



START

414

CASE

INDEX.

	D.	C.
Thomas H. Neilson	3	
John D. Maher	5	
Geo. B. Robertson	8	20
Chas. A. Grabert	26	

COURT OF GENERAL SESSIONS OF THE PEACE,
City and County of New York,
part II.

-----X	
THE PEOPLE	: Before
vs.	: HON. JOHN W. GOFF, R.,
EDWARD LAWLESS.	: and a Jury.
-----X	

Tried, New York, March 15, 1904.

Indicted for False Registration.

Indictment filed November 13, 1904.

APPEARANCES.

DEPUTY ATTORNEY GENERAL CORNELIUS F. COLLINS, for the People,

PATRICK H. LOPTUS, ESQ., for the Defense.

Frank S. Beard,
Official Stenographer.

(After the opening of the Attorney General)

MR. LOFTUS: If your Honor please, at this point, on the opening of the Assistant Attorney General, I ask that the Court take the case from the further consideration of the jury, and that the jury be instructed to acquit.

The Attorney General said that the defendant registered under the name of Donnelly, and he is charged in the indictment with being Edward Lawless, and that he did, on that day, feloniously register in his own name.

THE COURT: I deny your motion, counsel.

MR. LOFTUS: Exception.

MR. COLLINS: Registration in a name other than one's own is a crime, if your Honor please.

THE PEOPLE'S TESTIMONY.

THOMAS H. NEILSON, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. COLLINS:

Q You are Deputy Clerk in the Board of Elections, for the Borough of Manhattan? A Yes, sir.

Q Have you brought with you the official record of persons registered in the Third Election District of the Fifth Assembly District, on the days of registration preceding the general election of 1903? A Yes, sir; that is our official copy (indicating).

Q Is this book which I hand you, the official copy of the registered voters of that district? A Yes, sir; that is the official copy, filed with us by the Inspectors.

Q I would like to have you turn to the alphabet letter D, and see whether or not one James Donnelly was registered from No. 65 Perry street, in the City and County of New York?

A Who do you want?

Q James Donnelly? A I don't see any James Donlin.

4

Q No; James Donnelly? A Yes, sir; James Donnelly;
65 Perry street, second floor, age, 23, New York, State of
New York. Yes, he is here.

Q On what date was he registered, the date of the
month that he registered? A The date of the month?

Q Yes. A He is No 73 on the registry. It don't say
what day of the month it was.

Q Well, does it say what registration day it was?
A No. One of the four registration days.

Q Look in the column marked "date of registration",
on the last page? A Oh, yes, October 16th-- no, October
10th, 1903.

MR. COLLINS: I offer the record in evidence,
if your Honor please.

THE COURT: It is admitted.

(It is marked People's Exhibit 1).

BY MR. COLLINS:

Q Have you with you a map showing the divisions of the
third election of the Fifth Assembly District? A I have.
It is there. That's it, underneath there (indicating).

MR. COLLINS: Will you admit that 65 Perry
street is in the Third Election District of the Fifth
Assembly District of the County of New York?

MR. LOFTUS: Yes; I will admit that.

J O H N D. M A H E R, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. COLLINS:

Q Mr. Maher, state what your official occupation is? A I am Chief Deputy State Superintendent of Elections, for the Metropolitan Elections District.

Q Did you see the defendant at the bar subsequent to the 10th day of October, 1903?

MR. LOFTUS: That is objected to, as immaterial.

THE COURT: Objection overruled.

MR. LOFTUS: Exception.

A I did.

BY MR. COLLINS:

Q Where did you see him? A At the office of the State Superintendent of Elections, 27 William street, New York.

Q State whether or not you conducted an oral examination of him, at that time?

MR. LOFTUS: Objected to.

THE COURT: I sustain the objection.

BY MR. COLLINS:

Q was the defendant sworn before you?

MR. LOFTUS: Objected to.

THE COURT: Objection overruled.

MR. LOFTUS: Exception.

A He was.

THE COURT: That is, as to the form. This is not an indictment for perjury.

MR. COLLINS: My purpose is to show an admission that he did not reside there, if your Honor please.

THE COURT: No. Strike out the answer. I sustain the objection to that question. Just ask the witness what he did, in relation to this defendant.

BY MR. COLLINS:

Q Now, state what you did when this defendant called at the office of the State Superintendent of Elections?

A I asked him to be sworn, and he was sworn.

THE COURT: No. What was done? That is a conclusion.

A (Answer continued) And I held an examination there.

THE COURT: No, no.

BY THE COURT:

Q What did you do? A Do you mean what the actual facts were?

BY MR. COLLINS:

Q Yes. Don't say that he was sworn, but tell what process you went through? A I handed him a copy of the Bible,

and asked him if all the answers that he gave to the questions would be the truth, and the whole truth, and nothing but the truth, and he said they would. And I asked what his name was.

MR. LOFTUS: Objected to.

THE COURT: Objection overruled.

MR. LOFTUS: Exception.

A He said it was Edward Lawless.

BY THE COURT:

Q Were these questions and answers taken down in writing? A No, sir.

BY MR. COLLINS:

Q What else did you ask him? A I asked him how old he was and he said 23 years old; and I asked him where he lived, and he said in Coytesville, New Jersey.

BY MR. COLLINS:

Q Did you ask him any questions relative to 63 or 65 Perry street? A I asked him if he lived there, and he said no.

Q Oh, who was present at that time, Mr. Maher? A Mr. Collins, the Deputy Attorney General. You were there.

Q Anyone else? A The stenographer in the office, but he was not taking memoranda.

Cross examination none.

GEORGE B. ROBERTSON, a witness called
on behalf of the People, being duly sworn, testified
as follows:

DIRECT EXAMINATION BY MR. COLLINS:

Q Where do you reside, Mr. Robertson? A 286 West
11th street.

Q Were you present in the Third Election District
of the Fifth Assembly District in the County of New York,
on the 10th day of October, 1903? A Yes, sir.

Q Mr. Robertson, state whether or not you saw the
defendant at the bar in the Third Election of the Fifth
Assembly District on the 10th day of October, 1903?

A Well, I can't say for certain whether I did or not, wheth-
er I saw him there or not.

Q Didn't you testify before the Superintendent of
Elections, in this city---

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

THE COURT: You had better question further,
Mr. Attorney General.

BY MR. COLLINS:

Q Do you remember testifying in relation to this defendant,

before the Superintendent of Elections?

MR. LOFTUS: Objected to.

THE COURT: No; you must question further.

BY MR. COLLINS:

Q Were you present on that day? A Yes, sir; part of the day. I was not there all day.

Q Were you present at a time when one Donnelly was registered, James Donnelly? A Yes, sir; James Donnelly.

Q Now, I want you to tell the Court and jury whether or not this was the man that was present, and who registered as James Donnelly?

MR. LOFTUS: Objected to.

BY MR. COLLINS:

Q Who was present when that name was registered?

A Well, I can't tell everybody that was there.

Q Well, tell some people that were there? A Well, the inspectors were there, some of them. I don't remember whether all of them were there or not; and several others were around. I don't know who was there. I can't remember.

