

**START**

415

**CASE**

I N D E X

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John A.:Fyshe	15	34		



-: I N D E X :-

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COURT OF GENERAL SESSIONS OF THE PEACE

CITY AND COUNTY OF NEW YORK

PART II

Before

Hon. JOHN W. GOFF, R., and a Jury.

-----X  
: THE PEOPLE :  
: :  
: :  
: VS. :  
: :  
: INES HYLAND :  
: :  
: :  
-----X

Indicted for Grand Larceny in the First Degree.

Indictment filed January 11, 1904.

Tried, New York, March 16, etc., 1904.

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

Assistant District Attorney MARSHALL B. CLARKE, for the People;

MESSRS WEEKS, BATTLE & MARSHALL, for the Defense.

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Frank S. Beard,

Official Stenographer.

(A jury was empanelled and sworn.)

THE COURT: Gentlemen of the Jury, it is my duty to caution you not to speak about the case among yourselves, or with any other person, and not to form or express any opinion on the guilt or innocence of the defendant, until the case is finally submitted to you.

The Court will take a recess until a quarter after two o'clock.

AFTER RECESS

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OPENING ADDRESS FOR THE PEOPLE

of

ASSISTANT DISTRICT ATTORNEY MARSHALL B. CLARKE

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May it please the Court:

Mr Foreman, and Gentlemen:

The nature of this prosecution has already been partially divulged by me, in my examination of you gentlemen, as to your fitness to serve as jurors.

You have, no doubt, gathered that the Grand Jury of this County have indicted the defendant, Mrs Ines Hyland, charging her with the crime of Grand Larceny in the First Degree.

Now, this case could be made a very long case. You, gentlemen, can imagine that the relations of the various parties, whose names have been mentioned in connection with the case, could be gone into in very great detail.

But I do not purpose, on this occasion, especially in opening the case to you, to go into any of these collateral matters.

But I propose to tell you, in as few words as possible, just what Captain Fyshe, the complaining witness claims this woman did as to certain jewels, and how they came into her possession, and just what the arrangement was between them, and her conduct during the transaction.

Any other matters that will be brought out can be elucidated as the trial goes on; but it is not the part of the prosecuting officer, in opening the case, to go into all these matters.

Now, briefly, the claim made by the complaining witness in this case is this: He is an officer of the British Army, who has been living in South Africa, who is a civil engineer, who has retired from the British Army, who married, in London, an American lady, and they came to this country in April last.

Mrs Fyshe was possessed of these jewels which are the subject of this action. They consist of a diamond necklace, which she has owned for five or six years, and which has been added to, from time to time, by jewelers here in New York, until it has become quite an elaborate piece of jewelry, and is estimated to be worth from \$6,000 to \$8,000.



THE COURT: That is, this lady, the wife of the complaining witness?

MR CLARKE: Yes, sir. She owns the diamond necklace.

This necklace, together with other jewels, was in the possession of the Captain and his wife, at the hotel in this city where they were living, in December last, at the time of this alleged larceny, the Hotel Navarre.

On the day in question, December 3rd, as the result of some prior conversations had by the Captain with this defendant, whom he had known in South Africa, and whose husband he had known, and whom he had afterwards met after coming to America, in New York, and she having meanwhile obtained a divorce, and living here as a single woman, and earning her living, as I understand, as an insurance agent, there was a final understanding between the complaining witness and the defendant, looking toward the raising of money on these diamonds, in order to enable Captain Fyshe to embark in some of his civil engineering undertakings, he having talked with her, and she having represented that her mother was a woman of means, and had frequently loaned money, and that, if



he had good security to offer, she might induce this lady, her mother, whom she represented, and who resided, as she said, in the northern part of the State, to advance him a sum of money equal to what he desired, some \$5,000 or \$6,000.

He thereupon took from the safe deposit box in the Hotel Navarre these jewels. He had a right, apparently, to do that, because he had access to the box. However, he did not, at that time, inform his wife that he was taking them.

He then, by appointment, met the defendant in a restaurant, at Seventh Avenue and 28th Street, in this City and County, and there submitted the matter to her, and asked her what she thought of the amount that he might procure, and talked it over in a general way.

She said that her mother, in a case of this character, would require that the security be carefully examined, and that, before she would loan money on jewels of this description, they must first be submitted to somebody in whom she had confidence, and she named a Mr Holmes, who, she said, was a dealer in precious stones, at 16 Maiden Lane, in this city, and asked that she be permitted to submit them to that gentleman. Subsequently, another meeting took place,

at the Marlborough Hotel rathskeller in this city, and again the Captain took the diamonds there, the watch and rings, and the other articles, and he suggested that they take them to Schwartz Brothers, just across the way from the Marlborough. He was apparently reluctant to let them go out of his possession. And they did go there, this lady accompanying him to Schwartz Brothers' jewelry store, and the diamonds were submitted to Mr Schwartz.

He is an expert in precious stones, and his opinion on them was endeavored to be got, but he did not care to appraise them, although he said that they were genuine and were of large value, and looked them over, and approved of them, but did not appraise them.

The Captain then returned with the jewels and with this defendant, to the rathskeller of the Marlborough Hotel. And there she again made the proposition that they must be appraised definitely, and a definite price put on them, and by somebody whom she had confidence in.

He then delivered the jewels to her there, in that restaurant, sitting at a table, and took from her a written receipt, in a memorandum book which he

had in his pocket at the time, and which she signed, in his presence, and which says, "Received one gold watch, one necklace, diamond, two rings, diamond. Received from Mr Fyshe. Value to be estimated," and signed with her name, Ines Hyland.

And he says that, in order to be perfectly safe, she took the jewels from the package in which they were, and put them in her corset, and he then accompanied her to her home, 357 West 30th Street, leaving her at the door, and she going upstairs, it being understood that she should go down, next day, to Maiden Lane, to this Mr Holmes, in whom she said she had the utmost confidence, and get his opinion as to how much her mother could safely loan; and then the jewels were to be returned to him, Captain Fyshe and retained until the loan was closed, and then they would be turned over to her.

They were to meet the next morning, at the Hotel Navarre. He waited until eleven o'clock, the appointment being for ten o'clock, but she did not appear.

