropolitan Mercantile & Realty Company, a corporation existing under the laws of New Jersey, dated March 12, 1909, consideration \$1 and other valuable considerations, acknowledged July 6, 1910, recorded August 31, 1910, in Liber 553 of conveyances, page 559, covering a plot 46 1-4 acres, subject to one mortgage -- subject to two mortgages.

Q Subject to two mortgages? A Yes, sir.

Q All right. A I then found a deed, Robert J. Kirkland, Sheriff, to Robert Plaut, dated August 29, 1910, acknowledged September 15, 1910, recorded September 23, 1910, in Liber 558 of Conveyances, page 272.

Q Now, in making your search, Mr. Gardner, will you state what is your custom with respect to maps? A My custom is to make a copy of the map so that I can refer to it and see if the description recited in the deed corresponded to the map.

MR. TONEY: I object to what his custom is as incompetent, immaterial and irrelevant.

THE COURT: I will receive it.

MR. TONEY: Exception.

Q Go on. Well, did you on this occasion make a map of the property in question? A I had an exemplified copy made.

CASE # 1498

MR. TONEY: I object to that upon the ground that it is not responsive.

MR. PRESS: Question withdrawn.

MR. TONEY: I ask to have the answer stricken out.

THE COURT: Yes.

Q Did you have an exemplified copy of People's Exhibit 1 with you on that occasion? A I did not have it on that occasion, but I had the map which I made.

MR. TONEY: I object to that as not responsive.

MR. PRESS: He said he had not.

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

THE COURT: Yes.

Q Did you have any map before you at the time you were making your search of that property? A I had the original map filed in the County Clerk's office and from that I made a pencil copy for my own use.

Q And did you take your description in your deeds and examine them with respect to the map? A I certainly did.

Q Did you find that the descriptions in those deeds covered the premises set forth in the map? A I did.

Q I show you People's Exhibit 1 and ask you if that is the same map, or rather a copy of the map which you saw, the original map? A It is.

Q And with which you compared your descriptions? A Yes.

Q Are you prepared to say that the description ---

CASE # 1498

MR. TONEY: Now, I move to strike that out on the ground that the original map is the best evidence.

MR. PRESS: Well, it is in.

Motion denied. Exception.

Q And is the property mentioned in this deed the property comprehended in this map, People's Exhibit 1? A It is.

Q MR. TONEY: I object to that as leading and ask to have the answer stricken out.

Motion denied. Exception.

CROSS EXAMINATION BY MR. TONEY:

Q Mr. Gardner, what is there about that map by which you identify it with the one you examined in the County Clerk's office in New Jersey? A Because I went over it.

Q But what was there about it that you identify it by?
A The metes and bounds .

Q Metes and bounds there you identify it by? A Yes.

Q What metes and bounds? A If I have the map before me I can show you.

Q Just a minute, please, what was it, when the District Attorney showed you that map that you saw on it by which you identified that map as the one that you saw in the County Clerk's office in New Jersey? A I had this map made and I know it was the exact map.

MR. TONEY: I ask your Honor to direct the witness to answer the question.

1511
CASE # 1498

THE COURT: I think he has answered that.

MR. TONEY: I asked him what was it he saw on this map by which he could identify this map with the one he examined in the County Clerk's office in New Jersey.

THE COURT: He said he had the map made and therefore he knew it was the map.

MR. TONEY: That has a name on it. He did not look at the name.

THE COURT: I think it was responsive. Proceed.

Q Do you mean to say that you had a map made that is in New Jersey on file there? A Yes, I went even to the surveyor in Rahway and had him go and make the map.

Q That is all.

J O S E P H J R E I H E R, called and duly sworn
as a witness on behalf of the People, testified as follows:

Address: 44 Court street, Brooklyn, New York.

DIRECT EXAMINATION BY MR. PRESS:

Q Mr. Reiher, what is your business? A Lawyer.

Q When were you admitted to practice at the bar? A June, 1907.

Q Where? A In the State of New York.

Q Since that time have you been practicing law in the County of Kings and State of New York? A I have.

Q During the time you have been practicing at the bar

1511
CASE #1498

48
have you searched many titles? A I have.

Q Where? A In Kings, New York County, and a few in Jersey.

Q A few in Jersey? A Yes.

Q Did you make a search of the property described in the map, the property owned by the Metropolitan Mercantile & Realty Company, situated in the City of Rahway, New Jersey, July 7, 1907? A Yes.

MR. TONEY: I object to that on the ground that he has not laid a foundation as an expert. He says he only examined a few titles in Jersey.

THE COURT: Well, he has examined a few titles. You might ask him a few further questions if desirable to show his familiarity with the laws of New Jersey.

Q About how many have you searched in New Jersey? A About three or four.

Q That was within the time that you have been practicing at the bar? A Yes, sir.

Q About how many have you searched in the county of Kings? A I have searched fifty or sixty or seventy.

Q How many in the county of New York? A Thirty or forty.

MR. PRESS: I think, if your Honor please ---

THE COURT: Now, what is the question you wish to ask?

MR. TONEY: I will ask him this question.

LIBRARY
CASE # 1498

BY MR. TONEY:

Q Are you admitted to the bar of New Jersey? A No, I am not.

Q Are you sure you searched as many as three titles in New Jersey? A I have.

Q In what county? A Elizabeth.

Q All in Elizabeth? A Yes.

Q How long ago was that? A Within the last four years.

Q Well, was it four years ago? A No, within about a year ago or two years ago.

Q Well, it was about a year ago that you searched three titles there? A Yes.

Q Did you search them all in one year? A No, not all in one year.

Q Within four years? A Yes.

Q And the last one was about a year ago? A Yes.

MR. TONEY: I renew the objection, if your Honor please, on the same ground.

Objection overruled. Exception.

BY MR. PRESS:

Q Where did you search that title? A In Elizabeth, New Jersey.

Q What office there? A The county clerk's office.

Q Can you tell me what you found, commencing with Arthur Wolfe, if you will, to John H. Atkins, if you have it? A I

RECORDED

INDEXED

CASE # 1498

found a deed of record, Arthur Wolfe, unmarried, to John H. Atkins, dated June 4, 1907, acknowledged June 4, 1907, recorded June 19, 1907, consideration \$500, recorded in Book 490 of Conveyances, page 126. The deed recited that it was subject to a mortgage of \$8875. It covered a parcel of property of approximately 46 1-4 acres, it recited that in the deed, in the City of Rahway, New Jersey.

Q Did you have the original map before you at the time?

A I did.

Q Did you compare that description with the map on file in the County Clerk's office there? A I took the original map on file and compared it with the description in the deed.

Q And was it identical with the description in the deed?

A It was.

Q Go on? A I found a mortgage of record, by Arthur Wolfe to Caroline E. Pratt for \$8875, dated June 4, 1907, acknowledged June 4, 1907, recorded June 19, 1907.

Q Is that John H. Atkins to Arthur Wolfe? A Arthur Wolfe to Caroline E. Pratt.

Q Oh yes, I see. A That was recorded in Book 236 of Mortgages page 168.

Q Yes. A I found a deed of record, John H. Atkins and Anna M. his wife -- I might say before that I found another mortgage of record, John H. Atkins to Arthur Wolfe.

Q Yes. A For \$8675 dated June blank, 1907. Acknowl-

CASE #1498

edged June 4, 1907, recorded June 19, 1907, Book 236 of Mortgages page 162.

Q Yes. A I found a deed of record John H. Atkins and Anna M. his wife, to the Metropolitan Mercantile & Realty Company, dated March 12, 1909, acknowledged July 5, 1910, recorded August 31, 1910 in Book 553 of Conveyances, page 559. That deed recited that it was subject to a mortgage of \$8875. I also found of record a deed by Robert J. Kirkland, Sheriff of Union County, to Robert Plaut, dated August 29, 1910, acknowledged September 15, 1910 and recorded September 23, 1910, in the office of the register of Deeds in Union County, New Jersey, in Book 558 page 272. Those deeds and mortgages all cover the same land. I compared the descriptions.

Q Mr. Reiher, I ask you to look at People's Exhibit 1, and I ask you to state if you can, from your recollection, whether that is a copy of the original map that you saw when you were over in the county clerk's office in New Jersey? A It is the same, a copy of the map that is on file over there.

MR. TONEY: Now, if your Honor please, I move to strike out the witness's testimony concerning the search he has made in New Jersey, on the ground that he is not properly qualified as an expert.

Motion denied. Exception.

MR. TONEY: That is all. I wish to move, if your Honor please, at this time that this map and the

CASE # 1498

admission of this in evidence and all reference to it be stricken out on the ground that it now appears that the map was made by a lawyer. It does not appear that he is familiar with that kind of work, and that the map is correct in any particular. The map should be made by a civil engineer.

THE COURT: We will let it stay for what it is worth. That is a matter upon which you may comment to the jury, of course.

MR. TONEY: Exception.

MR. PRESS: The People rest, if your Honor please.

MR. TONEY: Now, if your Honor please, I move to dismiss the indictment, upon the ground that it does not appear that the money in question came into the hands of Collins, or any part of it.

THE COURT: Mr. Press, what appears in that respect?

MR. PRESS: It appears, if your Honor please, that Collins called on the complaining witness, that he spoke about the purchase of this property.

THE COURT: But the point he makes now is that Collins did not get the money.