Q Was that man there then (indicating)? A He was one of them, yes, that was there.

Q Did you hear him say anything at the time that the man, giving the name of James Donnelly was registered?

A Yes, sir; I saw him take down the man's name, and all the questions that he answered.

Q Did you hear Donnelly asking his age and residence?

BY THE COURT:

Q That is the man that gave the name of Donnelly?

A Yes. The man that gave the name of Donnelly, yes. I heard him asked all the usual questions, what his name was, and where he resided, and how long he had lived in the State, etc.

BY THE COURT:

Q Was this witness in the polling place in any special capacity?

BY MR. COLLINS:

Q In what capacity were you at the polling place?

A Well, a kind of a watcher.

Q For a political party? A Yes, sir.

Q And you were there for the purpose of watching the persons registered? A Yes, sir.

Q You stated that you saw the gentleman who stood up in Court, just now, and whom I indicated, Mr. Grabert, put down the various answers in the books of registration, upon the registration of the man who gave his name as Donnelly?

A I suppose he did. I wasn't looking over his shoulders.

He was one of the inspectors, and it was his duty.

THE COURT: No. Never mind about his duty.

BY THE COURT:

Q Did you see the inspectors write in their respective books of registration, in response to the answers given by this man called Donnelly, at the time?

BY MR. COLLINS:

Q Did you see the Inspectors of Election write the answers given by the man called James Donnelly in the book of registration used by the Inspectors? A I saw them writing something in the book.

Q And was the something that they wrote written subsequent to the statements made by the man that gave the name of Donnelly? A Yes, sir; they asked him questions, and he would answer, and they would write.

Q. Now, after the answers had been registered by them, did you see Grabert do anything else, the man just pointed out in Court by me?

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

BY MR. COLLINS:

Q One of the Inspectors of Election, who just now stood up in Court?

MR. LOFTUS: Objected to.

THE COURT: Objection overruled.

MR. LOFTUS: Exception.

A What do you mean?

BY MR. COLLINS:

Q I mean did he leave his place, and go out and speak to the man who gave his name as Donnelly? A I saw him get up and step outside.

Q Well, did he speak to anyone, when he stepped outside? A Well, he called to someone, to somebody, but whether-- but that was all. I didn't hear him say anything else.

Q Well, who was that somebody? State whether or not it was the somebody who gave his name as Donnelly? A It was to the somebody who gave his name as Donnelly.

Q It was? A Yes, sir.

Q Did he leave the polling place, and go outside, the Inspector, Grabert? A Yes, sir; he went outside of the door.

BY THE COURT:

Q Out on the street? A Yes, sir.

Q And where was the man then who gave the name of Donnelly? A He was on the street, too, about 25 feet away from him, somewhere about there, about the next store.

BY MR. COLLINS:

Q Did you follow the Inspector out of the polling place? A Yes, sir; I stood in the doorway.

Q You were inside of the polling place when you saw the man register as Donnelly? A Yes, sir. But, if I am not actually mistaken I went out before he did.

Q And you saw the Inspector who stood up in the Court room go out and speak to the man who registered as Donnelly?

A Yes, sir. He said something to him, but I don't know what it was; and that was all.

Q And how far was that from the place where the registration took place that he spoke to him? A Well, about the next store.

Q About how far away? About how many feet? About?

A Oh, I don't know. About 20 or 25 feet, or so.

Q Away from the store where the registration place was? A Yes, sir.

Q Now, did you, subsequent to that time, see the man who registered as Donnelly? A Never saw him until he came in there.

Q No. I mean after that time, did you see the man that then registered as Donnelly? A Afterwards.

Q After the 10th of October, when this registration took place, did you see that man again, who registered under

the name of Donnelly? A Well, I saw somebody who looked like him.

Q Did you see a man who you swore was that man?

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

THE COURT: No. You must examine further on that point.

MR. COLLINS: If your Honor please, when we get an unwilling witness, it is quite hard to do so.

THE COURT: I know, but I cannot rule upon that, as a matter of law.

BY MR. COLLINS:

Q State whether or not you were subpoenaed to the office of the Superintendent of Elections, after that date?

MR. LOFTUS: Objected to.

THE COURT: Objection sustained.

BY MR. COLLINS:

Q Did you see the man who registered under the name of Donnelly, in the month of October or November, 1963?

MR. LOFTUS: Objected to, as already asked and answered.

BY MR. COLLINS:

Q After that day of registration?

MR. LOFTUS: Objected to, as before.

THE COURT: Objection overruled.

MR. LOFTUS: Exception.

A I don't know whether I saw him or not.

BY THE COURT:

Q Never mind your doubts, sir. The question is, did you see him? A I might have seen him.

THE COURT: Well, then, answer. Never mind your doubts now. The question is, do you know the fact? Did you see him or not.

A I saw somebody that looked like him.

THE COURT: Mr. Attorney general, question the witness on that point.

BY MR. COLLINS:

Q State whether or not you did see the man subsequent to that 10th day of October? A Well, I saw a man that looked like him.

THE COURT: That does not answer the question, sir.

BY MR. COLLINS:

Q Well, did you see the man? A Well, yes, I saw him.

Q You saw him? A Yes, sir.

THE COURT: And why did you not state that at

first?

BY MR. COLLINS:

Q Well, where did you see him? A Well, down in Mr. Morgan's office.

Q Who is Mr. Morgan? A The Superintendent of Elections.

Q And, when you saw him, did you announce that he was the man?

MR. LOFTUS: Objected to.

THE COURT: Objection sustained.

MR. COLLINS: Question withdrawn.

BY MR. COLLINS:

Q Is this the man at the bar, the man that you saw at Mr. Morgan's office, and the man that you identified as having registered under the name of Donnelly (indicating the defendant)? A Well, I couldn't say for certain.

THE COURT: No. Stop. Your question is somewhat ambiguous. By the examination of this witness, you have reached the point where the witness has testified that, at Mr. Morgan's office, he saw the man that he saw on the 10th of October, register under the name of Donnelly. He has testified to that. Now, proceed from that point.

BY MR. COLLINS:

Q Is the man in Court whom you saw on that day, that you refer to, in Mr. Morgan's office? A Well, I couldn't say for certain that he is.

Q You mean by that that you don't remember the man that you saw in Mr. Morgan's office? A No; I didn't know the man. Never saw the man before.

THE COURT: No; it is not necessary to go into those explanations.

BY MR. COLLINS:

Q You mean by that---

THE COURT: No. One moment.

BY THE COURT:

Q Mr. Witness, you have sworn that the man that you saw in Mr. Morgan's office, on a date subsequent to the day of registration, was the man who, you say, registered under the name of Donnelly. Do you recognize that answer?

A (No answer).

Q Answer. A Yes, sir; I said that.

THE COURT: Now, Mr. Attorney General, start from that point to examine the witness.

BY MR. COLLINS:

Q And how long subsequent to the 10th day of October was it that you saw the man whom you recognized as the man who had registered under the name of James Donnelly?

A What day was it?