Then she telephoned him that she was then at Mr Holmes' office, having the jewels appraised, and that she would shortly bring them up to him, and report

about them to him. And she said, I think, that Mr Holmes had said that they were good security, and that the deal could undoubtedly be put through.

Now, as matter of fact, what was she doing when she had these jewels in her possession?

Subsequent investigations developed that she was, at the very moment that she pretended to be telephoning to this man, to the effect that she was carrying through this deal with him, packing up her goods, to leave her 30th Street residence, and that she did leave there that morning, and did not leave any word as to where she was going; and, but for the accidental fact of one of the servants in that furnished room house in which she had her room, happened to notice that there was the word "Columbia" painted on the wagon that was taking her things away, she would, perhaps, never have been traced, and arrested.

But Captain Fyshe followed up that slight clue, and found that this lady's goods were taken to and stored in the Columbia Warehouse, to be kept until she called for them.

Three Central Office detectives were then detailed on the case, by the Chief of the Detectives

of this City, and, for three weeks, with the aid of Captain Fyshe, who gave up all other engagements, they searched this city, but got no trace of her, except this one trace, that her trunks, which she took away from this house where she had roomed, were in this warehouse.

After three weeks, she evidently feeling that things had blown over, to some extent, a telephone message was sent to the warehouse, to deliver these trunks to a certain person who would send for them.

The proprietors of the warehouse, under instructions from Police Headquarters, at once notified the detectives, and they traced the trunks as they left the warehouse.

They found that they went into the possession of one Mr Dudley J. Faith, a friend of this lady's, who sent to this warehouse for them, and had them taken to his office.

And, from that office, they traced them to a boarding house in 121st Street, in this city.

There the detectives went, and found that this lady was living in that boarding house.

They found also, that to the woman who kept the boarding house she had told a story that was false,



in many particulars, in engaging the room there, and had given a false name, Lowther, I think it was; and that, afterwards, when it became necessary for her trunks to be brought there, they being marked with her initials, "I. H.", Ines Hyland, she told the landlady that her name was Harris, so that that fact would be accounted for.

The house was watched, and, ultimately, the lady was seen leaving it, and one of the detectives spoke to her, and asked her if her name was Hyland, and she said no.

Then she asked him who he was, and what he wanted, and he said that she was a Central Office detective.

Then she declined to talk to him, and insisted that he take her before his superior officer, she evidently being advised of her rights, and being ready for this emergency; and she was at once taken to Police Headquarters, and her lawyer notified.

The Central Office detectives took possession of the trunks which were in the room in this boarding house, and gave the boarding house keeper strict instructions, to allow no one to enter those rooms. However, they were afterwards entered by agents of this



woman, and the trunks were opened, and the property taken out; and so, whether the diamond necklace was in the trunks or not, we do not know, because, through the bad faith of the woman who kept the boarding house, before the officers had an opportunity to find out what was in the trunks, the defendant, through her agents, had had them emptied of, practically, everything of value.

Now, gentlemen, those are the plain facts in the case.

It cannot be denied that this necklace exists. It is not a figment of the Captain's imagination, because, I say, it has been built up by jewelers, and one particular jeweler of this city has worked on it from time to time, during the last five years, and will tell you all about it.

Mr Schwartz, the jewelery on Broadway, who saw it that night, will tell you about it. He will tell you that he saw the Captain come in there with the lady, or with a lady who strongly resembled the defendant, if she were not identical with the prisoner at the bar.

Then we have the receipt, written in the handwriting of this defendant, acknowledging the receipt

of a diamond necklace.

All those facts strongly corroborate the claim that such a diamond necklace does exist, and that it did belong to Captain Fyshe and his wife.

Now, those being the facts, gentlemen, we ask your patient hearing of the witnesses.

We appreciate the unfortunate predicament into which this woman has brought herself, but, nevertheless, we think that Captain Fyshe, whatever his antecedents, whatever his character, or whoever he is--and I presume that my friend proposes to tear him limb from limb, in cross examination--is entitled, if he has been deprived of this property, by any trick or device, by this woman, if she be an adventurer, able to put up a game of that kind, and carry it through, then he is entitled to some consideration at the hands of a jury, and to have some effort made to secure his rights.

We ask, while we have no eye witness, outside of the Captain, of the actual taking of the jewels, yet, we ask you to believe that, on account of this defendant's subsequent conduct in leaving her house, without even saying to the person with whom she lived, where she was going, or that she was going, so

that they did not know that she intended to move, so that her trunks went away before anybody knew that she was going to move, and taking these quarters in a remote section of the city, and storing her trunks, and having them removed, subsequently, to a friend's business place, and then sent up, under an assumed name to an out of the way place where she lived, in a distant part of the city, should convince you that she is guilty of this crime.

## THE PEOPLE'S TESTIMONY.

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J O H N A . F Y S H E , a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR CLARKE:

Q Where do you live? A I live at 531 West 111th Street.

Q How long have you lived in the City of New York? A I have lived in the City of New York since the 4th of last April.

Q Where did you come from? A I came from London.

Q Are you married? A I am.

Q And did you come here with your wife? A My wife came on a previous steamer. Owing to business, I was unable to leave at the same time.

MR WEEKS: One moment. I object to this explanation.

THE COURT: Yes; strike that out.

BY MR CLARKE:

Q Now, where were you living in the City of New York in December, 1903? A I was living at the Hotel Navarre.

Q With Mrs Fyshe?

MR WEEKS: Objected to.

A I was in New York on business, and Mrs Fyshe was in Providence.

MR WEEKS: I object to all this explanation.

THE COURT: Objection sustained.

BY MR CLARKE:

Q Where were you living in New York? A The Hotel Navarre.

Q Now, do you know the defendant, Ines Hyland? A I do.

Q Where did you first meet her? A I first met her on the East Coast of Africa.

Q What were you doing there? A At that time, I was employed by the Bira Railroad Company.

Q In what part of Africa? A The East Coast of Africa.

Q And what was your profession? A At that time, I was timekeeper for the Railway Company, under Mr Hyland, who was the Maintenance Engineer, at that time, the husband of Mrs Hyland, Mrs Ines Hyland.

Q Then you knew her in South America? A I knew her in East Africa.

Q You know her in East Africa? A Yes, sir.