MR. PRESS: If your Honor please, the endorsement on the back of the check which is in evidence is Collins's.

MR. TONEY: As secretary of the company, your Honor,

CASE #1498

er assistant treasurer .

THE COURT: I will deny your motion.

MR. TONEY: Exception. If your Honor please, I have several witnesses to call in this case, and I would prefer to open the case to-morrow, unless we could finish it this evening.

THE COURT: I wish to accommodate you. If you are not prepared to go any further we will adjourn .

MR. TONEY: Not just at this stage.

(The Court thereupon admonished the jury in accordance with section 415 of the Code of Criminal Procedure, and adjourned the further trial of the case until Wednesday, February 28, 1912, at 10:30 o'clock A. M.)

1511
CASE # 1498

Mr. Atkins's office.

Q When was it that you say that conversation took place?

A The latter part of May or early in June, 1910.

Q 1910? A Yes.

Q You say you subsequently had conversations with him?

A Many conversations with him, many, about eight or ten.

Q Concerning that -- in his office? A In his office.

Q Did you have a conversation with him in the early part of the winter, in 1910? A Many conversations, yes.

Q Do you recall around November or December? A Yes, many conversations.

Q Do you recall having a conversation with him around either the latter part of November or the 1st of December, 1910? A Many conversations I have had, yes.

Q At that conversation --

MR. PRESS: One moment. I understood this witness was only recalled for the purpose of identifying a man by the name of Lloyd. Is this to be a renewal of the cross examination? The People rested.

THE COURT: It seems to me, Counsel, you do not need all this. I want you to try your own case in your own way and I want to give you every latitude within reason, but we must, in the interest of economy of time, finish. Now, go on and have done with it.

MR. TONEY: I have another witness I also wish to

1910
CASE # 1498

have identified.

THE COURT: Proceed.

Q You say you did have a conversation with him about that time in which you referred to the release of these lots?

A I had many conversations with Mr. Atkins.

Q Did not Mr. Lloyd, whom you have just been shown, show you into Mr. Atkins's office at that time? A I don't remember who let me in. I didn't pay much attention to that.

Q And as a matter of fact did not Mr. Lloyd stay there during a good part of the conversation that you had with Mr. Atkins?

MR. PRESS: I object to that because the witness has said he could not identify him.

THE COURT: Objection sustained.

Q At that time did you say to Mr. Atkins, or words to that effect, that "Collins promised me that he would have my lots released from that mortgage as soon as this building was completed"?

MR. PRESS: I object to that.

THE COURT: Let him answer that.

A Well now, I had many conversations with Mr. Atkins.

Q I ask you whether you said that or not? A No.

Q You did not say it? A No.

Q I ask you whether or not at the time, did not Mr. Atkins send Mr. Lloyd into the main office, of his office where you

CASE # 1498

were having the conversation, to get one of the real estate books to see how much you had paid on the second lot? A No, I will tell you what, though.

Q I ask you whether or not that occurred? A No, but I will tell you what.

Q I ask you whether he did or not? A No.

Q That is all I am asking you. I will ask you whether or not after the conversation concerning the lots had finished, you still continued to talk and speak of where you, Mr. Atkins and Mr. Lloyd had gone to school, at Hampton Institute in Virginia? Was that part of the conversation at that time?

A I don't remember.

Q You don't remember that? A No.

Q You don't remember Mr. Atkins saying to you at that time "Why, shake hands with Mr. Lloyd, he is an old Hamptonian too", you don't recall that? A I don't remember.

Q Do you know Everett E. Purnell? A Yes, very well.

Q How long have you known him? A For years.

Q Is that the gentleman (indicating)? A That is Mr. Purnell, I know him well.

Q I ask you whether or not in the early part of September, 1910, Mr. Purnell stopped in your place of business in 135th street, and you and he had a conversation concerning the condition of the Metropolitan Mercantile & Realty Company?

A We may have because I have spoken to numbers of persons.

CASE # 1498

Q Numbers of times?

MR. PRESS: No, he said numbers of persons.

Q Numbers of persons? And Mr. Purnell and you had been friends for some time? A Just, I have known him, no particular friend.

THE COURT: Well, have you not done now? You had all day yesterday to do this. Is there anything else of really novel interest you wish to elicit from this witness? You had your opportunity yesterday to examine this witness under cross examination and you availed of it.

MR. TONEY: This is the only point I wish to bring out here.

THE COURT: Well, get your point before the jury and then go on with your case.

Q I ask you whether or not you did about that time have such a conversation with Mr. Purnell? A I had many conversations with him and many other persons.

Q Didn't you say to Mr. Purnell at that time "How is the Metropolitan Mercantile & Realty Company getting along?"

MR. PRESS: I object to it as immaterial.

THE COURT: Objection sustained.

Q Didn't you ask him whether or not the company was about to fail?

MR. PRESS: I object as subsequent to the event.

THE COURT: Objection sustained.

1523

CASE # 1498

MR. TONEY: This is for the purpose of impeaching the witness.

THE COURT: I have ruled.

Q In the conversation that you then had with him, did you not say "They promised to have my lots released from that mortgage in Rahway"?

MR. PRESS: I object to that.

THE COURT: Let him answer that one question.

A Well now, I had many conversations with him.

Q I ask you whether or not that was said? A In 1910? Yes, I may have said that.

Q And "they promised to have my lots released as soon as the building was completed"? A No.

Q You didnot have any such conversation? "And that it had been some time now and the building was about completed and your lots had not yet been released"? A No.

Q And that you were getting somewhat uneasy because you heard a lot of rumors about the company? A No.

Q Do you know George H. Atkins? A Yes, I have seen him.

Q Do you remember attending a banquet in the latter part of March, 1909?

MR. PRESS: I object.

THE COURT: Let him answer. Get done with it some-time.

CASE # 1498

A Yes, I attended a banquet.

Q Do you remember seeing Mr. George Atkins there? A Yes.

Q Do you remember having a conversation with him?

A I couldn't tell about that.

Q Didn't as a matter of fact George Atkins come to you and say "Why, I didn't know you were a stockholder"? A He may have.

Q It was a stockholders' banquet, wasn't it? A Yes, it was.

Q And you said "Yes, I am a stockholder and I have bought a couple of lots to help the company out in finishing this building", didn't you say "By the way, do you know how many lots have to be sold and paid for before they can have the first batch of lots released from the mortgage in Rahway? Mr. Collins promised me that mine shall be among the first and I forgot to ask him how many had to be released"? A No, sir.

Q And didn't he say that he did not know? A No, I didn't ask him.

Q And told you how many lots there were in an acre of ground? A No.

BY MR. PRESS:

Q You did not have that conversation, did you? A No, not at all. It was simply a social affair.

BY THE COURT:

Q Where were you born? A In British West Indies.

CASE # 1498

Q What part? A Montserrat, a small island in the West Indies.

BY MR. TONEY:

Q Where were you born?

THE COURT: He told us that he came from Montserrat, British West Indies.

Q Are you an American citizen?

MR. PRESS: I object to that.

THE COURT: There is not any law on that subject that I know of.

MR. TONEY: Now, if your Honor please, I wish to again, with your Honor's permission, renew my motion to dismiss on the ground stated yesterday, that it does not appear that Collins, the defendant in this case, received anything whatever from the complainant Brambill. The District Attorney has introduced in evidence here under objection a check made out by Mr. Brambill to the Metropolitan Mercantile & Realty Company, with a signature upon it which the District Attorney alleges to be the signature of the defendant Collins. None of the District Attorney's witnesses have said that Collins signed that check.

THE COURT: I will deny your motion.

MR. TONEY: Exception, and upon the further ground, if your Honor please, that the people have failed to prove beyond reasonable doubt facts sufficient to prove the

CASE # 1498

charges alleged in the indictment.

THE COURT: Motion denied.

MR. TONEY: Exception.

THE DEFENSE.

L L E W E L L Y N C. C O L L I N S, the defendant, called and duly sworn as a witness on behalf of the defense, testified as follows:

Residence 172 West 133rd street.

DIRECT EXAMINATION BY MR. TONEY:

Q Mr. Collins, you are the defendant in this action?

A I am.

Q What is your business? A At present I am practicing law.

Q You are a practicing attorney? A Yes, sir.

Q Where is your office? A I have desk room at 80 Wall street in this city.

Q How long have you been an attorney and counsellor at law? A About 12 years.

Q You were secretary of the Metropolitan Mercantile & Realty Company about March, 1909? A I was, and assistant treasurer at that time.

Q How long were you connected with that company? A Since its incorporation in 1900.

Q Do you know the complainant in this matter? A I do.

CASE # 1498

Q Brambill? A I do.

Q Do you recall having a conversation with Mr. Brambill concerning the sale of the lots in question on or about the 18th of March, 1909? A I had such conversation about a week prior to that time. I guess it was about the 10th or 11th of March, 1909.

Q Will you state what Mr. Brambill said to you at that time and what you said to him?

MR. PRESS: One moment. Where was this conversation had?