BY THE COURT:

Q How long afterwards was it? A Well, I don't remember the time when I was subpoenaed.

Q Well, was it a week, or two weeks, or three or four weeks? A Down to Mr. Morgan's office?

BY MR. COLLINS:

Q Yes. Was it before election? A No; I think it was after election. I won't be sure. I don't remember when it was. You ought to know.

Q But, at that time you recognized the man whom you had seen, whom you saw there---

THE COURT: He has already testified to that sufficiently, I think.

BY MR. COLLINS:

Q Will you describe that man as best you can?

MR. LOFTUS: Objected to.

The Court: No, it is not necessary, at this point.

BY MR. COLLINS:

Q Do you know the man that you saw at that time in Mr. Morgan's office? A No, sir.

Q Could you tell him again, if you saw him? A I don't

know whether I could or not.

Q How long a period of time were you looking at him on the day of registration? A About the time that he was in there.

Q Well, how long would that take? A Oh, I don't know, I think there were one or two ahead of him in the line; I don't remember.

Q Well, did you see him all that time? A Yes, sir; I sat right there.

Q How long a period of time was used up at that time?

THE COURT: It is not necessary, Mr. Attorney General, he identifies him positively. He remembered the man and saw him again in Mr. Morgan's office, and identified him there. He has testified to that.

BY MR. COLLINS:

Q Was there anybody else present at that time, in Mr. Morgan's office?

THE COURT: But this man?

BY MR. COLLINS:

Q But this man? A Yes, sir, Mr. Maher was there.

Q Was I there? A There was no smooth-faced man there, only Belmont.

Q Well, I had a mustache at that time? A Yes, I remem-

ber you now. You had a mustache then, and hadn't any now.

Q Well, was there anybody else besides Mr. Maher and myself and yourself and the individual whom you identified as the man who registered? A I think Mr. Belmont was there. I won't be sure.

Q But the man whom you called Belmont you knew well?

A Yes, sir.

Q And he is not the man whom you identified as the man who registered? A No, sir.

CROSS EXAMINATION BY MR. LOFTUS:

Q One moment, On that day, in the Third Election District of the Fifth Assembly District, you represented one of the political parties; did you not? A Yes, sir.

Q Looking out for those interests there? A Yes, sir.

Q And that party was the Republican party, was it not? A Yes, sir.

Q And you are an active and enthusiastic Republican, are you not?

THE COURT: No, no. I exclude the question. It matters not what party it is, counsel. If it does appear to be material or relevant at all, I will

permit you to recall him, and ask him any question that you may think proper, under such circumstances. At the present time, it does not seem to me to be at all material.

MR. LOFTUS: Will your Honor permit me to show why I think it might be material?

THE COURT: Not at this stage of the case.

BY MR. LOFTUS:

Q You have said that you visited, subsequent to election, the office of the State Superintendent of Elections?

A Yes, sir.

Q And you saw a man there, who you, at that time, said was the man who had registered as Donnelly, on the 10th of October? A Yes, sir.

Q Now, Mr. Robertson, are you absolutely sure now--- you appear to have been sure, at that time--- but are you absolutely sure now, Mr. Robertson, that the man that you saw in the Superintendent's office on that day, subsequent to registration, was the man that you say registered as Donnelly; are you absolutely sure now? A I guess I am.

Q Never mind what you may have said at that time. What do you say now? A Well, I swore to that thing then, and I suppose I will have to stand for it now.

BY THE COURT:

Q The question of counsel is, whether what you then swore to was true?

THE COURT: Is that what you are aiming at, counsel?

MR. LOFTUS: I want to be sure whether he is now sure that the man that he identified in Mr. Morgan's office was Dennelly?

A Well, if---

THE COURT: No, no.

BY MR. LOFTUS:

Q Well, are you sure now? A Well, I wouldn't know the man now if I saw him.

THE COURT: Strike out the answer.

BY MR. LOFTUS:

Q Might you not have been mistaken when you were in Mr. Morgan's office that day? Might you not have been mistaken? A I might have been, yes.

Q And didn't you, as matter of fact, hesitate some time on that occasion, in Mr. Morgan's office, to identify the man to whom they called your attention?

MR. COLLINS: Objected to, as leading.

THE COURT: Objection sustained. That is very leading, with this witness, counsel.

BY MR. LOFTUS

Q Now, how long were you making that identification, Mr. Robertson? A As soon as I went in.

Q Then you didn't experience any difficulty? A No, sir; not at all.

Q Now, you had never seen the man who registered as Donnelly, before the day of registration? A No, sir.

Q And you didn't see him for more than two or three minutes on that occasion; did you? A Oh, yes; a little longer than that; probably ten minutes, or more.

Q Why, how many were there, in line? A Oh, I don't remember how many were in line.

Q Well, your attention was not called to him when he came in? A No.

Q So you didn't notice him then? A Well, I looked at him and saw him in the line.

Q But your attention was not specifically directed to him? A Well, I saw that he was a newcomer, and I naturally looked at him, to see who he was.

Q Did you keep your eye closely on him, while he was standing there? A Well, I suppose I had my eye on him most of the time.

Q But you didn't give him any particular examination?
A No, sir.

Q And you are not absolutely sure that you ever saw him since; not absolutely sure that you ever saw him anywhere since, not even at Mr. Morgan's office? A Well, I knew him then, yes.

Q But you have already said, on cross examination, Mr. Robertson, you have already expressed some doubt on that point. Now, let us see if you are positively sure that you ever saw the same man again. Are you sure now? Not what you were sure of, at Mr. Morgan's office, but what you are sure of now? A Well, I don't know/ I don't know how to answer that question. I was sure then, and you want to know if I am sure now?

Q Yes. Well, to put it in another way, mightn't you have been mistaken that day? A I answered that once before.

Q Well, what was that answer? A That I might have been mistaken.

Q Well, now, did you have any assumptions in your mind, or ideas in your mind, as to what particular ticket the person registered as Donnelly might vote?

MR. COLLINS: Objected to, as incompetent.

THE COURT: Objection sustained.

MR. LOFTUS: Exception. If your Honor please, I

will not be able to follow your Honor's requirements in that line any further, unless your Honor allows me to say a word.

It is this, if your Honor please: My questions were intended to show that this witness was an active Republican, and that he might have assumed, at that time that a man named Donnelly would be likely to vote the Democratic ticket.

With those facts, with that fact, and that possible assumption in his mind, that might have led him to make an identification in Mr. Morgan's office, which now, some months after election, he might be disposed to regard more harmless and less passionately. There is an element of partisanship in his first identification, I think.

THE COURT: No. We have not reached that point in the trial, I think, that it is material or proper to inquire what this witness had in his mind as to the nature of the ticket that the man Donnelly intended to vote. I do not see that that has anything to do with the question here at all.

MR. LOFTUS: Only as to his first identification, which might possibly have been the outgrowth of poli-

tical enthusiasm.

THE COURT: Oh, we are dealing now, counsel, with the fact that a man was identified by this witness, in Mr. Morgan's office, but we do not know who he was. We have not reached beyond that point, yet.