Q What was the nature of your acquaintance with her?

A Why, simply she was the wife of my chief. That was all.

Q Did you see much of her at that time?

A I met her frequently at various places, at the house of



the Railway Manager, and the Chief Engineers of the road, and at the British Consul's, and the Governor of the Territory.

Q Well, you saw something of her at that time?

A Yes, sir.

Q And you say you came to New York in April, 1903?

A Yes, sir.

Q How long after that, if at all, did you see this defendant? A I saw her, this Mrs Hyland, in June and July. I saw her off and on.

Q Where was she living in New York, at that time? A She was living at 25 Columbus Avenue, if I remember correctly.

Q Now, state whether or not you saw her, in December last?

A I saw her on the 2nd of December last.

Q Had you seen her prior to that, recently? A No. I hadn't seen her for two or three weeks before that.

Q Where did you see her on the 2nd of December last?

A I met her on the corner of 28th Street and Eighth Avenue.

Q Did you go anywhere? A We went to a little ice cream parlor, on the west side of Eighth Avenue, up--I think it was 322--just above 28th Street.

Q Now, let me ask you. Do you know of this diamond necklace, mentioned in the indictment in this action? A Yes, sir.

Q Can you describe it to the jury?



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A It was a necklace, made, principally of diamonds, that is, the ground work across the throat was diamonds, one after the other, and in gold settings, with two pear shaped diamonds, very expensive stones, as pendants, with a very large and genuine white pearl in the center.

Q And to whom did that belong? A It belonged to Mrs. Fyshe.

THE COURT: The wife of the witness?

BY MR. CLARKE:

Q Your wife? A Yes, sir.

BY MR. CLARKE:

Q Where was it at the time? A It was in the safe deposit box in the Hotel Navarre.

Q And, previous to that, where was it? A Previous to that it had been in my possession, in Providence, Rhode Island, and, previous to that, it had been in my safe deposit in the Gansevoort Bank.

Q And had been in the Lincoln Trust Company also?

A Yes, sir; in the safe deposit there; in Mrs. Fyshe's name.

Q Now, you say on the day-- where was this diamond necklace of your wife's, on the day that you say you met this defendant? A At the time I met the lady it was in the

safe deposit box, at the Hotel Navarre.

Q Who put it there? A I did.

Q Well, now, what was said by you and by this defendant, on this occasion? A Oh, at that time I wanted, for a business proposition---

MR. WEEKS: Objected to.

BY MR. CLARKE:

Q No. What did you say to the defendant? Never mind what you had in your mind? A Oh, in talking over business affairs we discussed several investments that the defendant had made.

MR. WEEKS: I would like to have the entire conversation, not this general statement.

THE WITNESS: That is what I am telling now, sir.

BY MR. CLARKE:

Q Well, what did she say? A She told me about her investments in Steel, and she said the people had told her that they were bad investments, but she believed she would pull through, and, in the end, would be a winner; and she talked about investing some money for her mother, saying that her mother had some money lying in the Lincoln Bank, in 42nd street; and I then approached the subject of a loan to her.

Q What did you say? A I said that I had then in my possession a necklace belonging to my wife, and two diamond rings which were my own property, and a gold watch, which was my own property, and that the value of them was in the neighborhood of, I should imagine \$8,000 or \$10,000, or possibly more, and I was very anxious to raise a loan of from eight thousand dollars to ten thousand dollars on them; and Mrs. Hyland at once agreed, after some little consideration, that, if the jewelry was worth the amount that she would be only too glad to advise her mother to advance it, if the jewelry--- if she was satisfied that the value was correct, and it was taken before some reliable person, some person that she knew, and that her mother knew, that would pass upon the value of the property.

And I asked her if she would go across to the hotel--- to the Hotel corner of Broadway and 36th street, the Marlborough, the Hotel Marlborough, and said that we would go there, and have some dinner, and talk it over, and she said, "Well, I will go home and change my dress, if you don't mind calling for me again here".

And I went back to the ice cream parlor to call for her later.

Meanwhile, I went to the Hotel Navarre, and took

from the safe the diamond necklace and the two rings-- no, excuse me, not the two rings, because I had them in my possession then--- but I took the necklace from the safe deposit, and brought it back with me, and I had the watch and the two rings in mypossession, which were my property, at the time.

And I brought the necklace, which was my wife's property from the safe deposit, and I returned to the ice cream parlor about half past six-- to the ice cream parlor--- and shortly after I entered, Mrs. Hyland entered.

Q Did you see anybody in the Hotel Navarre when you took the diamond necklace from the box? A Yes, sir. It was impossible for me to--- I had but one key---

Q Never mind that. Who did you see there? A The cashier.

Q What is his name? A Lindsay, I think.

Q Was he present when you took the diamonds from the box? A Yes, sir. It was impossible for me to get it out without the aid of his key. He had one key and I had another.

Q And you got the diamond necklace from the box in the presence of Mr. Lindsay? A Yes, sir.

Q Now, what sort of a package was it? A It was in a package of paper at that time. A case was rolled in soft paper.

Q It was in a case, was it? A Yes, sir; in a case;

rolled in soft paper.

Q Now, you say that you returned to the restaurant? A Yes-- sir, I returned to the restaurant, the ice cream parlor-- in Eighth avenue, and, shortly after I entered, Mrs. Hyland came in; and then we went to the Hotel Metropole rathskeller.

Q The Marlborough, do you mean? A Yes, the Marlborough; yes. And there we had dinner, and talked over old friends that we had in Africa. And, after dinner, I was very anxious to go to Mr. Schwartz's, or to someone who would tell the value of them, of the jewels. I didn't wish to part with the jewelry at the time.

MR. WEEKS: That is objected to.

THE COURT: Objection sustained.

BY MR. CLARKE:

Q Did you say to her that you didn't desire to part with them? You must only tell what you said? A No; I didn't say that to her; but I only inferred that I would prefer to have her go somewhere with me, to have someone see the jewelry in my possession, in my presence.

Q Did you know Mr. Schwartz? A Yes, sir; I had seen him previously.

Q Had you been in his store before? A Yes; often. I bought jewelry there, off and on,



Q And what did you do? A We went across to Mr. Schwartz's place, and there I produced the necklace, and the two rings and the watch, and Mrs. Hyland was very high in her praise of them, at that time.