Q Was this conversation had at Mr. Brambill's place of business? A It was, yes, sir. I called at Mr. Brambill's place of business on or about the 10th or 12th of March, 1909, and I said to him among other things "Mr. Brambill, we are in need of some money, that is, the company is in need of some money at this time to meet some payments on the building that we are erecting at the corner of 46th street and Eighth avenue, and you are a stockholder and interested in the welfare of the company; we would be very glad if you would make a loan to the company of say about four or five hundred dollars, if you can spare that amount, as we have some bills that are pressing us and must be met", and he said, "Well, yes, I am certainly interested in the company and I will gladly make you that loan, because by all means I want to see you complete that building. I do not want to see you fall down on that effort there". He

CASE #1498

said "But I am glad ^{you} ~~to~~ ^{feel} stop in for another reason." He said, "I don't care particularly to make the loan but one or two of your agents have spoken to me about purchasing some lots in Rahway, New Jersey, and they have really gotten me interested in that proposition, but there is one thing about it they don't exactly seem to understand or to be able to explain thoroughly". I said "What is that?" He said "They told me something about the mortgage, having a releasing clause in it, I don't know just what they mean by that; if you can make that clear to me and satisfactory I will buy a lot from you."

I said, "Well, here are the facts in regard to that property. The property was purchased in 1907 and at that time we paid down several thousand dollars, about \$8,000 on it, and then mortgages were executed for the difference, and, the releasing clause provided in the mortgage to the effect that upon payment of instalments --"

MR. PRESS: Now, one moment. I object, if your Honor please, that whatever ^{the} agreement is, the best evidence is what was contained in the instrument of which he is speaking.

MR. TONEY: If your Honor please, the witness is stating a conversation.

BY THE COURT:

Q Did you say this to the complaining witness? A I did.

Q Now, you may tell us what you said to him? A I said

CASE # 1498

to him "When the property was purchased we executed certain mortgages as part payment for the same and had inserted in the mortgage a releasing clause to the effect that when a certain amount of money had been paid, certain instalments, we might then have one acre of land released at a time from the mortgage. We did that in order that we might sell the lots and give title to them before the entire tract was paid for". Well, he says, "That sounds all right!" He said, "Now, then, if I should buy a lot from you how soon would you release my lot from the mortgage?" I said, "Well, you see what we want now, we want this money for the purpose of meeting some pressing bills on the building, and for that reason I could not promise to have it released immediately; I would do it soon; because it would defeat the very object for which I want the money." He said, "That's all right about that, I have confidence in the company as far as that is concerned, and if you promise me that you will release those lots when the building is completed I will be satisfied." I said "Well, there is no question about that because we have that provision in the mortgage, as far as that is concerned, and we will live up to it".

So he said, "Well, now, here is what I will do, I will go out and see the property and I will buy a lot. When can I get my deed?" I said then "Well, I couldn't say just how soon we will be in position to release an acre of ground from the

CASE # 1498

mortgage but I am sure it will not be any great while now before the building is completed and then it can be done." He said "Well, I would rather complete the transaction all at once, I would rather pay cash for one lot and get a deed for the same." I said, "You can see a deed would not do you any good until it is released from the mortgage." He said, "Well, I will tell you, I will keep the deed off record until you release it from the mortgage and then I will record it." I said, "If you take it under those conditions that's all right and the deed may be delivered to you accordingly."

So we discussed the prices of the different lots, as we had a map in front of us there and I told him what the prices were and he said "Very well, I will go and see the property and you will hear from me again." That is the gist of the conversation I believe I had with him at that time. That was the conversation.

BY MR. TONEY:

Q Did you have any further conversation with him concerning that property and the deed he was to get at any subsequent time? A I had a conversation with him, I take it, it must have been at least six or eight months after that.

Q Where was that? A That was at my office, the office of the secretary of the company, 46th street and Eighth avenue.

Q And about what time was that? A That was about September, 1909. I know it was about six or seven months after

CASE # 1498

the first conversation I had with him.

Q What was the conversation that you had with him at that time? A At that time he came to my office and said, "Well, how is the company getting along?" I said, "Well, we are making headway so far as that is concerned," and then I said to him at once "I suppose you want to know about releasing your lots?" He said "No, that's all right, the main thing I want to know is about the building, are you going to complete the building? Is there any likelihood of losing the building? That is what I am most interested in." He says "I will be satisfied about getting my lots released at some future date, but I want to know about the building, that is the main thing now." I said, "We are making every effort and I feel sure we will complete it and we will not lose it." I said, "It is costing a great deal of money, close on to \$100,000; we thought it would cost only about \$85,000 when we started but it is costing us more than that, but we are making headway, I am glad to say, and everything is in good shape and I feel sure we will pull through." That was the conversation I had with him then.

Q Did you ever talk with him at any time subsequent to to that? A Yes, after that time I take it, it must have been around the early part of 1910, or about February, 1910, he came to see me again, and that time he said "I came to see you about getting my lots released." And I said to him then, "Well, we had so many demands upon us, of mechanics and other

1531
CASE # 1498

creditors, who have been pushing us so that we have not been in position to release any of the ^{lots} lost as yet, but I am sure we will do it pretty soon."

Well, he said, "You told me when I purchased the lots that you thought you would be in position to have them released from the mortgage in a reasonable time." I said, "Yes, I did; we have not been as successful as we thought at that time that we would be; that's the reason why we have never gotten in position to have them released from the mortgage, but," I said, "We will do it, we will get around to it, there is no question about that."

Q Was there anything further at any subsequent period concerning that? A Yes, he came in to see me still again, I forget just when, but I think it was about the month--or two or three days after that he came in to see me again, so I referred him then to the manager of the company, that he might understand what I was telling him about the condition of the company and the reasons why they had not been released was just as I have been telling it.

Q Now, in your conversation you say you had with him first about the lots,--you heard Mr Brambill testify yesterday?

A I did.

Q You heard him say that you told him those lots were free and clear, the Railway property in which he was about to purchase a lot or lots? A I heard him say so, but I never

CASE #1498

told Mr Brambill any such thing. I didn't tell him that for several reasons. The first reason was that I never misrepresent anything to any one at any time.

BY THE COURT:

Q No, no. Did you or did you not make that statement to him, that is all? A I did not, I never told him that.

BY MR. TONEY:

Q Now, you heard Mr Brambill further say that you said to him, "You can take my word, you need not get an attorney, the title is all right," and showed him a search, or something going back to Queen Elizabeth's time; did any such thing as that ever happen? A No, sir, I never had any search, and I never told him any such thing, never showed him any such search.

Q Did you show him any paper at all? A I didn't show him any paper whatever concerning the company, with the possible exception of that map of the lots there.

CROSS-EXAMINATION BY MR. PRESS:

Q You are a lawyer and have been twelve years practicing at the bar of the State of New York, is that right? A I have said that I have been a lawyer for twelve years.

Q And you are thoroughly familiar with titles, are you?

A I am well familiar with titles, yes.

Q And you are thoroughly familiar with the affairs of this company, because you have been with it since its incep-

CASE # 1498

tion, is that right? A In 1900, yes, sir.

Q And you were present, were you, when Atkins conveyed this property to the company? A What is that question?

Q When Atkins conveyed the property in Rahway, New Jersey, to your company, you were present on that occasion, weren't you? A I was, yes, sir.

Q Whon was the owner of the property before Atkins?

A Before Atkins? Why, one Mr Wolfe was the owner, Mr Arthur Wolfe.

Q Were you present when Wolfe conveyed to Atkins? A No, sir, I was not.

Q Was Atkins associated with the company at the time that he took title from Wolfe? A He was.

Q At that time he was president of the company? A He was treasurer and manager at that time.

Q And as treasurer and manager he purchased property from Mr Wolfe for himself and his wife, is that correct? A No, sir, for the company.

Q Is it not a fact that the first deed was made to Atkins and wife from Wolfe? A To Atkins, yes, sir.

Q Is that right? A Not to Atkins and wife, but to Atkins.

Q To Atkins? A Yes.

Q Can you explain to this jury why the manager of the company took title to that property in himself instead of pur-

CASE # 1498

chasing it for the company? A I can.

Q Explain it, then? A At the time that was done, we were operating, the company was operating in the States of South Carolina, Georgia and Alabama. Mr P. Sheridan Ball was president of the company and he was in Charleston, South Carolina, stationed there. I at the same time was stationed in Atlanta, Georgia, and had been there for several years working up the Southern interests of the company. We were the ones authorized on behalf of the company to execute papers as president and secretary of the company. As the property could not be paid for entirely in cash, mortgages had to be executed back, you see, and naturally it was the duty of the president and the secretary of the company to sign these mortgages on behalf of the company, but in our business, in order to get around that particular phase of it, Mr Atkins took title himself so as to be able to execute the mortgages back to Mr Wolfe. That is why it was done by him rather than to the company.

Q That is the explanation you give for Atkins taking title to that property, because you were in one section of the United States and another was in another, and Mr Atkins you want this jury to believe could not execute papers for the company?

A That was the reason, to avoid delay.

Q All right, that is satisfactory. So then, a manager of a company cannot be authorized by the corporation--you are a lawyer--to execute a deed or execute any paper for the corpora-

CASE # 1498

tion?

MR. TONEY: Objected to as incompetent, immaterial and irrelevant and calling for a conclusion.

Objection overruled. Exception.

A Manager? Well, he was not authorized.

MR. TONEY: I object.

THE COURT: I have ruled.

A (Continuing:) He was not so authorized, in that case, Mr Press.

Q Oh, in that case? A No, sir.

Q All right. Now, what did he pay to the company for that property, or rather what did Wolfe receive from Atkins for that property, what was the consideration? A The entire consideration, as my understanding--

Q What was the consideration? A \$25,000.