MR. LOFTUS: Well, that is all, for the present.

C H A R L E S A . G R A B E R T, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. COLLINS:

Q Mr. Grabert, where do you reside? A 266 West 11th street.

Q What is your occupation? A Printer.

Q How long have you resided in that neighborhood?

A Seven or eight years.

Q You know one Edward Lawless? A Yes, sir.

Q How long a period of time did you know him? A Well, I knew him probably about four to five years ago, for a period of two months.

Q Well, is the defendant at the bar Edward Lawless?

A I think he is, yes.

THE COURT: No, no.

BY THE COURT:

Q Is he? A Yes, sir.

BY MR. COLLINS:

Q Is he Edward Lawless? A Yes, sir.

Q You say you knew him four or five years? A Ago,

Q Ago? A Yes, sir.

Q Well, four or five years ago, did you see him daily?

A No. Maybe two nights a week, for the period of a couple of months.

Q Did he live in the same neighborhood that you did?

A Well, I don't know where he lived.

Q Did you meet frequently in the same neighborhood?

A Yes; once or twice or week, in the pool room.

Q Where you played the game of pool? A Yes, sir; billiards and pool.

Q And how many times did you see him? A About twice a week.

Q For about how long? A For about two months.

Q And, after that, how frequently did you see him?

A I didn't see him at all, after that.

Q When did you next see him after that? A It was in McCullagh's office.

Q In whose office?

A The Superintendent of Elections.

Q Were you one of the Board of Inspectors?

A Yes, sir; I was one of the Board of four inspectors.

Q In the third election of the Fifth Assembly District?

A Yes, sir.

Q Were you present on the 10th day of October, 1903?

A Well, yes; I was Inspector of Election, yes.

Q Were you present at the time when a man registered, giving his name as James Donnelly? A Yes, sir.

Q Did you make entries in your books, in answer to the questions that were put to that man called, or who named himself, James Donnelly? A yes, sir; the same as everybody else that registered.

Q (Question repeated). A Yes, sir.

Q Did you see the man at all? A No, sir.

Q Didn't you speak to him at all? A Not then; no, sir.

Q When did you speak to him? A Well, after the party that registered -- after he registered, a party had said that it looked like Edward Lawless, and I called him, and he didn't answer.

Q Well, you saw the man that registered as James Donnelly leave the room? A Yes, sir.

Q And you followed that person out; didn't you? A Not followed him out; no, sir.

Q You walked out after him? A We walked out to the door; we had a custom to do that. It was immediately on top of the door. I stepped outside of the door, when nobody else was in the place to register.

Q And you walked up towards him? A No, sir; I went out to the door.

BY THE COURT:

Q Did you keep in view the identical person that had just registered under the name of James Donnelly? A No, sir; he had his back to me.

BY MR. COLLINS:

Q But did you keep his back in view? A Yes, sir.

BY THE COURT:

Q Now, I said the person. I ask you again, did you keep the identical person in view that had just registered under the name of James Donnelly? A Yes, sir.

BY MR. COLLINS:

Q Did you speak to him? A I called out.

Q After you called out, did you speak to him?

A That's what I called out.

Q What did you call out? A I said, "You wouldn't vote on that".

BY THE COURT:

Q How far was this person away? A Next door, walking east, on Bleecker Street.

BY MR. COLLINS:

Q Did you subsequently identify that --

THE COURT: No.

BY THE COURT:

Q When you called out the words that you say you did, did the individual turn back to you? A No, sir.

Q Did he make any response at all? A No, sir. He kept on going east, walking away.

BY MR. COLLINS:

Q You want the jury to understand that you at no time stood still, both of you, when you got outside? A I stood at the door, and called it out, and then afterwards I probably stood there until somebody else came along.

Q Did he stand still? A No, sir; he kept on walking away from me.

Q Didn't you look up from your book, before he left the polling place? A No, sir.

Q After that day, after the 10th of October, did you see the man who registered as Donnelly? A No, sir.

Q Not at all? A No, sir.

Q Were you present in the office of the Superintendent of Elections? A I was there one day; yes.

Q When Mr. Maher was present? A Yes, sir.

Q When I was present? A I don't know, sir. I ain't sure.

Q You don't know me at all? A I ain't certain about it; no, sir.

Q You don't remember ever having seen me before?

A I ain't certain; no, sir.

Q Did you see the defendant at the bar in Mr. Morgan's office? A Yes, sir.

Q Were you sworn, at that place? A Well, I ain't certain; I don't remember.

Q In Mr. Morgan's office? A I ain't certain. I don't remember.

Q Didn't you appear before the Grand Jury? A Yes, sir.

Q In this building, upstairs?

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

THE COURT: Objection sustained.

MR. LOFTUS: Exception.

A Yes.

BY MR. COLLINS:

Q And you were placed under oath, before the Grand Jury; weren't you? A I think so; I am not certain; I don't remember.

MR. LOFTUS: Objected to.

THE COURT: Allowed.

MR. LOFTUS: Exception.

BY MR. COLLINS:

Q Now, I ask you again whether or not, since the 10th day of October, 1903, you saw the man who registered as Donnelly? A No, sir.

Q If your recollection were refreshed on that subject, you think that you could think any more clearly about it?

A No, I don't think I could.

Q Do you remember being asked this question, before the Grand Jury --

MR. LOFTUS: Objected to.

THE COURT: No. You must proceed further, Mr. Attorney General. There is not sufficient of this witness's examination to warrant me in concluding that he is an adverse witness. You must proceed further.

BY MR. COLLINS:

Q How long a period of time did it take to register this man, in the polling place? A Well, if a man is bright, you can probably register him in two minutes, and if not, in three or four or five minutes.

Q Well, getting down to this particular man, how long did it take to register him? A That I don't recollect.

Q You were Chairman of the Board of Registration?

A Yes, sir.

Q Did you put the questions, when this man, James Donnelly, was registered? A I am not certain.

Q Don't you recollect whether you did or not? A No, sir. I think it was just after I came back from supper, and, when anyone goes away, the others take care of his book, at the same time.

Q And where was this polling place? A It was a piano store, and had a double door, leading to the street, and, on the side of the door was a show window, very well lighted; and we sat at a table near the door, and the pianos were crowded back, and the table had leaves on it, and I sat with my back to the door, and the other Inspectors were there and there (Illustrating), and an officer and a McCullagh Deputy were right at the side of the door.

Q So that there was no difficulty in seeing whoever came into the door? A Well, the Inspector on that end (Indicating) was looking right at the party registering, and, if I was registering, I would have to turn around, and look up at the person registering.

Q Well, did you never look up, and look at the party? A Well, in some instances. If I knew the party, I might give them the Hello. When he first come in, usually I would look at him, and, if he hesitated to answer, I would look up.

Q And then at some period of time when you were asking these questions, you were looking the man straight in the face? A Well, if I asked him his name, and there was no hesitation in answering the questions, I probably would not look in his face.

Q Well, when you saw Lawless, subsequent to the time

when you saw him frequently, for a period of two months, did you know him? A Well, I had an idea that it was him, when I saw him in the Deputy Chief's office.