MR. WEEKS: Objected to.

BY THE COURT:

Q What did she say, if anything? A Well, she said that she thought the value of the necklace was somewhere around \$12,000 or \$15,000, that was her idea at the time, expressed there, in the jewelry place; and she thought they were very satisfactory, that the whole thing was very satisfactory.

BY MR. CLARKE:

Q And what did Mr. Schwartz say? A Well, he said he didn't care to set any figure, but he was talking in a guarded sort of way, and he inferred that she was about right in her estimation of them, that they were very valuable, but he did not set any figure upon them.

Q Had he ever seen them before? A He had.

Q Well, when? A Well, some weeks before that, I had had them there.

Q You had taken them in there? A Yes, sir; in fact, he had tightened one of the rings. The setting on one of the rings had become loose and he tightened it up for me,



previous to that.

Q And what did you do after that? A After that, we returned to the Hotel Marlborough, the rathskeller, and there we had some light refreshments, and a glass of beer each.

And there Mrs. Hyland gave me the receipt, and I was a little backward in giving her the jewelry, and she said, "Why, you don't mean to say that you mistrust me, an old friend, whom you have known as long as you have known me?" And I said, "Why, certainly, I don't mistrust you. Don't think that for a moment. But I don't think it is quite safe that you should go about the city with them in your possession, especially, if anyone should see them," and she said, "Oh, well, you can see me home yourself".

Q Well, what did she do after that? A She placed them in her corsets.

Q They were in the package? A Yes, sir; they were done up in the package.

Q What was in the package? A In the package was the necklace, and it was rolled up, and the watch was given to her, without any covering at all, and one of the-- the two rings were given to her, rolled in tissue paper.

Q Well, then, there were three packages, in all?

A Yes, sir.

Q Three different, separate items? A Yes.

Q And what did she do with them? A She put them in her corsets. She just unbuttoned her dress in front, in this way (illustrating)-- it was an open front, such as ladies wear-- and put them in there, and said, "I think it is perfectly safe there".

Q Now, did you see that memorandum book before (indicating)? A Yes, sir.

Q Whose is it? A It is mine.

Q And did you have it in your possession that evening, the 2nd of December, 1903? A Yes, sir.

Q Now, state what took place as to that memorandum book? A Well, I said, "Well, you will give me a receipt, in case of an accident, or that anything should happen?" ~~Therefore~~ the very words that I used were, "Suppose you should die in the night. I would have no means of showing that the jewelry belonged to me". And she said "Well I will give you a receipt."

And I pulled this note book out of my pocket because I had no paper in my pocket, with this fountain pen, and she wrote off this receipt, and signed it, and handed it back to me again, and I put the book in my pocket.

And we chatted a few minutes there, and it was snowing quite heavily, and I saw her to within one door of her place, just close to the door, and she went in, and closed the door after her, with the understanding that she was to take these things to Mr. Holmes, at 16 Maiden Lane, the next morning.

MR. WEEKS: Objected to. I don't want the understanding.

BY MR. CLARKE:

Q Did she say that? A Yes, sir.

Q When? A In this conversation.

Q When did she say that? A Well, we were at the rathskeller of the Marlborough Hotel, while we were there, that was the understanding.

Q On this last occasion? A Yes, sir; on this last occasion. That was the understanding when I handed this jewelry over to her, that was the agreement.

Q What did she say? A She said that she would take it to 16 Maiden Lane, and there have it appraised by Mr. Holmes, and that, if Mr. Holmes thought that it was worth the money, she would advise her mother at once, and that Mr. Holmes would also write in her behalf to her mother; and that one reason why she wanted Mr. Holmes to see the jewelry was because she had made some investments for her mother before which had not

been good, and that she thought her mother would be rather scary of letting her invest any more money for her on her own word, and that her mother would prefer to have someone that she knew, and that her mother had known Mr. Holmes for years, and that he was an old friend of the family.

Q Now, was anything said, at any of these conferences, as to the amount of money to be loaned, or the rate of interest?

A It was to be \$8,000 if the jewelry was worth only that amount, but if the jewelry was worth \$10,000, it was to be \$10,000, at six per cent.

She said that her mother had in the Lincoln National Bank, at 42nd street, a great deal of money, which was lying there at Savings Bank interest, four and a half or four per cent-- I don't remember which, and that her mother would allow her one per cent for making the loan-- I was to pay six per cent, and her mother would then get one per cent more than she was getting in the bank.

MR. CLARKE: I offer the receipt in evidence which the witness testified the defendant signed in his presence.

It is admitted in evidence without objection and marked People's Exhibit 1.

BY MR. CLARKE:

Q Now, you say that you saw the defendant home? A Yes,

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sir.

Q Where did she live? A At 357 West 130th street.

Q 130th street? A West 30th street, I mean.

Q Had you ever been in her apartment there? A I never had.

Q How long had she lived there; do you know? A Well, as far as I know, about a month, from her conversation.

Q Did she tell you so? A Yes, sir.

Q Did she say she was in any business? A Yes, sir; she said she was an insurance agent of the New York Life, and I had met one of the gentlemen whom she was directly employed under. He led me to believe that she was in his employ.

Q Now, was anything said about your meeting her at a future time? A Yes, sir; I was to meet her at ten o'clock the next morning, at the Navarre, where she was either to bring the \$8,000 or \$10,000, as the case might have been, or the jewelry, and hand it over to me at the Hotel Navarre; but it was practically agreed that she was to bring there---

MR. WEEKS: Not practically. That is a conclusion.

BY MR. CLARKE:

Q Well, what was said? A She was to bring the money or



the jewelry to the Hotel Navarre, the next morning, at 10 o'clock. And I waited for her, next morning, and the time passed on until 12 o'clock, and I saw nothing of Mrs. Hyland.

About a quarter before 12, she called me up on the telephone, or about 12 o'clock, and told me that she was then downtown, and had had the jewelry appraised.

Q Did you recognize her voice on the telephone?

A Yes, sir. And she said that she had had the jewelry appraised and Mr. Holmes said that she could safely advance \$10,000 on it.