Q \$25,000, made up how? A Made up of two mortgages, one of \$8875, the other \$8675, and the difference in cash.

Q What was the difference in cash? A Oh, it was nearly \$8,000, I think.

Q Is it not a fact that it was only \$500? A No, sir, it is not a fact.

Q I ask you to look at this deed and ask you to say what consideration is mentioned in the deed? A In some deeds, you know it is only one dollar.

Q I ask you what is mentioned in that deed, People's Ex-

1537
CASE # 1498

hibit 5? A In this deed the entire consideration mentioned is only \$500.

Q Only \$500? A Yes, sir.

Q Is it not a fact that the reason Atkins took title to that property was for the purpose of selling it an inflated value to the company and mulcting the company? A No, sir, it is not a fact.

Q Now, he did give a mortgage back, didn't he, a purchase money mortgage? A He did, yes, sir.

Q And that is a copy of the mortgage, isn't it (indicating)? A I think it is.

Q Well, look at it again. I want you to be sure it is. I do not want any thinking? A All right. Yes, this is a copy of it.

MR. PRESS: That refers to People's Exhibit 6.

Q And that is an exact copy of the deed from Wolfe to Atkins, isn't it? A I could not say it is an exact copy, because I have not the original here to compare it with.

Q Well, look at it? A And even looking it at would not tell me, because I have not the original here, but I believe it to be.

Q Well, you believe it to be? A I believe it to be, yes.

Q I show you deed from Wolfe to Atkins, People's Exhibit 5, and ask you to show me any clause in that deed which pro-

CASE # 1498

wides for the release of any part of that property on the payment of any sum of money? A Well, I did not say that provision was in the deed.

Q I ask you to look at that deed and answer the question?

A I never stated that was in the deed.

Q Very well. A It was in the mortgage, I said.

Q Very well, I show you People's Exhibit 6, a mortgage of Atkins to Wolfe--Oh, no, -one moment--that question is withdrawn.

Q When Wolfe conveyed to Atkins, he conveyed subject to a certain mortgage for \$8875? A Yes, sir.

Q Have you got a copy of that mortgage? A I have, yes, sir.

Q Have you it here? A I have, yes, sir.

Q Is it exemplified? A It is.

Q Is there any provision in that mortgage? A Yes.

Q (Continuing:) For release?

MR. TONEY (handing) Read it, please, Mr District Attorney.

Q That is the clause you refer to (indicating)? A Yes, sir.

Q And that provides that the party of the first part has the privilege of paying off this mortgage in instalments at any time at the rate of \$400 per acre, \$400 per acre? A Yes, sir.

Q Which part designated by him is to be released from the

1531
CASE #1498

lien of the mortgage held by the party of the second part?

A Yes.

Q And this is an exemplified copy of it? A Yes, sir.

Q And this is the same property you say? A The same property, yes, sir.

Q And this is the mortgage that you took this property subject to? A It is, yes, sir.

MR. TONEY: I offer this in evidence.

MR. PRESS: No objection whatever.

(Marked Defendant's Exhibit A.)

Q Now, at the time this property was purchased by Atkins, he gave a purchase money mortgage for \$8675, is that correct?

A That is correct, yes, sir.

Q And will you find in that mortgage the clause releasing a part of that property on the payment of a sum of money?

A No, there is an explanation to be made about that.

Q Never mind the explanation. Is there such a provision in that mortgage?

MR. TONEY: I object to the question on the ground that it assumes facts not in evidence. There is no evidence he made any such statement.

MR. PRESS: There is a statement--

THE COURT: Now, just a moment. The question calls for the witness' knowledge and his intention as to its construction. I will allow it.

1540

CASE #1498

Q Is there such a clause in that mortgage? A There is no such clause in this mortgage.

Q That is all. There is no such clause in that mortgage?
A That's correct.

MR. TONEY: I object to the manner of this cross-examination.

THE COURT: What is there that you deem objectionable in the manner?

MR. TONEY: My objection is this. He is assuming in his question that statements have been made here that have never been made, and upon that he is constructing a hypothetical question which is not fair to the defendant.

THE COURT: Well, has he not the right on cross-examination to assume the existence of facts?

MR. TONEY: I do not think so. My understanding of the rules of evidence is different.

THE COURT: Well, my understanding is different from yours, I think the vice of your understanding is that you have confounded cross with direct examination. I shall adhere to my judgment and I will allow the question. Objection overruled. (Exception.)

Q So that the purchase money mortgage for \$8675 covering that property, and which is known as People's Exhibit 6, had no provision whatever for the release of any portion of that property from that mortgage on the payment of any less sum than

154
CASE #1498

the actual amount of the mortgage, is that correct?

MR. TONEY: If your Honor please, I submit that the instrument speaks for itself and is the best evidence.

THE COURT: He may answer.

MR. TONEY: I take an exception.

A It was arranged for--

Q (Interrupting:) Never mind, it is not provided for in the four corners of that mortgage, is it? A It is not in there, but by mistake only.

Q Was there any document recorded simultaneously with this which provided for that?

MR. TONEY: If you know.

Q (Continuing:) If you know? A I don't know.

Q But you do say you were in this company at the beginning as secretary and you were familiar with its affairs, isn't that true? A Yes, sir.

Q And you were present at the transfer of this property from Wolfe to Atkins? A I said I was not. I said so distinctly, I was in the South, I told you.

Q Was there any instrument, if you know which was recorded and which provided at any time for the release of any of this property under the terms of this mortgage on the payment of any less sum than the actual face value of the mortgage, \$8675? A I don't think so.

Q Now, it is a fact that you did call on Brambill?

FBI

CASE # 1498

A It is.

Q So he is telling the truth when he says you did call on him at his tailor shop? A Yes, sir.

Q That is actually so? A That is a fact, yes, sir.

Q What was the capitalization of this company?

MR. TONEY: I object to that as incompetent, immaterial and irrelevant.

MR. PRESS: He stated that the company--

THE COURT: He may answer.

MR. TONEY: I take an exception.

A The company in 1900 was capitalized at \$100,000. It was subsequently increased to \$1,000,000.

Q To \$1,000,000? A Yes, sir.

Q And about March, 1909, you were so hard up that you were going to Brambill to borrow \$400?

MR. TONEY: I object to that.

THE COURT: He may answer the question.

MR. TONEY: I take an exception.

A In March, 1909, we went to him for that purpose.

Q So that the million dollar corporation at that time was so hard up that \$400 was necessary from Brambill to keep it alive, is that right? A No, sir, that is not right. Helpful but not necessary.

Q You only wanted to have it in the bank to look at, then? A No, I wanted it for the purpose of paying pressing

CASE # 1498

1511

bills.

Q So that the company needed the money at that time?

A That was not necessary to keep it alive, is the point I was making.

Q How long did it last after that? A How long did the company last after that?

Q Yes. A About 18 months, I guess.

Q Wasn't it a staggering for those 18 months-- A (Interrupting:) It was--

Q (Interrupting:) Under the obligations that it had incurred? A It was in straits.

Q And isn't it a fact that you were holding banquets and holding meetings in churches and elsewhere for the purpose of luring people in, for the purpose of providing funds for the company?

MR. TONEY: I object to that word "luring", and I object to the manner.

THE COURT: Strike out the manner. Mr District Attorney, in the effort to make your questions plain you perhaps put a little more vigor to indicate perhaps a conviction on your part, which may not perhaps be altogether proper. Repeat the question.

(Question repeated by stenographer.)

Q Now, will you answer the question? I will change "luring" to "getting"? A No, we were not holding them for

CASE #1498

the purpose of luring people in.

Q "Luring" has been stricken out. I say "getting"?

A Getting people? A Well, we were holding meetings for the purpose of providing funds to build that building. The building was costing \$100,000.

Q You have answered the question. I do not want an address to the jury. Now, it is a fact, isn't it, that you did give this man Brambill at that time that you called on him in his tailor shop a map? A Yes, I am quite sure I left that map there.

Q So that as far as you are personally concerned you do not deny that that map was given to him by you, do you? A I am inclined to think I did give it to him.

Q So that when objections were made to that map being offered in evidence, you knew as a matter of fact at that time that that map was given by you to Brambill?

Objected to. Question withdrawn.

Q But you did give him that map? A I think I did, yes, I think I did.

Q Cannot you say for certain? A Not positively, but my best recollection is that I did give it to him.

Q And have you any doubt that People's Exhibit 1 is an authentic copy of the map of the property owned by the company in Rahway, New Jersey? A I think that is an authentic map, yes.

1558

CASE # 1498

Q And you have no doubt that the property that was purchased by Brambill is shown on that map, have you? A I feel pretty sure of it, yes, sir.

Q Well, would you go beyond that and say you were certain it is? A I couldn't say I am certain, no, sir, but I feel sure of it.

Q And you know that he bought property from the company on the 17th of March, 1909? A I can't say that I know that, no.

Q Well, we will try and refresh your recollection. Did you ever see that deed before, People's Exhibit 4? A Yes, sir.

Q And it is a fact then that Brambill did buy a lot known as 381 belonging to the Metropolitan Mercantile & Realty Company? A Yes, sir, that is a fact.

Q So that there is no doubt at all that this man bought this lot and that it was part of the tract of your property in Rahway, New Jersey? A No doubt at all.