Q Well, you knew it was Lawless, didn't you? Didn't you recognize him? A Well, when he said he was Lawless, I was sure.

Q Well, aren't you sure now that this is Lawless (Indicating the defendant)? A Yes, sir; I am sure that it is Lawless.

Q Well, you did see him in Mr. Morgan's office?
A Yes, sir.

Q Do you recollect whether or not you identified him, at that time, as the individual who presented himself for registration?

MR. LOFTUS: Objected to.

A I said no, he was not the man.

Q You said no, at the time? A Yes, sir.

Q Didn't you swear that he was? A Later on, I might have. Not at that time, though.

Q Didn't you swear, before Mr. Maher, on that day, while I was present, or while the representative of the Attorney General was present, that this man, the defendant at the bar, was the man who registered before you, and gave the name of James Donnelly?

MR. LOFTUS: Objected to, as before.

THE COURT: Objection overruled.

MR. LOFTUS: Exception.

A I said no, at least, that he was not the man.

Q But didn't you afterwards say that he was the man?

A Yes, sir; I think so. I answered the questions that was put to me.

Q Well, did you, at that time, in answer to a question asked you by the representative of the Attorney General, before the Deputy Superintendent of Elections, say that you knew he was Lawless, but that you wanted to cover him, and did not want to see him get into trouble?

MR. LOFTUS: Objected to.

THE COURT: Objection overruled. I think that, from the character of the examination of the witness, he has shown a condition that warrants the Attorney General in putting certain questions to him.

A Well, I ain't positive whether I did or not.

THE COURT: Strike out that answer.

BY MR. COLLINS:

Q Well, I want you to say whether or not you stated, in answer to a question put to you by the Attorney General there, that the reason why you first did not identify Lawless was that you wanted to protect him from the penalty of his offence?

MR. LOFTUS: Objected to.

THE COURT: Objection overruled.

MR. LOFTUS: Exception.

A Well, I was taken in there, and I seen Lawless t
and they asked me was he the man, and I said I didn't
think so. Why I got my idea that --

THE COURT: No, no.

BY MR. COLLINS:

Q Well, then, you came back afterwards? A Yes, sir.

Q And you heard the testimony of someone else?

A Yes, sir.

Q You were confronted with the man Robertson, who was on
the stand, awhile ago? A I wasn't confronted with him.
He was there.

Q And then who did you say was the man that registered
before you, and gave the name of James Donnelly? A Well,
after Robertson said that was the man, I knew he had more of
an opportunity of seeing the man than I did.

THE COURT: No. Never mind what you knew. What did
you say?

BY MR. COLLINS:

Q And didn't you say, then, that he was the man who
registered as James Donnelly?

MR. LOFTUS: Objected to.

THE COURT: Allowed.

MR. LOFTUS: Exception.

A Yes.

BY MR. COLLINS:

Q And didn't you, then, say that the reason why you did not first identify him was because you didn't want to expose him to the penalty for his offence?

MR. LOFTUS: Objected to.

THE COURT: Allowed.

MR. LOFTUS: Exception.

A No, sir; I don't recollect that.

Q Do you recollect testifying before the Grand Jury?

A I think so; yes.

Q Now, I will ask you if this question was not put to you, before the Grand Jury, and if you didn't make this answer: "Do you know Edward Lawless? A. Yes, sir."?

A Yes, sir.

Q Now, I will ask you if you remember being asked this question, and giving this answer: "Q. Did he register in the Third Election of the Fifth Assembly District on the 10th of October of this year? A. Yes, sir". Do you remember that?

MR. LOFTUS: Objected to.

THE COURT: Objection overruled.

MR. LOFTUS: Exception.

A No; I don't remember that.

BY MR. COLLINS:

Q Do you remember this question and answer: "Q. What name did he give? A. James Donnelly"?

MR. LOFTUS: The same objection.

THE COURT: Allowed.

MR. LOFTUS: Exception.

A I testified that a James Donnelly registered.

THE COURT: No, no. Answer the question.

BY THE COURT:

Q (Question repeated). A No, sir; I don't remember that.

BY MR. COLLINS:

Q Do you remember this question and answer: "Q. Did you know his name was James Donnelly, when he registered?

A. No. The last thing, I looked up, and recognized him, and then I went outside, and called him, but he didn't come back"?

MR. LOFTUS: Objected to.

THE COURT: Allowed.

MR. LOFTUS: Exception.

A Well, I remember saying that I went out, and called him, and he didn't answer.

BY MR. COLLINS:

Q That he went out? A That I did; that I walked to the door; and I was right by the door.

Q Do you remember being asked this question, and giving this answer: "Q. But you know that he is Lawless; do you?

A. Yes, sir; pretty sure of it?" A Well, I gave that answer; yes.

Q You answered that you were sure that it was Lawless? A That I seen in the Chief's office?

Q No. That you knew that he was Lawless, the man that registered under the name of James Donnelly. "Q. But you know that he is Lawless, do you? A. Yes; pretty sure of it?"

A No, I don't remember that.

Q You don't remember that? A No, sir.

Q Mr. Grabert, do you remember being asked this question: "Q. Mr. Grabert, you were down before the Superintendent of Elections; weren't you? A. Yes." Do you remember that? A Well, I must have answered yes to that.

Q "Q. And were you examined there before him? A. Yes, sir." Q. When you were asked to tell your first story, you told a story contrary to what you have told here; didn't you? A. Well, I didn't answer positively that it wasn't him.

"Q. Didn't you deny that you knew the man, and deny that he was Lawless, and only after examination say that you desired to protect him, when you said that, and that you feared being arrested yourself, and would, therefore, tell the truth? A. Well, not exactly that. I didn't want to swear positively that it was him, because I didn't look up,

and, when I looked up at him, it came to my mind that it was Edward Lawless. From what I hear, he has been away in Elmira Reformatory for two years or more, and was three years ago that I knew him."

THE COURT: No, no; strike that out.

MR. LOFTUS: I object to that entire question, as immaterial, irrelevant and incompetent, and move to strike it out.

MR. COLLINS: I consent to that, and would not have read it, if I had seen what was in it.

THE COURT: I sustain the objection. Strike it out.

BY MR. COLLINS:

Q Do you remember these questions being put to you by a juror, and these answers being given --

MR. LOFTUS: Objected to, if your Honor please.

It does not seem to me that any proper foundation has been laid.

THE COURT: I am inclined to agree with you. I think, Mr. Collins, that you have not laid sufficient foundation for these questions and answers.

BY MR. COLLINS:

Q Mr. Grabert, is your recollection of all of the facts --

THE COURT: Mr. Collins, you should get to the gist of this case as rapidly and directly as possible.

Stand one side, please.

BY THE COURT:

Q Now, what is your name? A Charles A. Grabert.

Q Grabert, look at the defendant at the bar. Now, look at him. You recognize that you are under oath? A Yes, sir.

Q Do you? A Yes, sir.