And she said "Now, I don't feel like going around the city with it in my possession, and so I think I will leave it in his safe, and I will come up and meet you at the Hotel Navarre at four o'clock, and I will bring you the money."

And she said, further, "If there should be any delay on my part I will be there at 7:30, at the very latest."

Subsequently, when I found that she had moved I found that, at four o'clock---

MR. WEEKS: Objected to.

Q Did she come at four o'clock? A No, sir. And I waited until five, and she didn't come.

Q Did you see her again that day? A No, sir.

Q When did you next see her? A I next saw her at 121st street, the day that she was arrested. I met her, three weeks later.

Q Three weeks later? A Yes, sir.

BY MR. WEEKS:

Q That was about the 19th of December? A Yes, sir.

Q Saturday, the 19th of December? A Yes, sir.

BY MR. CLARKE:

Q Now, what did you do, after the defendant failed to meet you, as agreed? A Why, I thought---

Q Never mind what you thought, Captain? A I waited there and waited for her until 7:30 came, and until 8 o'clock came, and I saw nothing of her.

So, the next day, I went around to the number, the house--- I had never been there-- and asked the janitress--- she came to the door-- asked her for---

MR. WEEKS: Objected to.

BY MR. CLARKE:

Q Well, you made inquiries there? A Yes, sir.

Q And what else did you do? A I went from there--- she told me that---

MR. WEEKS: Objected to.

BY MR. CLARKE:

Q Never mind about that. You went to this lady's

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house, but she was not there, was she? A No, sir; she was not there.

Q Now, what did you do about this matter afterwards?

A Well, I started out to look for the express company that took her things---

MR. WEEKS: Objected to.

BY MR. CLARKE:

Q Now, did you go to Police Headquarters? A No; no, sir. I went ~~after~~ to the Columbia Storage Company.

Q As the result of some information that you got?

A Yes, sir; from the janitress of the building.

MR. WEEKS: That is objected to, and I ask that it be stricken out.

THE COURT: Strike it out.

BY MR. CLARKE:

Q As the result of some information? A Yes, sir.

And I asked the man---

MR. WEEKS: Objected to.

BY MR. CLARKE:

Q Where did you go? A To the Columbia Storage warehouse.

Q Where is that? A Between 66th and 67th street and Columbus avenue, if I remember correctly.

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Q Well, you are not entitled to say what you said to anybody there. You went there? A Yes, sir.

Q And what did you do afterwards? A From there I went down on the following day to Police Headquarters.

BY MR. WEEKS:

Q The following day? A Yes, sir.

BY MR. CLARKE:

Q And who did you see there? A I saw Sergeant Gallagher, of the Central Office.

Q Now, what did you and Sergeant Gallagher do, after that in relation to this case? A Why, we went to some of the steamers and we also went to the address of the house there, and went about the city, and watched different places, to try to get track of the woman. Of course, there were three detectives detailed on the case.

Q Who were they? A Sergeant McAuley, Sergeant Deedy, and Sergeant Gallagher.

Q Did you go with them to any place? A I did. I went to the various steamers, and went all over the first and second class passenger list of the steamers that were outward bound.



THE COURT: How is this material?

MR. CLARKE: I merely want to show that he made efforts to find the woman.

BY MR. CLARKE:

Q Did you find the woman? A No, sir; not before the 19th.

THE COURT: Now, let me ask here, Mr. Clarke: After he delivered these articles to the defendant, as he says, did he go down to this place, in Maiden Lane, 16 Maiden Lane?

BY MR. CLARKE:

Q Did you go to 16 Maiden Lane? A I did; yes, sir.

Q When did you go down there? A I went down there the following day. That same night I tried to locate some people by telephoning the building, and I was unable to do so, as it was so late, after four o'clock. But I found out that there was no such person as Holmes, and I believe the detective went there afterwards---

Q Never mind that. Did you find any trace of Mr. Holmes? A No, sir. They said there that there was no such person in the building, and never had been, to their knowledge.



THE COURT: Mr Clarke, was anything said, at the time these articles were delivered by him to the defendant as to any time when she would report to him the result of the appraisement, or her communication with her mother?

MR CLARKE: Yes, sir.

BY MR CLARKE:

Q Tell us about that? A At 10 o'clock next day, she was to report to me about that.

BY THE COURT:

Q What did she say? A And she said that she was to communicate with her mother by telegraph, and her mother was to telephone to her and telegraph to the bank, authorizing the payment of the money.

BY MR CLARKE:

Q And she was to report to you at what hour? A She was to report the result of the appraisement at ten o'clock, and her mother's reply was to be given to me at four o'clock that afternoon, when she was supposed to meet me, at the Hotel Navarre.

CROSS EXAMINATION BY MR WEEKS:

Q Have you told us all the arrangement between yourself and the defendant on that night? A As near as I can think of it at the present time.

Q All the details of it that you can remember? A I have.

Q Have you told us all the places that you went to on that night? A I have, as near as I can remember; I have told you everything.

Q You went to the ice cream saloon on Eighth Avenue?

A I did.

Q And then you went to the Hotel Navarre? A Yes.

Q And then you came back to the ice cream saloon? A I did.

Q And then you went to the Hotel Marlborough? A Yes.

Q And then went across the street to Schwartz's?

A Yes.

Q And back to the Hotel Marlborough? A Yes.

Q And back to the Hotel Marlborough? A Yes.

Q Now, is that a correct statement of the different places that you went to, and the order in which you went to them, and the number of times that you went to them? A Yes.

Q You are sure of that, are you? A Yes.

Q How many times did you go to Schwartz's that night?

A After meeting the defendant, I only went there once.

Q After meeting the defendant, in the afternoon, you went there only once? A That's right.

Q You are not mistaken about that, Mr Fyshe? A No.

Q Did you go to Schwartz's jewelry store after you met the defendant, and asked Mr Schwartz to put a higher value

on that property than it was worth? A I did not. I was in there previous to meeting the defendant, if I am not mistaken, that evening.

Q Then, before you met the defendant you went into Schwartz's jewelry store and asked him to put an exorbitant price on the jewelry? A No; I didn't ask him to put an exorbitant price on the jewelry.

Q No. Didn't you ask him to value the jewelry at more than it was worth? A I couldn't say that, because I didn't know the value myself.