Q Now, in looking at this instrument, I ask you, is that your name there, is that your signature there, rather, "Attested L. C. Collins," on People's Exhibit 4? A That is my signature, yes, sir.

Q You were a lawyer at the time this deed was drawn? A I was a lawyer, yes, sir.

Q And you gave the company legal advice at that time, did you not? A Well, not particularly. I was not the legal

151
CASE # 1498

advisor of the company.

Q Who drew this deed, People's Exhibit 4? A I think it is in the handwriting of the chief clerk we had at that time.

Q The chief clerk? A Yes, I think so.

Q And who compared these deeds or looked over them before they were delivered to the parties to whom they were made out at that time? A Why, the chief clerk, the one that prepared them always did that.

Q Well, you as a witness, you never read the contents of the deed? A No, I didn't read the contents of the deed.

Q As a lawyer you did not deem it necessary to read over any deed that was made out by the chief clerk?

MR. TONEY: I object to that "as a lawyer".

THE COURT: Well, it is redundant. We will strike it out.

Q Well, you did not then look over People's Exhibit 4, did you, before it was handed over or delivered to Mr Brambill?

A I don't recall looking over it. I assigned it.

Q Did you observe the date of the deed as the 17th of March, 1909? A No, I don't recall having observed that.

Q Did you observe that the acknowledgment is dated the 27th day of February, 1909? A I do not, but I am inclined to think that was a mistake, I think that was meant for March.

Q You think it was meant for March? A Yes, because the date, you see, is prior to that, so it must have been meant for

CASE # 1498

March.

Q I see, the 27th of February was intended for the 17th of March? A Well, the 27th of March is my belief.

Q Didn't you hear the complainant on the witness stand state that it was delivered to him on the 17th of March, 1909, St. Patrick's Day? A I don't recall him saying anything about St. Patrick's Day.

Q Well, you heard him say it was delivered on the 17th of March, didn't you? A Yes, I heard him say that.

Q So therefore the acknowledgment could not be intended for the 27th of March, could it? A If it was delivered that date, but I am not conceding it was delivered on the 17th.

Q You are not conceding that? A No, sir.

Q Now, let's see if there is something you will concede. You were present on the occasion when Atkins made his deed of this property in Rahway to the Metropolitan Mercantile & Realty Company? A Yes, sir.

Q And you were a witness to that instrument, weren't you? A Yes, sir.

Q You read that deed, didn't you? A No, I did not read it. I took it for granted that it was all right. What was done by officers there, they were all honest men, and I took it for granted that they were all right.

Q What is that? A I took it for granted they were all right.

EXHIBIT
1548
CASE # 1498

Q Who were the honest men you refer to? A I say the officers were all honest men, I knew they were honest men.

Q You knew Atkins to be an honest man? A Yes.

Q Who drew the deed, Atkins to the Metropolitan Mercantile & Realty Company? A Very likely the head clerk did that.

Q Was the head clerk a lawyer? A No, he didn't have to be a lawyer to follow forms.

Q Not to draw a deed? Will you explain to his Honor and the jury why in a deed which is made Atkins to the Metropolitan Mercantile & Realty Company, that it is subject nevertheless to a certain mortgage to secure the payment of the sum of \$8375, and has not got in it subject to two mortgages? A As I say, I did not read that, but I take it, that is only an oversight. It was meant to be there, there is no question about that, because it is a matter of record.

Q This million dollar corporation was being run in that way, that these were all oversights? A I say that was clearly an oversight, because it was intended to be there.

Q Now, what was the date when that deed was made? A I don't recall what date it was made.

Q Is it not a fact that it was actually made on the 6th day of July, 1910? A I don't think so. I think it was made earlier than that.

Q Give me your best recollection of that? A My best recollection of that is, it was made during the early part of 1909. That's my best recollection.

1548
CASE # 1498

1

Q During the early part of 1909? A Yes.

Q How long, or when were you indicted by the Grand Jury in this case?

MR. TONEY: I object to that as incompetent, immaterial and irrelevant.

THE COURT: Objection sustained as unnecessary. The Court takes cognizance of that.

Q But as a matter of fact, since that time you have endeavored to refresh your recollection as to the various events that happened in connection with this company's affairs, haven't you? A Of some of the events, yes, sir, not all.

Q Did you in connection with the making of this deed refresh your recollection? A No, I did not, I did not refresh my recollection in regard to that.

Q Let me ask you this: Can you explain to this jury, or by the way, who is Benjamin F. Thomas? A Benjamin F. Thomas is a commissioner of deeds.

Q Employed by whom, on the 12th day of March, 1909? A I don't know he was employed by any one. He has an independent business of his own in 53rd street, he is a hotel keeper there.

Q 53rd street and where? A Near Eighth avenue.

Q Was that near the offices of the company? A It was about eight blocks from the offices of the company.

Q Were you present when Benjamin F. Thomas took acknowl-

CASE # 1498

2

edgement to the deed, People's Exhibit B, which is from Atkins to the Metropolitan Mercantile & Realty Company? A I don't recall whether I was present or not. I couldn't say, presently.

Q When you were a witness to that deed, People's Exhibit B, did you observe whether there was an acknowledgement on that deed at that time or not? A No, sir, I did not observe that.

Q You did not observe that? You just affixed your signature and didn't look at anything else? A I witnessed his signature, yes, sir.

Q But you could not tell whether there was an acknowledgement at that time? A I couldn't say now whether I noticed an acknowledgement then or not.

Q You were thoroughly familiar with all the affairs of the company as Secretary and assistant treasurer at that time? A Pretty well familiar with them all, yes.

Q Can you explain how it comes about that this deed is dated the 12th day of March, 1909, and the acknowledgement to that deed is dated the 6th day of July, 1910? A Yes, I have for that only Mr. Atkins' explanation, which of course I take to be correct.

Q You don't know anything about it yourself, of your own knowledge? A I don't know of my own knowledge why that was not done. I have only his explanation for that.

Q And you yourself didn't know anything whatever about it?

CASE # 1498

3

A About what?

Q About this deed or why this was done, of your own knowledge? A That is to say, as to why it was unexecuted until March, 1909?

Q 1910? A 1909, I think.

Q No, I am speaking of the acknowledgement of the 6th day of July, 1910? A Oh, yes.

Q You don't know of your own knowledge anything about that? A No, I only have what he told me about that. I don't know anything about that.

Q I suppose you know, or really you don't know anything as to why, this was of your own knowledge, it was not recorded until August 31, 1910? A That was an oversight. Mr. Atkins intended to record it but simply did not do it. He intended to record it. There is no question about that.

Q Another oversight? All right.

MR. TONEY: I object to the remark.

THE COURT: Strike out the remark.

Q Well, you do know that foreclosure proceedings were commenced on the second mortgage, the purchase money mortgage on that property, don't you? A Yes, they were commenced.

Q And you do know that the property had been sold by the Sheriff of Union County prior to the recording of the deed to the company? A We did not know it at the time the deed was recorded.

CASE # 1498

Q Well, can you explain how it occurred that you managed to get it on just ahead of the Sheriff's deed, but two days after the sale by the Sheriff? Was that a coincidence only?

A It was a coincidence only.

Q That is all. Now, you had a man by the name of Fox in your employ in March, 1909? A Yes, sir, we did.

Q You had a number of agents? A Yes, sir, we did.

Q And you had Fox? Is it not a fact that you sent Fox up to take Collins over the property in Rahway, New Jersey? A To take Mr. Brambill there, you mean?

Q Yes? A Yes, Fox was sent up there for that purpose.

Q You sent him up there? A Yes, sir.

Q Yes, surely you did, and he was an agent of the company, wasn't he? A He was.

Q And it is equally true that Fox after a subsequent conversation had between you and Brambill, carried the deed to Brambill and received his check? A I take it that is true.

Q And it is equally true that that endorsement on the back of the check is in your handwriting? A Yes, sir, that is true.

Q That is referring to People's Exhibit 3, which reads "Metropolitan Mercantile & Realty Company, L. C. Collins, assistant treasurer." A That is correct, I was assistant treasurer then.

1591
CASE # 1498

Q So that what Collins has stated in that respect is in accordance with your recollection of what transpired? A Yes, what I have stated in every respect is according to my recollection what transpired.

Q Now, you called on him on the first occasion, you say, about when? A About the 8th or 10th of March.

Q And then after that you sent up Fox? A Yes, sir.

Q And then after Fox had seen the complainant and had gone over the property in New Jersey, he reported back to you, Fox reported back to you? A Yes.

Q And then you went up and saw Collins and concluded the final arrangements for the purpose of that property, isn't that true, or Bramvill, I mean? A No, I don't recall having had but one conversation with Mr. Fox at the time we discussed the price then; I don't recall having gone back to see him and I feel sure I did not.

Q You feel sure you did not? A Certainly.

Q You say you didn't see him until six months after that? A About six months afterwards before I saw him again.

Q And then when he called on you six months afterwards, it was simply to discuss the necessity for the completion of the building on Eighth avenue? A He stated that is what he was interested in, that is what he wanted some news about.

Q The only interest he had was to call on you and see about the erection of this building? A That was the only

CASE # 1498

6

one he spoke of at that time.

Q He didn't talk to you at all about his property? A I spoke of it to him, as I said, as soon as he came in there.