Q Are you prepared to swear -- do you swear, now, that the defendant at the bar is the man that you saw go out of that polling place, and whom you followed to the door?

A No, sir.

Q Will you swear that he is not the man? A Yes, sir. If I'm not sure that he is the man, I will swear that he is not the man.

Q No. I don't want any explanation from you. Do you swear, now, that the defendant is not the man that you went after, in the polling place, and called to him, "You won't vote under that name"? Will you swear that the defendant is not that man? A Yes, sir.

THE COURT: Now, you may proceed.

BY MR. COLLINS:

Q Now, do you remember swearing to a contrary state of facts to what you have sworn to, now? A Yes; I think I did.

Q Now, you swore to a contrary state of things, before the Grand Jury, didn't you?

1

A I don't remember about that. I don't remember whether I swore then/or not.

Q Now, then, let me see if I can refresh your recollection on that subject. You remember these questions being put to you by a juror, and the answers following:

"Q You do now positively swear that Mr. Edward Lawless was the man who came there and registered on that day?

A Yes, sir.

"Q You are positive of that? A Yes, sir."

You remember being asked those questions and giving those answers? A No, sir.

BY THE COURT:

Q No, what? A No; I don't remember that; I don't remember those questions.

BY MR. COLLINS:

Q You remember swearing that Edward Lawless was the man who registered as James Donnelly before the Grand Jury?

A No, sir.

Q Do you remember what you swore to there? A Well, no, I don't remember. I was in and out, three or four times.

Q Well, what was it you swore to when you were called before the Grand Jury and were asked the questions relative to this case? A Well, I don't remember what they were.

Q Were you asked your name? A Yes, sir.

Q Were you asked if you knew Edward Lawless? A Yes, sir.

Q Were you asked whether or not Edward Lawless was the man who registered as James Dennelly? A I think I must have been. I don't remember all the details of it.

Q Well, do you remember any of the details of it as to whether or not you swore, at that time, that Edward Lawless was the man who registered as James Dennelly, and that you looked up and saw him? A No; I don't remember that.

Q Do you remember being asked the question by a juror:

"Q You are positive of that? A Yes, sir."

Do you remember being asked that? A No, sir.

Q And do you remember being asked this question:

"Q And do you swear to it? A Yes. As I said before the only doubt that was in my mind about it was that when I went outside and called him, he failed to answer?"

Do you remember making that answer? A No, sir; I don't remember that. I claimed before that that was the doubt in my mind.

THE COURT: No. Just answer the question. And strike out the latter part of the answer. Mr. Attorney General, ask this witness if he will now swear, under

oath, whether or not he ever swore before, at any time, or at any place, before any officer or body, that Lawless was the man who registered as James Donnelly.

MR. COLLINS: I will adopt your Honor's question.

(The question is repeated on behalf of the Attorney General, by the stenographer.)

THE COURT: Now, repeat that question carefully, Mr. Stenographer. And consider it carefully, witness, and remember what it means to you.

(The question is repeated by the stenographer).

A No, sir.

BY MR. COLLINS:

Q No, sir, what? What does that answer mean? A That I won't swear that I didn't swear so.

BY THE COURT:

Q You will not swear that you did not swear that Lawless was the man that registered under the name of James Donnelly; is that the point, witness? A Yes. But I can explain.

BY MR. COLLINS:

Q Well, did you swear before, that Edward Lawless was the man who registered under the name of James Donnelly?

A I don't remember whether I did or not.

Q Did you swear to anything before the superintendent

of Elections?

MR. LOFTUS: Objected to.

THE COURT: Objection overruled.

MR. LOFTUS: Exception.

A I don't remember.

Q Did you swear to anything before the Grand Jury?

MR. LOFTUS: Objected to.

THE COURT: Allowed.

MR. LOFTUS: Exception.

A Well, I can't remember what was asked, and what was not asked.

Q Let me ask you, Mr. Grabert, whether you know that making a statement wilfully false on that stand, would subject you to a prosecution for perjury? Do you know that? A No, sir, I don't.

BY THE COURT:

Q Do I understand you correctly, witness, to say that you do not know that, if you swear falsely on the witness stand, now, that you will not be liable to prosecution for perjury? A Oh, yes, I understand that.

THE COURT: Well, that is what the Attorney

General wants to know from you.

BY MR. COLLINS:

5

Q Well, then you know that a false oath or statement under oath, at this time would subject you to a prosecution for perjury? A Yes, sir.

Q Now, I ask you if you swore to a contrary state of facts as to the identification of the defendant, before the Grand Jury?

MR. LOFTUS: Objected to.

THE COURT: Objection sustained.

BY MR. COLLINS:

Q I will ask you whether or not you said in answer to a question by a juror, before the Grand Jury, whether you made this reply to that question:

Q "If you had any doubt when you hollered at him that night, how is it that you changed that doubt afterwards, and say positively that it was he? A Well, I am sure that it was him?" A Well, the reason---

BY THE COURT:

Q No. Did you say that? A Well, I might have from what Robertson said.

THE COURT: No. Strike out that answer.

BY THE COURT:

Q Did you or did you not? A I don't remember that.

THE COURT: How long ago was this man before the Grand Jury?

MR. COLLINS: On the 13th of November.

BY MR. COLLINS:

Q Less than four months ago; was it not; when you were before the Grand Jury? A It was around election time.

Q It was after election, was it not? A Yes.

Q Do you remember what happened inside of the room on the day that you registered the man calling himself James Donnelly? A What happened?

Q Yes.

BY THE COURT:

Q In the polling place?

BY MR. COLLINS:

Q In the polling place? A No, sir.

Q Well, you remember the questions being asked; don't you? A What questions?

Q Don't you remember the questions being put to the man that called himself James Donnelly? A Put to everybody that came in to register.

THE COURT: No. Answer as to that man.

A Yes. Or it would not be on the books.

BY MR. COLLINS:

Q Do you remember seeing Mr. Robertson in the Superintendent of Elections office, the witness who was on the stand before you? Do you remember seeing him in the Superintendent

of Elections office? A Yes, sir.

Q Do you remember seeing Mr. Maher there? A I went with Mr. Robertson there.

Q (Question repeated). A yes; I believe so.

THE COURT: Do I understand you correctly, Mr. Attorney General, that this witness said that he was the Chairman of the Board of Inspectors?

MR. COLLINS: Yes, sir; he so testified.

BY THE COURT:

Q Is that so? A Yes, sir.

Q Were you ever acting as an Inspector before? Did you ever serve before as an Inspector of Elections? A Yes; I was an Inspector before.

Q For how many years? A Two years. I was a poll clerk, one year.

Q And inspector the next year? A yes, sir; and Inspector again after that; and the gentleman that was Chairman before didn't want it again, and I took it.

Q And you were Chairman of the Board? A Yes, sir.

BY MR. COLLINS:

Q Following the question that I last put to you, do you remember a Grand Juror asking you this question:

"Q In fact, you didn't have any doubt, that night, at

all, when you went after him? You were sure it was he, then? A Yes, sir?"

A I don't remember that.