Q And that you would make it all right with him? A No; I didn't tell him that.

Q Sure of that? Now, you went to Mr Schwartz's before you met the defendant? You heard Mr Schwartz's testimony, in the Magistrate's Court, didn't you? A Well, I wouldn't remember it. I heard what he said.

Q Now, let me ask you if this is not the substance of your interview with Mr Schwartz, the night that you brought the lady in there, just before you brought the lady in there. Did you not go into Mr Schwartz's jewelry store, and ask him, "Would you be so kind as to appraise it up a little bit more than it is worth?" and that you would make it all right with him, and ask him to appraise it at \$10,000? A No. I was in there previously, if I remember correctly, and no such con-

versation as that took place, of my knowledge.

Q At the time that you went there to Schwartz's place, on this day, was before you met this defendant? A Yes, sir; if I remember correctly. It is sometime ago.

Q Now, you were examined in this case in the Magistrate's Court, weren't you, Mr Fyshe? A I was.

Q Didn't you then testify that you went to Mr Schwartz's jewelry store, between the time that you left the defendant, at the ice cream saloon, and the time that you came back to the ice cream saloon? A In the time between?

Q Yes. A I don't remember that I did.

Q Did you or did you not? Whether you remember it or not, did you or didn't you? A I don't remember that I did.

Q Well, do you mean to testify that you don't remember whether you did that? A That's what I say. I know that I was in there previous to our going in there together.

Q Now, didn't you then say---I will ask you another question right here, Mr Fyshe. Where did you say you delivered this jewelry to Mrs Hyland? A I delivered it to her in the Hotel Marlborough.

Q In the Hotel Marlborough? A Yes, sir.

Q That was the first time that you had handed it over to her? A No; she had it in her hands, in Mr Schwartz's.

Q You are sure of that; are you? A I am.



Q All right. I will pass that for the present, Mr Fyshe, and I will go back a little further. How many times have you been convicted?

MR CLARKE: I object to that. Ask him if he has ever been convicted. That is the proper question.

MR WEEKS: I will ask it the other way.

BY MR WEEKS:

Q Have you ever been convicted? A I never have.

Q You never have? A No.

Q Do you realize that you are under oath? A (No answer)

Q Do you know the Clerkenwell Sessions in London?

A What is that?

Q Do you know the Clerkenwell Sessions, a criminal court, in London? A Yes.

Q Weren't you convicted there of assault? A Oh, yes, I was convicted of assault, yes. But, putting a wholesale question like that at me, how many times have you been convicted.

Q I asked you if you were ever convicted, and you said no? A No. I beg your pardon. You asked me how many times I had been convicted.

Q And is that the only time you were ever convicted?

A That's the only time.

Q It is not the only time, though, that you have been guilty of assault, is it?

MR CLARKE: I object to that. He is not bound to



incriminate himself. It is a question of law. I object to that. Let him ask him about any specific case.

THE WITNESS: Oh, in regard to that case, I wish to say that I was fined \$5, for slapping a man across the face for assisting upon taking my wife to the theatre, when I had forbidden him the house. I told it to Mrs Hyland, or he wouldn't know anything about it now.

BY MR WEEKS:

Q Now, Lieutenant Fyshe, or Captain Fyshe, or Mr Fyshe, or whatever it is, go on and say anything else that you want to. To begin with, are you a Captain? A I am.

Q Is it not a fact that you are only a lieutenant?

A No; it is not.

Q Have you got any papers to show that you are a Captain?

MR CLARKE: I object.

BY MR WEEKS: Have you?

MR CLARKE: Objected to.

THE COURT: Allowed.

A I don't know that I have with me, no.

BY MR WEEKS:

Q What regiment were you a Captain of? A I was Captain of the South African Irregular Mounted Forces.

Q Do you remember being examined in a case of Alberta C. Fyshe, your wife, against yourself? A Yes, sir.

Q And, when you were asked in regard to your rank, you said that you were a Second Lieutenant; didn't you?

A I have never been a second lieutenant.

Q Have you any discharge from the British service?

A No, I haven't been discharged from the British service.

Mr. Clarke, if I am allowed to speak---

MR. WEEKS: " No.

MR. CLARKE: No. No speeches.

THE WITNESS: I don't wish to make any speeches.

BY MR. WEEKS:

Q You say you were never a second lieutenant? A No; I never was.

Q Now, do you remember, on the hearing of the charge made against you by your wife, in the Magistrate's Court, being asked this question:

"Q You are drawing compensation as a lieutenant now?

A Yes."

A That is quite correct. I am.

Q "Q But your rank was that of Captain? A I was second lieutenant, and the law says that I shall draw compensation as second lieutenant, no matter to what grade I arrive later on." Were you ever a second lieutenant? A No.

Q Then why did you so testify? A I didn't so testify.

Q Then you didn't so testify in the Magistrate's Court?

A I did not; because I never was.

Q Have you any papers showing your official connection with the British Army? A I have papers, granting me a pension as a lieutenant, yes.

Q As a lieutenant? A Yes.

Q Not as a Captain? A No, sir. Because I was wounded as a second lieutenant, and I get my compensation as a lieutenant.

Q Now, the British Army is not the only army that you have been connected with, is it, Mr. Fyshe? A No, it is not.

Q You were also connected with the United States army; weren't you? A Yes; I enlisted as a boy.

Q You enlisted in the United States Army and deserted, didn't you? A Yes, I did.

Q And, after that desertion, you went to South Africa? A No, I did not.

Q Where did you go? A I lived in New York City.

Q For how long? A A matter of two or three years, a couple of years.

Q Now, was it not a very much shorter time than that? A No.

Q When did you desert? A Oh, in 95 I think it was.

Q Didn't you testify that it was in 97? A I don't think so.

Q How old are you? A I am 29 years of age.

Q When were you born? A I was born in 74 if I am not mistaken.

Q Yes. And when did you enlist? A I enlisted at 19 years of age.

Q And how long did you remain in the service? A I remained in the service a matter of two years.

Q Until 95? A Yes.

Q And where did you live in New York? A At 18 Jones street.

Q All the time? A Yes.

Q What was your employment then? A I was-- at that time, I had no regular employment. I assisted a man that was putting in ranges, had a contract for putting in ranges, and steam fittings in houses.