Q And then it was in 1910 when he actually took a live interest in his lots? A It was then that he commenced to demand that his lots be released, yes, sir, from the mortgage.

Q And when was it that you discussed with him about giving him a deed of the property? A That is the first conversation I had with him, about the 8th or 10th of March, 1909.

Q Yes, and he had not agreed to buy at that time, for he hadn't seen the property, is that true? A He said he had been considering it for some time. He wanted information and if he went out and liked the property he would buy.

Q Then it was you stated he said he did not need a deed? A Yes.

Q Although he was paying the full purchase price for lot 381? A Surely, and then it was for that reason he insisted upon having it.

Q Why, certainly, and why shouldn't he have it if he paid the full purchase price? There were no instalments to that, isn't that true? A The only reason I gave him why he should not have it --

MR. TONEY: Now, if your Honor please, the question of the District Attorney is assuming a state of facts not proven.

THE COURT: I have been right over that very proposi-

CASE # 1498

tion of law and decided against that contention. I have held, perhaps wrongly, but I have held that the District Attorney has a right to lead and to assume, on cross-examination. I overrule the objection.

Q (Question repeated by the stenographer). A I did not want him to have it then because as I say we were not in position at that time to release any of them from the mortgage, and I so stated that to him. That's the only reason why I did not want him to have it then. He insisted upon getting it. I said "Then if you hold it off record." And he said he would do it until the lots were released; he said he would hold it off record, said he would take it upon those conditions.

Q So that you want his Honor and the jury to believe that Brambill, although he paid the full purchase price, was not entitled to his deed at that time? A He was entitled to it, even then, but we were not in position to give it free and clear, and I so stated it. I did not go there to sell him a lot. I went there to get a loan and I did not want to sell him a lot, in fact, but he preferred it.

Q Is it not a fact that from the instruments on record, particularly People's Exhibit 6, that you could not release any part of that property? A We could have released it, yes, sir.

Q Is there anything within the four corners of that instrument which indicate that you could? A But we had a dis-

1511

CASE #1498

8
tinet understanding with the holder of the mortgage that he would release the second mortgage provided we got an acre of ground released from the first mortgage. He was a man interested in the company and we had that distinct understanding.

Q Don't you know as a matter of fact that that oral agreement is merged in the written instrument and that you could not enforce it? A He was a man of honor, he would have kept it, there is no question about that.

Q That is all.

RE-DIRECT EXAMINATION BY MR. TONEY:

Q Mr. Collins, did Mr. Atkins ever execute any deeds and mortgages or such instruments as that for the Metropolitan Mercantile & Realty Company, at any time?

MR. PRESS: For what? I object to the form of the question.

A He did, yes, sir.

Q You say he did execute deeds and mortgages? A He did, yes, sir, he took them in his own name in the absence of officers of the company who were away at that time.

Q But I say, you must misunderstand me, I say did Mr. Atkins at any time execute deeds or mortgages for the company, execute them? A Not for the company. That was done by the President and Secretary.

Q And was that rule always adhered to?

CASE # 1498

MR. PRESS: I object to that.

THE COURT: He may answer.

A It was adhered to, yes, sir.

Q So that within your knowledge, did he ever execute any such instrument for the company? A No, sir, he did not.

Q And you were the secretary of the company? A I was.

Q And you were the only officer of the company who was authorized to affix the seal of the company to such instruments? A Yes, sir, that's correct.

Q At that time that you were discussing with Mr. Brambill the proposition of releasing his lot from the mortgages on the property, did you know at that time that there was not a releasing clause in the mortgage from Atkins to Wolff? A I did not know at that time that there was no releasing clause in that, because it was intended that it should be there, and I had been informed it was there and I really believed it was there.

Q And did Mr. Wolff himself believe it was there? A He certainly did, because he so stated.

MR. PRESS: I object and ask to strike that out.

THE COURT: Sustained. Strike out the answer. The question was asked and may be repeated. Repeat the question.

(question repeated by the stenographer).

THE COURT: If you can show facts, it may be it

1591

CASE # 1498

would be received.

Q Did you subsequent to that time discuss with Mr. Wolff as to whether or not that mortgage contained all that it was agreed that it should contain?

MR. PRESS: I object. The instrument speaks for itself.

THE COURT: Objection sustained.

Q Did you at any time subsequent to the time that you had the discussion with Mr. Brambill discuss with Mr. Wolff the proposition of releasing --

MR. PRESS: I object as to conversations had with Mr. Wolff.

MR. TONEY: I have not finished the question.

THE COURT: Well, go on and finish the question.

Q (Continuing) Of releasing lots on any part of the property in question from his mortgage?

MR. PRESS: That is binding us down to a conversation had between him and a third party.

THE COURT: I think I am bound to allow it to be answered. It may be answered yes or no.

A I did have such conversation.

Q What did Mr. Wolff at that time state?

MR. PRESS: I object to any conversation had between him and Mr. Wolff as not binding on us at all.

THE COURT: I suppose the theory on which the defend-

1511
CASE # 1498

ant offers this is that it goes to the intention of the defendant.

MR. PRESS: Why does he not produce Mr. Wolff?

THE COURT: Well, I do not know. I will allow the question. That is a matter upon which you may comment before the jury.

Q Did Mr. Wolff agree with you to release lots from that mortgage whenever such lots were being released from the first mortgage? A He did, yes, sir.

Q What did Mr. Wolff say as to that? A Mr. Wolff said that it was the intention, his intention to have that clause in there. It was discussed at the time and it was clearly an oversight that it was not in there, and he said he was still willing to and would at any time carry out the intention of the parties, and release the lots from the second mortgage whenever they were released from the first.

THE COURT: Now, have you anything else you want to show?

MR. TONEY: Not there, your Honor.

Q Now, your business as Secretary of the company --

THE COURT: Now, you see, your time for examining your witness is on your direct examination.

MR. TONEY: There is one point that the District Attorney has touched upon I want to explain.

THE COURT: Well, go on then.

CASE # 1498

Q Your business as Secretary of the company was simply to attest signatures? A That was it, yes, sir.

Q On instruments executed for the company? A Yes, sir, exactly.

Q You did not ever examine the instruments? A No, sir.

Q That is all.

A R T H U R W O L F E, called and duly sworn as a witness on behalf of the defendant, testified as follows:

(Residence 556 West 140th street).

DIRECT EXAMINATION BY MR. TONEY:

Q Mr. Wolfe, what is your business? A I am in the printing business and real estate.

Q About June, 1907, did you know John H. Atkins? A I did.

Q As Treasurer of the Metropolitan Mercantile & Realty Company? A I did.

Q And at that time were you the owner of certain property in Rahway, New Jersey? A I was.

Q And I will ask you if the property referred to in that deed (indicating People's Exhibit 5) is the property that you owned at that time? A It is.

Q Is that the deed that you executed conveying that property to Atkins? A I presume that is a duplicate of the deed.

CASE # 1498

13

Q At the time the negotiations took place for the sale of that property, whom did you understand the property was to be bought by and was to be conveyed to?

Objected to. Objection sustained.

Q To whom was the property to be conveyed? A Well, I dealt with Mr. Atkins.

Q Did you deal with him as an individual in his own right, or as an officer of the Metropolitan Mercantile & Realty Company?

MR. PRESS: Objected to as to the form of the question.

THE COURT: Objection sustained.

Q How much did you sell the property to Mr. Atkins for?

A I believe it was in the neighborhood of twenty-three or twenty-four thousand dollars.

Q How much was paid you on account of that property?

A All in all I ~~xxx~~ believe it was paid, about in the neighborhood of about eight thousand dollars.

Q At that time? A At the time of taking title I be-

lieve there was six thousand dollars passed and there were two additional instalments paid of one thousand dollars each thereafter, to my best recollection.

Q At the time you took back a second mortgage, I believe--

A Yes.

Q Look at that and say whether or not it is a copy of the mortgage which was executed to you upon conveying title to

CASE # 1498

150

14

Atkins? A I guess this is. It is.

Q Now, does that mortgage contain all of the clauses that were intended between you and Mr. Atkins that it should contain? A Well, I only learned at a later date. I always did intend to convey --

MR. PRESS: One moment. I object as to what he intended to do.

THE COURT: Objection sustained.

Q I ask you whether or not it contained all that you and Atkins agreed that it should contain? A It should contain the same clause as in the previous mortgage.

MR. PRESS: One moment.

THE COURT: Well, let it stand. The purpose, Mr. Press, of this testimony is to show that there was an omission from the deed and that this man had the understanding that it could be released.

THE WITNESS: That is right, your Honor.

THE COURT: Now, that is the purpose of it. Now, we have it in evidence. Is there anything else you want to show by this witness?

MR. TONEY: Yes, if your Honor please.

Q Was anything said as to when you were to make the releases from this second mortgage?

MR. PRESS: I object.

THE COURT: What is the difference when he was to do

CASE # 1498

15

it?

BY THE COURT:

Q There was an agreement that you would release from the operation of this mortgage the property in question upon conditions? A There was an agreement, yes, sir.

THE COURT: Now, that is all you want, is it not?

MR. TONEY: Yes, sir, on that point.

CROSS-EXAMINATION BY MR. PRESS:

Q Can you explain why five hundred dollars was the amount mentioned in the deed? A Just a nominal consideration.

Q And these papers were drawn by a lawyer representing you? A They were.