Q Do you remember being asked this question, and giving this answer---

THE COURT: Wait, wait. Ask this witness whether or not he will swear that he did not make that answer.

BY MR. COLLINS:

Q Did you or did you not make that answer? A Well, I don't remember.

Q Will you swear that you did not? A No, sir.

Q Do you remember being asked this question, and giving the answer:

"Q The only thing was in order to shield him when you would take him before the Superintendent of Elections, you did say that you had a doubt? A Yes, sir?" A I don't remember that.

BY THE COURT:

Q Did you make that answer?

BY MR. COLLINS:

Q Will you swear that you didn't make that statement?

A I don't remember the details of all this, because I didn't think it would amount to anything.

THE COURT: No, no. Stop. I do not want to hear anything further.

BY MR. COLLINS:

Q Did you or did you not swear to that? A I don't remember, sir.

Q Will you swear that you didn't swear to that, at that time? A No, sir, I will not.

Q State whether or not you were asked this question, and gave this answer:

"Q And you said you had a doubt, because you wanted to shield him? A That's right; yes.

"Q But you didn't have any doubt? A No, sir?"
Were you asked those questions, and did you make those answers?
A I don't remember.

Q Will you swear that you didn't make those answers to the questions asked? A No, sir.

Q Do you mean by that that you can't swear----
A Well, because I can't remember.

THE COURT: I cannot hear you, in the first instance, and I am sure the jury cannot. You speak so low,

BY THE COURT:

Q The Attorney General wants to know whether you will

now swear that you did not make the answers that he has read, to the questions which he has read, when you were before the Grand Jury? A No, sir.

Q That is, you will now swear now, that you did not?

A I don't; because I don't remember.

Q No. I do not want your "because"? A No, sir.

Q Do you swear that you made those answers to those questions? A No, sir.

Q Do you swear that you did not make those answers?

A No, sir; because I don't remember all of them.

THE COURT: No. I do not want your "because".

I told you that before.

BY MR. COLLINS:

Q Were the statements that you swore to before the Grand Jury true? A Well, I can explain---

THE COURT: No, no. Answer that question.

It is a simple question.

BY MR. COLLINS:

Q (Question repeated).

MR. LOFTUS: That is objected to, if your Honor please. It has not been yet shown that he swore to anything before the Grand Jury.

MR. COLLINS: Yes. He said he was before the Grand Jury.

THE COURT: Well, show it, if there be no doubt about it.

BY MR. COLLINS:

Q Were you before the Grand Jury of this County?

A Well, I think I was. I was upstairs here, a week ago, I know.

Q Were you upstairs on the 13th of November, or thereabouts, before the Grand Jury?

A Yes, sir; I think I was.

Q And were you sworn in the Lawless case, in the case of this defendant? A Well, I don't remember whether I was sworn or not.

Q Did you give testimony in that case?

A I believe I answered questions there.

Q Before the Grand Jury?

A Before some men, upstairs.

Q Relative to the defendant in this case?

A Yes, sir.

Q You know where the Grand Jury room is upstairs, don't you?

A No, sir.

Q Weren't you upstairs on the District Attorney's floor, the third floor of this building?

A Yes; a week ago I was there; about two weeks ago.

Q And on what case were you there then?

A On this case. Three weeks ago, it was. I was told to go upstairs after I was in here.

Q Well, were you subpoenaed before the Grand Jury? You received a subpoena to go there, didn't you?

A Yes. I have four or five subpoenas at home that I received.

Q Yes. But you were subpoenaed to go to the Grand Jury, weren't you?

A Yes.

Q And did you go into a room, upstairs, in the other corner of the building (indicating)? A Well, I don't remember that.

Q Well, did you go into a room where a number of men sat around in a circle? A Yes, sir.

Q And you sat down there, and were asked questions, and answered them? A I guess I must have.

Q Now, you know whether you did or not. Speak out, and tell this jury whether you did or not? A Well, I must have.

BY THE COURT:

Q Did you or did you not? A Yes. I was down here.

Q Then why don't you answer?

BY MR. COLLINS :

Q You were asked questions by me, there; weren't you?

A I don't remember ever seeing you before.

Q You don't remember ever seeing me before? A No, sir.

Q You were examined by a Deputy Attorney General, in Mr. Morgan's office; weren't you?

THE COURT: No. Confine yourself to the Grand Jury, now, Mr. Attorney General.

BY MR. COLLINS:

Q Were you before a body of gentlemen, who sat in a circle, upstairs? A Yes, sir.

Q And you gave testimony there, didn't you? A I answered questions.

Q And the questions were asked you by some person that was there; weren't they? A Yes; they must have been.

THE COURT: No. Not what must have taken place, but what was done.

BY THE COURT:

Q Do you understand the questions that are asked you?

A Well, I don't recollect them all. They were in reference to this case.

Q I didn't ask you that. Do you understand the questions that are asked you here? A Now?

Q Yes. A Yes.

Q How old are you? A Sir?

Q How old are you? A Twenty-eight.

Q What trade or occupation have you? A I work at the printing business, now.

Q Printing? A Yes, sir.

BY MR. COLLINS:

Q Where are you employed as a printer? A Down at the Latham Press, 14 Cliff Street.

Q Are you employed now? A Yes, sir; down there. At that time, however, I was driving a truck.

Q But now you are employed in a printing house? A Yes, sir.

Q As a printer? A Yes, sir.

Q When you were upstairs, before those gentlemen, in a semi-circle, somebody behind the Grand Jury asked you questions, did he not? A I don't remember that.

Q Well, did somebody ask you questions? A Yes, sir.

Q Did you make some answers? A Yes, sir.

Q Did you sit in a chair, as you came in the room?

A Yes, sir.

Q I now repeat, whether or not the statements made by you before that body were true or not? A (No answer.)

THE COURT: Answer the question.

THE WITNESS: Well, I don't remember the questions that was asked me.

BY THE COURT:

Q He is not asking you to remember what you said, but he asks you if what you said before the Grand Jury was true. You can answer that, can you not? A Well, I don't remember what they were.

Q No. He is not asking you for that. He is asking you if what you said before the Grand Jury was true? A Yes, sir; they must have been.

Q No. Were they? Not what they must have been. Were they? A Yes, sir.

Q And you were sworn, when you made those statements, were you? A Well, I don't remember.

Q Don't you know that you were put under oath, when you went into that Grand Jury room? A I don't remember that; no, sir. I can explain to your Honor --

Q No, I do not wish your explanation.

A The reason why --

THE COURT: No. I do not want your reasons.

CROSS-EXAMINATION BY MR. LOFTUS:

Q Now, Mr. Gabert, do you remember the hour? Whether it was in the day or evening, when the man registered as Donnelly? A No; I think it was in the evening, though.

Q It was in the evening? A I think so.

Q Do you remember about what hour it was? A No, sir.

Q Was it -- haven't you stated that it was about ten o'clock? Was it not about the last of the day's business? A I didn't say that.

Q Well, let me see. The registration hours closed at ten o'clock, did they not? A Yes, sir.