Q What was that man's name? A Wolfert.

Q And do you know where he is now? A I do not; no.

Q Do you know anybody that you worked for, during that time? A No, I couldn't recall. It is a long time ago.

Q And then you went to South Africa? A And then I went to South Africa.

Q And there, you say, you met Mrs. Hysland, her husband being the Chief Engineer of the road on which you were time-

keeper? A Yes; in East Africa.

Q And when did you leave Bira? A When did I leave Bira?

Q Yes. A In 98.

Q In what month? A I think it was August or September.

Q You left Bira just after you had shot a negro, did you not? A No; I didn't leave there just after I had shot a negro.

Q What is that? A No; I didn't leave there just after having shot a negro.

Q Well, shortly before you left Bira, you shot a negro; didn't you? A I couldn't say that I did. It was said that I had, but I couldn't say that I did.

Q Well, you left Bira before you found out whether the negro was dead or not, didn't you? A I couldn't say it at all; I couldn't say that.

Q You couldn't say that? A No.

Q Do you remember being examined in the Magistrate's Court, and being asked this question:

"Q When did you leave Bira, and why? A I left Bira because I had some trouble with the Portuguese Government.

"Q Did you shoot a man? A I had shot a negro, and killed him?" A I don't know anything about that.



"Q You don't know even now whether you killed him or not? A I don't know anything about that."

A I remember that; yes.

Q "Q How soon after the shooting did you go away?

A The following day." Is that right?

A That is right; yes, that is right, in most essentials. The only thing was---

Q Now, you remember that you testified to that before the Magistrate? A I testified that I had shot a rifle that night, but I couldn't say that I shot a native; because I don't know whether I did or not.

Q Now, didn't you testify before the Magistrate that you had shot a negro? A I testified that I had shot a negro?

Q Yes. A That I had shot a rifle, not that I had shot a negro, because I couldn't say myself whether I did or not, because, if I said it, I would lie, that I had shot a negro.

Q Well, didn't the shooting have something to do with your going away immediately after the shooting?

A No. I had had trouble with the Portuguese Government for shooting elephants in the Territory. That is the trouble that I alluded to there, in that testimony.

Q After shooting elephants? A Yes.

Q Now, Mr. Fyshe, where were you born? A I was born in Groton, Connecticut.

Q And how is your name spelled? A My name is spelled in England---

Q No. How is your name spelled? A F-i-s-h.

Q That is the way your parents spelled their name?

A Yes, sir.

Q And, after you got over to England, you saw fit to change it, didn't you? A No, I did not.

Q You did not? A No.

Q Well, how do you spell it now? A F-i-s-h; and sometimes Fysh. I have no means of preventing people from spelling the name as they please.

Q Haven't you sometimes requested the name be spelled Fyshe? A Yes.

Q And what other names have you gone by? A I have very often been called Morgan, very often.

Q Yes. A But that was because my stepfather's name was Morgan, and the rest of the family was called Morgan, and I was very frequently called Morgan.

Q And what other names have you gone by? A I have never gone by any other names.

Q Think again. A I don't remember any other name.

Q You don't remember? A No.

Q What other name have you gone by during the year 1904, to bring you down to a very short period of time, to help our recollection? A Well, for the sake of getting away from newspaper men, I used the name of Stone.

Q Well, you knew that when I asked you before? Why didn't you conceal it? A Why, there was nothing to conceal in it, at all. There is nothing in it against me, at all.

Q Now, that was when you took an apartment, at "The Rudolph"; was it not? A Yes.

Q You took the lease of the apartment under that name; did you not? A No, I did not.

Q Didn't you represent to the party that you leased from that your name was Stone? A I told them who I was, and told them that I wished---

Q Didn't you represent to the lady from whom you leased, Mrs. Reed, that your name was Stone? A I did not.

Q Now, Mr. Fyshe, will you produce whatever papers you have, showing your present relation with the British Government, if you have any? A I probably can show some papers. I can't say that I can, either. I might have them on me. People don't generally travel with those things in their pockets.

If I have any, I will be only too pleased to give them to you. I haven't anything. The only thing that I have is two blanks for filling out, to draw pension pay.

Q Have you got the envelope that that was addressed in?

A Yes, I have.

Q May I see it?

MR. CLARKE: I object to his showing his private correspondence. I object to that.

A I am perfectly willing that he should see it.

MR. CLARKE: I withdraw the objection.

BY MR. WEEKS:

Q This is an envelope addressed to Lieutenant James

A Fyshe; is it not? A Yes.

Q And you still maintain that you are a Captain?

A I explained here why that was done. This is from the Paymaster's office, and he knows nothing of my rank except that I was wounded as a lieutenant and draw that pension.

Q Now, I show you a draft, and ask you if that is your signature to that draft? A Yes; that is my signature.

MR. WEEKS: I ask to have it marked for identification.

(It is marked Defendant's Exhibit 1 for identification.)

BY MR. WEEKS: Q I show you these papers and ask you if they are in your handwriting? A Yes, sir; those are mine.



(They are marked Defendant's Exhibit 2 For Identification.)

BY MR WEEKS:

Q Are these other papers in your handwriting? A Yes, sir; that is my handwriting.

(They are marked Defendant's Exhibit 3 For Identification.)

BY MR WEEKS:

Q And I show you that letter and envelope, and ask you if they are both in your handwriting? A Yes, sir.

(They are marked Defendant's Exhibit 4 For Identification.)

BY MR WEEKS:

Q And I show you this letter and envelope, and ask you if they are in your handwriting? A Yes, sir.

(They are marked Defendant's Exhibit 5 for Identification.)

BY MR WEEKS:

Q I show you this letter and envelope, and ask you if it is in your handwriting? A Yes, sir.

(They are marked Defendant's Exhibit 6 For Identification.)

BY MR WEEKS:

Q Now, Mr Fyshe, returning to Schwartz's place, is it



not a fact that you had shown this necklace to Mr Schwartz, of Schwartz Brothers, sometimebefore this, and offered it for sale? A Yes.

Q And he offered you \$3,500 for it? A No. He never made me any offer for it.

Q Well, didn't he say that it was not worth more than \$3,500, and that he might be able to get a customer for you? A He did tell me he could sell it for me for between \$7,000 and \$8,000.