Q And you instructed your lawyer as to what he was to do in connection with it? A I sent these papers down to him and he told me later after this question came up that he made a mistake.

Q I ask you at the time you directed him to draw up the papers? A I told him to make a duplicate of the original mortgage and to embody the same clauses.

Q Who was the lawyer? A Leon Lasky.

Q And he was practicing at the bar? A I suppose he naturally was.

CASE # 1498

J O H N H. A T K I N S, called and duly sworn as a witness on behalf of the defendant, testified as follows:

THE COURT: Now, what do you want to prove by this witness?

MR. TONEY: I want to prove that that property, if he bought it, he simply bought it as trustee for the company, being an officer for the company, that the property was not bought for himself individually, and conversations that he has had with the complainant Brambill.

BY THE COURT:

Q What is your business? A I am an attorney and counselor at law.

Q Were you an agent of the company in question? A I was treasurer of the company.

Q Did you take in your own name title to the property?
A I did, yes, sir.

Q Which was intended to be held by you as the agent or trustee of the company? A Yes, sir.

THE COURT: Now, that is all you want on that point, is it not?

Q The property in question? A Yes, sir.

THE COURT: Now, what else do you want to prove?

BY MR. TONEY:

Q You know the complainant, Brambill, do you? A I do.

Q You heard him testify yesterday? A I did.

CASE # 1498

17

THE COURT: Let me know what you wish to prove?

MR. TONEY: I want to impeach the testimony of the complainant Brambill concerning his testimony of the conversation he claims he had.

BY THE COURT:

Q Well, what conversation did you have with Brambill?

A I had a conversation with Mr. Brambill relative to releasing the lots from the mortgage.

Q What did he say to you and you say to him?

MR. PRESS: I would like to have the time fixed.

Q When did you have this conversation? A The latter part of 1909.

Q Before or after he had bought the property in question?

A It was after the property had been bought.

Q Well, now, what did he say and what did you say? A He stated that at the time the property was purchased Mr. Collins had told him that within a short time thereafter he would have his lot that he had a deed for released from the mortgage, and it had been considerable time and he wanted it done, as it had been long enough and he thought it was time now to have it done and he had come down that day to see Collins about it.

THE COURT: Now, that is all on that point, is it?

MR. TONEY: That is all on that, your Honor.

BY MR. TONEY:

Q Did you have any subsequent conversation? A I had a

1511
CASE # 1498

18

conversation with him about eight or nine months afterwards at his shop up in 135th street.

Q What did he say in that conversation? A I told him at that time when I went in, I told him I had been recently elected President of the company and that I was endeavoring to get a number of the lot holders to pay a certain amount on their unpaid contracts in order that we might redeem the property that had been sold by foreclosure, and that a number of others had agreed to do so, and that we, the Board of Directors, had authorized the officers to make a liberal discount to such persons as would pay up larger sums than they had agreed to pay in their contracts, and Mr. Brambill said to me that he did not want to do that, that Collins had told him when he bought the lots that the thing, his lot, would be released in a very short time and it had been over a year and he did not want to put out any more money, and he said to me, "If you will go and get the other lot holders, stockholders, to put up a sufficient amount of money to get the property back and then come and bring me the deed for the other lot that I bought, with a release clause for the two, then my money will be forthcoming, I have it and I will pay the balance" --it amounted to something like \$200 odd. That was about the gist of the conversation I had in September.

Q You heard Mr. Brambill say that in the first conversation he had with you at the company's offices in 46th street

1561
CASE # 1498

that Collins had told him that the property was free and clear?

A I did.

Q Did he make any such statement as that to you at that time? A He told me Collins told him there was a mortgage on the property and he would have it released in a very short time, and he thought ample time had passed to have that done.

Q Did he make that specific statement? A He made that statement both times to me.

Q Did he make that statement to you, that Collins told him the property was free and clear, did he make that statement?

A He did not, no, sir.

Q Who was present at that conversation, if any one?

A Mr. Lloyd was present at the first conversation we had at the company's office, the first conversation. There was no person at the second.

Q And he was the man that was identified here by Mr. Brambill this morning? A Yes.

Q Did he show Mr. Brambill into your office on that day?

A He brought him into my office on that day.

Q At that time did you have any further conversation?

A Well, yes, we talked considerable about the condition of the company, and I informed Mr. Brambill that we had gotten an agreement from some of the other lot holders.

Q I mean concerning this property, did he say anything further concerning this property? A Well, he said as soon as

191
CASE # 1498

he saw the condition of the company, he would be willing still to wait a while longer before demanding the release, and tried to get me to fix some definite time in future that he might get it.

Q And you left it so? A Well, I told him that the condition of the company, the building was about completed, but that meant that the company would have other demands, and we needed more money because contracts were completed and people were after more money, and I couldn't give him any fixed time.

CROSS-EXAMINATION BY MR. PRESS:

Q This man Lloyd, in what capacity was he in the company at the time you had this conversation? A He was a director.

Q And directors were in the office all day long, were they? A No, only officers were there.

Q Did he have any other employment at that time? A Yes, sir, I think he did.

Q Was he receiving a salary from the company as a director? A He was receiving some commissions from the company.

Q On the occasion that you speak of he happened to be on hand? A Yes, he was there.

CHARLES D. LLOYD, called and duly sworn as a witness on behalf of the defendant, testified as follows:

(Residence South Norwalk, Connecticut).

CASE # 1498

21

DIRECT EXAMINATION BY MR. TONEY:

Q What is your business, Mr. Lloyd? A My business is real estate agent and insurance.

Q About the 1st of December, 1910, do you recall showing the complainant Brambill in to see Mr. Atkins at the company's office, at 46th street and Eighth avenue? A I remember somewhere about the latter part of 1909 or the early part of 1910.

Q Is it upon the occasion that Mr. Brambill referred to in his testimony? A It was.

Q Were you present during any part of the conversation that ensued between Mr. Atkins and Mr. Brambill? A I was.

Q Just state what part of the conversation you heard, if any? A When I showed Mr. Brambill in the office he said to Mr. Atkins, he came down to see Mr. Collins about releasing of his lot. He says that he had purchased two lots and had paid for one and that Mr. Collins had promised that his lot would be released in the first batch of lots that were released on that property; that is, when an acre or sixteen lots were paid for they could be released, and his should be one of the first released.

Q Was all the conversation concerning the lots in question? A Then Mr. Atkins asked him about how much he had paid on the second lot, and he went on to say, then Mr. Atkins, then he turned to me and he said, "Well, I can find out in a minute," and he asked me would I go in the general office and

1579

CASE # 1498

22

look there and see could I find the book, it said in the book "Real Estate, Rahway Property," and bring it in, and he possibly could find out from that book what amount Mr. Brambill had paid on the second lot; I went out and of course left them talking. I went out and looked around for the books on the desk there.

Q Well, when you returned did you hear anything further of the conversation? A Not concerning the lots in question. I simply returned and reported I couldn't find the book in question.

Q That's all.

CROSS-EXAMINATION BY MR. PRESS:

Q You were a director of the company at that time? A I was.

Q That is all.

CHARLES E. PURNELL, called and duly sworn as a witness on behalf of the defendant, testified as follows:

(Residence, 16 West 135th street.)

DIRECT EXAMINATION BY MR. TONEY:

Q Purnell, what is your business? A Insurance inspector.

Q Do you know the complainant Brambill? A I do.

Q On or about the 1st of September, 1910, did you call at Mr. Brambill's place in 135th street and have a conversation with him? A Yes. sir.

157
CASE # 1498

23

Q Will you state, in which he referred to this Rahway property and his purchase of lots there? A Yes.

Q Will you state what Mr. Brambill said to you then concerning these lots? A Among other things he said he wanted to know how the company was progressing, wished to know how soon the building would be finished.

Q What building was that? A 46th street and Eighth avenue, stating that he had purchased two lots from the company at Rahway, for the purpose of helping them out to finish that building, and as soon as the building was finished Mr. Collins had promised him his lots would be released among the first acre which would be released on payment of a certain amount of money.

Q Did he say anything further to you concerning those lots? A No, he simply said there were quite a few rumors around concerning the company and he wanted to know what the possibilities were.

THE COURT: Now, you have that point brought out, have you not?

CROSS-EXAMINATION BY MR. PRESS:

Q He said that Mr. Collins had promised him that as soon as the building was erected he would release his lots in Rahway, New Jersey, among the first? A Among the first batch.

Q But he didn't say to you when Mr. Collins had made that

1572
CASE # 1498

promise to him, did he? A I don't recall that.

Q That's all.

G E O R G E W. A T K I N S, called and duly sworn as a witness on behalf of the defendant, testified as follows:

(Residence 1539 45th street, Brooklyn).

DIRECT EXAMINATION BY MR. TONEY:

Q Mr. Atkins, do you know the complaining witness, Brambill?
A I do.

Q Around about the latter part of March, 1909, at a banquet given by the company to its stockholders, you heard Mr. Brambill refer to that in his cross-examination this morning, did you not? A I did.

Q Did you see him there? A I did.

Q Did you have a conversation with him? A I did.