Q Now, is it not a fact that the man who registered as Donnelly registered about as one of the last, on that day? A I don't remember that, what time exactly.

BY THE COURT:

Q Well, was it day or night? A It was in the evening, when the people were around. That's the reason I remember so many people being around.

Q Was it light or dark? A It was dark.

BY MR. LOFTUS:

Q Don't you now remember that it was almost ten o'clock when the man named Donnelly registered? A No, sir; I don't remember that.

Q Or the man that gave his name as Donnelly registered? A No, sir; I don't remember that.

Q Weren't you acting as President of the Board? A Yes, sir.

Q And it is the duty of the President or Chairman of the Board, when present, is it not, to ask -- to put the questions to the applicant? A Yes, when he is there.

Q And you were there from seven o'clock on, that evening; weren't you? A Well, maybe it might have been from eight o'clock on. There was four of us to go away to eat our supper.

Q And, if any man came in there, between eight and ten, the closing hour, you probably put the questions to him; didn't you? A Yes.

Q And you saw every man that you put the questions to; didn't you; at least, had one look at him? A Yes, sir.

Q Then it is altogether likely that you saw the man who gave his name as Donnelly?

THE COURT: No. I exclude the question. We are not dealing with possibilities, now.

MR. LOFTUS: I take an exception, sir.

BY MR. LOFTUS:

Q You didn't see Edward Lawless there, that night; did you? A I am not sure of it; no, sir.

Q But you heard the name, Edward Lawless, mentioned by somebody? A Yes, sir.

Q And that was the first you knew anything about, or

heard anything about, Edward Lawless, on that occasion; was it not? A Yes, sir; that's the reason I called out.

THE COURT: No. Stop. Do not give your reasons.

BY MR. LOFTUS:

Q And you saw a man going out, who, somebody said, was, or looked like Edward Lawless? A Yes, sir.

Q You did not see that man's face, after his name was mentioned; did you?

MR. COLLINS: Objected to, as entirely leading.

THE COURT: Yes; it is entirely leading and suggestive.

MR. LOFTUS: But, if your Honor please, this is cross-examination.

THE COURT: I exclude the question, because of its leading character. The last half dozen questions that you have put to the witness have simply suggested answers to him.

MR. LOFTUS: I take an exception to that observation by the Court.

BY MR. LOFTUS:

Q You finally went down to Mr. Morgan's office?

A Yes, sir.

Q Do you remember what date? A No; not the date exactly.

Q Was it within a week or a month after the registration?

A It was a couple of weeks after.

THE COURT: I think, Counsel, that has been gone over very carefully by yourself and the Attorney General.

BY MR. LOFTUS:

Q Did you see Edward Lawless at the Superintendent's office? A Yes, sir.

Q Did you identify him there? A Not at first; no, sir.

Q After how long a time did you identify him? A Well, when Robertson said he looked like the man.

Q Was it Robertson's statement to you, in the Superintendent's office, that finally persuaded you that it was Lawless who had registered?

MR. COLLINS: Objected to.

THE COURT: Excluded.

MR. LOFTUS: Exception.

THE COURT: I do not think, Counsel, that there is any use of your going over this ground. He has already testified about these matters several times. I do not see that there is any reason or necessity, in the interests of your client, in doing so.

MR. LOFTUS: I think it might be proper to show the circumstances under which he made the identification, if he made any identification whatever.

THE COURT: Well, that only goes to his credibility.

The question is, what does he do here? However, Counsel, I will allow you to continue your examination, as recess, if it becomes necessary. Have you anything further to offer, Mr. Attorney General?

MR. COLLINS: Well, Robertson testified that the man that he saw at the Superintendent of Elections' office was the man who registered as James Donnelly.

THE COURT: But he has not identified him here.

MR. COLLINS: And he said that the only persons present were Mr. Maher and myself and Mr. Belmont, and he is sure that Mr. Belmont is not the man that he pointed out.

THE COURT: No, Mr. Attorney General. No matter what moral deflections have taken place in this case, if there have been any, among witnesses, we can only determine upon the evidence before us, in this case; and, insofar as the evidence goes, there is no positive testimony that the defendant at the bar is the man who registered under the name of Donnelly on that day; and I am not now passing upon the question of whether that testimony be true or false.

I am simply bound, as matter of law, on the question of whether or not there is sufficient testimony in the case to warrant me in submitting the case to the jury.

on the question of this defendant's guilt or innocence; and there must be testimony in the case to positively identify the defendant at the bar as the man who registered, on the 10th of October, under the name of James Donnelly.

MR. COLLINS: Well, of course, in the light of this case, all that I can do, at the present time, is to have the man positively identified who was identified by Robertson as the man, in the Superintendent of Elections' office.

THE COURT: Oh, no. That is too remote.

MR. COLLINS: And I could have the Grand Jury Clerk, to prove the Minutes of the Grand Jury.

THE COURT: Well, even so, and even though you put in testimony here that witnesses have perjured themselves on this trial, yet that would not be of sufficient legal value to warrant me in holding the defendant.

If witnesses have committed perjury, on this trial, they can be called to account for it, in another tribunal or on another trial.

But we are dealing, now, with the question of whether or not the defendant is the man, and we have to deal with the testimony before us, on that question.

MR. COLLINS: I appreciate the difficulty, your Honor.

THE COURT: Now, there is no use, unless you have some testimony, positive in its character, by which you can show that the defendant at the bar, Edward Lawless, is the man who registered as James Donnelly, on the day in question, I do not see the use of continuing the trial of this case.

MR. COLLINS: Yes, sir. I appreciate the difficulty, sir. And I understand that it is my duty to present another case to the Grand Jury, after this case is ended, a case of another character.

THE COURT: Very well. Have you put in all the evidence that you can put in?

MR. COLLINS: Yes, sir. I cannot put in any other evidence than I have stated to your Honor.

THE COURT: Yes. But that would not make the case any stronger. Have you any motion to make, Counsel?

MR. LOFTUS: Yes, sir. I ask your Honor to advise the Jury to acquit.

THE COURT: I am constrained to grant the motion, Gentlemen of the Jury, because there is not sufficient testimony before me to warrant me in submitting the case to you.

I, therefore, advise you to acquit the defendant.
(The Jury find the defendant Not Guilty.)

1

THE COURT: Now, Mr. Attorney General, is there any other charge against the defendant?

MR. COLLINS: No, sir; no other charge against the defendant.

THE COURT: Then he is discharged.

Now, Mr. Attorney General, if you are of the opinion that any witness in this case has committed perjury, it is certainly your bounden duty to examine and prosecute.

If you have any complaint to make against this witness here, why, you had better consider whether you will make it now, or wait until such time as you are prepared to make it.

MR. COLLINS: I am inclined to think, if your Honor please, that if this witness were to leave the Court room now that I would not be able to obtain him again, and I think it is my duty, in the face of the evidence that this man has given before the Superintendent of Elections, and the evidence that he gave before the Grand Jury, when I was present, to declare now that I know he has committed perjury, because he has sworn diametrically opposite, on the two occasions; and I feel it my duty to call your Honor's attention to it.