Q Will you state what that conversation at that time was with Mr. Brambille? A I saw him sitting at a seat with a party with whom I was acquainted, so I went over to him and said "Hello,, I didn't know that you were a stockholder." He said "Yes, I am a stockholder, also a lot holder," he said, "I have purchased two lots from the company." He says to me "You are representing the company, have you any knowledge about the lots out there?" He said "It was told me that my lots would be released and I would be given a deed and the lots would be released." I told him the only thing I knew was that they had

157

CASE # 1498

claimed that when an acre of ground was paid off that so many lots would be released. He said, "Mr. Collins promised me my lots would be released in the first batch of lots." That was the conversation I had up there, that they would be released. That was the gist of the conversation I had with Mr. Brambill at the banquet.

Q Did he at that time refer to the time when Collins told him that? A He said at the time he bought his lots, I don't know just what time, because I didn't know he was even a stockholder until that time I saw him at the banquet.

CROSS-EXAMINATION BY MR. PRESS:

Q But you are perfectly certain he told you that at the time he was getting the lots? A I am not certain of that because I don't know the time he got the lots, the only thing I know is what he told me.

Q You are a brother of the President of the company? A Of the Treasurer of the company and also a representative.

Q And also a member of the Board of Directors?

THE COURT: He said also a representative.

A A representative.

LOUIS W. OSTERWIS, called and duly sworn as a witness on behalf of the defendant, testified as follows:

(Residence 17 East 87th street).

157
CASE # 1498

DIRECT EXAMINATION BY MR. TONEY:

Q Mr. Osterweis, what is your business? A I am an attorney at law.

Q Where is your office? A 200 Fifth avenue.

Q Do you know the defendant, Llewellyn D. Collins? A I do.

Q Did you ever have negotiations with him concerning this Rahway property in question? A I did.

Q Will you state whom you represented at that time? A I represented Mr. Plaut.

Q Who was the owner of the Rahway property? A Yes, sir, I also represented Mr. Wolfe.

Q Will you state the time and place and what was the conversation that you had with Mr. Collins concerning this property?

MR. PRESS: I object to this conversation between Mr. Collins and this gentleman. I do not know what it relates to.

THE COURT: It is not competent. If there is reason for it I would like to understand it. I do not see the propriety of your question.

MR. TONEY: I simply want to corroborate Mr. Collins as to the understanding.

THE COURT: Well, you have some proof tending to show there was an agreement that the property would be released from this mortgage in question. That is not dis-

1575

CASE # 1498

puted, is it, Mr. Press?

MR. PRESS: Oh, yes, undoubtedly, your Honor.

THE COURT: I mean you are not going to disprove it, are you?

MR. PRESS: Why, no, not now. I am not going to attempt to disprove it, but we certainly dispute that there was such a contract entered into, because there is no such contract of record.

THE COURT: You do not get the meaning of my question. ^{They} have offered the witness to show that part of the agreement was that the property would be released, but that agreement was not inserted in the mortgage. Now, you may argue to the jury that there was not, and they will argue that there was such an agreement, as indicative of the good faith and lack of felonious intent on the defendant's part. Now, there is no need of supplementing that testimony by other testimony, if that testimony is not to be disputed?

MR. PRESS: No, your Honor.

THE COURT: It is cumulative, and if it is cumulative, it is within my discretion whether or not to receive it.

MR. PRESS: Precisely, your Honor.

THE COURT: Very well, now, if you are not going to dispute it I will reject this testimony and sustain the

CASE # 1498

objection.

MR. TONEY: Very well, that is all, Mr. Osterweis.

F R E D E R I C K R. M O O R E, called and duly sworn
as a witness on behalf of the defendant, testified as fol-
lows:

(Residence, Brooklyn, New York).

DIRECT EXAMINATION BY MR. TONEY:

Q What is your business, Mr. Moore? A Publisher of the
New York Age.

BY THE COURT:

Q What is that, a newspaper? A Yes, sir.

Q Do you know the defendant? A I do.

Q How long have you known him? A About ten years.

Q Do you know others who know him? A Yes, sir.

Q Do you know his reputation for honesty? A Yes,
sir, I think I do.

Q What is it, good or bad? A Always good, as far as I
have learned.

Q Have you ever heard any one say aught against him?

A Everybody in this community speaks very highly of him.

MR. TONEY: That is all. That is my case with the
exception of a character witness and I think he is just
outside. (Calling).

(The party does not answer).

112
1577

CASE # 1498

THE COURT: Well, now, you rest?

MR. TONEY: Yes, sir.

THE COURT: Any rebuttal?

MR. PRESS: None, your Honor.

THE COURT: Now, both sides rest.

Mr. Toney closed the case on behalf of the defense.

(The Court thereupon admonished the jury in accordance with Section 415 of the Code of Criminal Procedure, and took a recess until two o'clock p.m.)

-AFTER RECESS, TRIAL RESUMED-

Mr. Press closed the case on behalf of the People.

157
CASE # 1498

People
vs.
Llewellyn C. Collins.

THE COURT'S CHARGE.

HON. WARREN W. FOSTER, J.

THE COURT:

Gentlemen of the Jury, the defendant is presumed to be innocent, and you must declare him innocent and acquit him unless the evidence satisfies your minds collectively and individually beyond any reasonable doubt of his guilt. Every presumption is in favor of the defendant and every reasonable doubt must be resolved in his favor.

This case differs from the ordinary case of larceny. Larceny in general is what in common parlance is known as stealing and in law is defined as the taking of personal property from the possession of the owner with the intention of depriving the owner of it. Here the complaining witness voluntarily parted with his money. It is contended by the People that he parted with it because of false representations as to existing facts made by this defendant. If this defendant, with the intention of getting the money of the complaining witness away from him, made representations as to existing facts, which representations in truth were false and untrue, and were known so to be by this defendant, and relying on them the complaining witness parted with his money to the defendant, the defendant in law stole it and is guilty of larceny. If I take your watch stealthily from your pocket, Mr. Foreman, with the intention not of playing a prank upon

157
CASE # 1498

you, but of depriving you of your watch, I steal it and am guilty of larceny. If by false representations as to an existing fact I induce you to give me your watch, and I take it, those representations being untrue and made with the intention of getting your watch, and you relying on them, give me your watch, I steal it quite the same in law as though I put my hand into your pocket, and stealthily remove it.

It is contended here by the People that this defendant represented that certain property in question was free from any incumbrance, that it was in a position to be properly conveyed by the proposed grantor to the complaining witness; that the complaining witness believed it and bought the property and took a deed for it; that he was induced to rely on the representations by the statement, ^{which} it is not claimed to be untrue, that the defendant at bar was a lawyer, who had personal knowledge, and therefore it was unnecessary to go to the expense and trouble of having a search of title made.

If you believe that the intent of the defendant was felonious, that he falsely represented these facts knowing them to be untrue, that they were false statements of existing facts, and that with this felonious intent he secured the money of the complaining witness, you may and should convict this defendant of grand larceny in its second degree, for, I take it, there is no substantial dispute as to the amount of the property.

1500
CASE # 1498

3

The defendant says that he was an officer of the corporation; that this property was mortgaged it is true, and mortgaged under an agreement whereby the property could be made free and clear by the company. Whether that is so or not you must determine from the evidence before you.

Suffice it to say that the gist of this case, for the facts in the main are not in dispute, they are necessarily proved by the People, but there is no substantial dispute about certain of the facts, as I understand it, and if I am wrong I beg to be interrupted; assuming then that certain facts are not in dispute this case resolves itself down into a question of the bona fides of the defendant. Did the defendant intend to steal this money, did he intend to get it by these false representations, knowing them to be untrue or was he acting in perfect good faith as an officer of a company, which unhappily has come to an untimely and untoward end? If his intentions were good and honorable then they were not felonious and there could be no larceny. If, on the other hand they were felonious within the definition that I have given you of the law, convict him of grand larceny in its second degree.

Are there any requests?

MR. TONEY: None, your Honor.

THE COURT: Very well, Gentlemen, then you may retire.

THE SEVENTH JUROR: Your Honor, what bearing has it

159
CASE # 1498

on the case whether he got this money for his own personal use or for the use of the company?

THE COURT: Well, I do not think that is important. The question is whether he got it. What he did with it is not very important.

The jury returned the following verdict:

"We find the defendant guilty of grand larceny in the second degree."

MR. TONEY: If the Court please, I move to set aside the verdict of the jury on the ground that it is against the evidence, against the weight of evidence and upon all the grounds enumerated in Section 465 of the Code of Criminal Procedure, and I also move for a new trial.

THE COURT: Motion denied.

MR. TONEY: Exception. I further move to set the verdict of the jury aside and that the defendant be discharged from custody upon the ground that the Court has no jurisdiction in this case, it not appearing that the alleged offence was committed in the County of New York, and even in the State of New York. There is no testimony in the case.

THE COURT: It is too late, I think, for you to raise that point. You should have raised that upon the trial. If through inadvertence the People

1592

CASE # 1498

have failed, and I do not assert they have, to prove the locus in quo, you should have directed the attention of the Court to that during the trial, while it was yet time to correct it. The motion must be denied.

MR. TONEY: Then I make a motion in arrest of judgment that the defendant be discharged from custody upon the ground of lack of jurisdiction of this Court, because it does not appear in the evidence that the alleged crime was committed in the County and State of New York.

THE COURT: Well, I have already said that you were too late with that objection.

MR. TONEY: Exception, if the Court please.

I hereby certify that the foregoing is a true and correct transcript of the stenographic notes taken upon the trial of the case James S. Lynch Official Stenographer

CASE #1498