Q Now, please answer my question. Didn't he say to you that it was not worth more than \$3,500 to him, and that he thought he might be able to get a customer for it? A He said that he thought he might be able to get a customer for it, for \$7,000 or \$8,000.

Q And didn't he ask you to leave it with him, and say that he would give you a receipt for it? A He did.

Q And didn't you say that you could not; that you didn't have any authority to do it? A I said I didn't care to do so.

Q Didn't you tell him that you didn't have any authority to leave it with him? A No, I did not. I told him I didn't care to; that I didn't think my wife would be pleased if I did.

Q Mr Schwartz is a jewelery in business on Broadway?

A He is.

Q And yet you were not willing to leave the necklace with him , on his receipt? A I hadn't known Mr Schwartz for any length of time.

Q You preferred to leave it with Mrs Hyland, on her receipt? A That was a great many months after.

Q A great many months after? A Yes; three or four months after.

Q Was it not within two or three weeks, Mr Fyshe?

A No; it was not.

Q Now, is it not a fact that, the first time you ever went into Mr Schwartz's was subsequent to the first of November?

A No, certainly not. I bought a watch from him, away last August.

Q Eh? Just let me try to refresh your recollection in regard to that, Mr Fyshe. You remember Mr Schwartz testifying-- well, you heard Mr Schwartz testify in the Magistrate's Court, didn't you? A Yes, I heard something that he said. I don't know that I heard everything that he said. I remember that he did testify.

MR CLARKE: I object to the examination of the witness as to how some other party testified.

MR WEEKS: I didn't know that the District Attorney would object, because I had consented---

MR CLARKE: Oh, I'll have Mr Schwartz here. He has

returned to the city.

MR WEEKS: Well, I didn't know that you would have him here, and I consented that you should read his testimony.

MR CLARKE: He is in town now, and I will call him.

MR WEEKS: I am very glad of it; it is very much better then.

BY MR WEEKS:

Q Now, you say you didn't ask Mr Schwartz to buy it?

A No; I never asked Mr Schwartz to buy it.

Q And didn't you ask \$10,000 for it, to Mr Schwartz?

A I might have asked \$10,000 for it.

Q Didn't Mr Schwartz tell you that you might get \$3,500 for the necklace? A Possibly, if he wanted to buy it.

Q But didn't he tell you that? A I don't recollect that he did.

Q And when was it that you say you showed it to him?

A I showed it to him--he saw it several times--he saw it some three months previous to this time in question, the second of December.

Q Now, you also advertised in the newspapers, didn't you, Mr Fyshe? A Yes.

Q To get somebody to buy or loan money on jewelry?

A I did.

Q And you had some answers to that advertisement, didn't you? A Yes.

Q When did you put that advertisement in? A That was somewhere previous to Thanksgiving. I couldn't tell you the exact date.

Q And you showed some of those answers to Mr Schwartz, did not you? A I think I did; yes.

Q And you also showed some of them to Mrs Hyland; didn't you? A I think I did show one to Mrs Hyland. I wouldn't say for sure that I did.

Q Now, coming down, Mr Fyshe, to the occasion of your meeting Mrs Hyland, as you say, on the 2nd of December, where did you meet her? A I met her on 28th Street and Eighth Avenue.

Q In the street? A Yes.

Q On the corner? A Yes.

Q How did you make that appointment? A Because she had told me that she would meet me there.

Q Well, how did she tell you? A She wrote me.

Q She wrote you; did she? A Yes.

Q Are you sure of that? A Yes. Or she rung me up on the telephone. I wouldn't say which it was now.

Q Wait a minute. You say she wrote to you? A Yes, I think so.

Q Have you got that letter? A No, I have not.



Q You had written to her before that? A Yes.

Q And hadn't you seen her, the day before? A No.  
Some weeks previously, I think.

Q Sure? Hadn't you seen her the day before? A No.  
I wrote her from Providence, if I aint mistaken, making the  
appointment, if I aint mistaken, saying that I would be in New  
York.

Q Where did you address her? A I addressed her 227  
Eighth Avenue, I think it was, or Ninth Avenue.

Q Well, did you know whether she lived there or not?  
A I did not.

Q Didn't you know that that was only a letter box? A I  
didn't know at all.

Q Did you ever suggest to her that she should hire a  
letter box? A No.

Q Had you seen her, toward the end of November? A What  
is that question, again?

Q (Question repeated) A No.

Q Were you ever in any place at Eighth Avenue and 30th  
Street, with her? A Eighth Avenue and 30th Street?

Q Yes. A Not just on that corner, not just at that lo-  
cation, that I know of.

Q Before you wrote her from Providence, asking her to  
meet you, on the 2nd of December, you hadn't see her for how



long? A I hadn't seen her for a matter of three weeks, or a month; something like that.

Q Where has you seen her last, before that? A Last before that?

Q Yes. A I saw her--I think I met her on the street, if I aint mistaken.

Q By appointment or chance? A By appointment.

Q Where did you meet her then? A I met her on the corner of Ninth Avenue and 65th Street, I think, or 55th Street, or 65th Street.

Q Which was it? A I can't remember now, exactly, which it was.

Q How did you make that appointment? A She telephoned to me to meet her there.

Q Where did she telephone to? A To 872 Broadway.

Q And did you meet her there? A I did meet her.

Q And before that, when had you seen her? A Well, I couldn't say. I had met her several times before that.

Q Did you meet her in Central Park? A I didn't meet her in Central Park, but, on the day in question, when I met her at 65th Street or 55th Street, I went to Central Park with her.

Q Now, hadn't you, just before that, gone to her apartment Avenue,  
in Columbus, and left word with the janitor that you wanted to

see her?

MR CLARKE: I object. I do not think that this is material at all. You know that Mr Fyshe's wife is present, and that is your reason for this.

MR WEEKS: No; it isn't that at all. She knows him better than we do. I want her to learn where her necklace went to, if I can.

THE COURT: Allowed.

MR WEEKS: I don't want to waste time, your Honor. I shall try not to go too far from the case at issue here.

BY MR WEEKS:

Q Isn't that the way the appointment was made, Mr Fyshe?

A How is that?

Q That you went to her former apartment, at 25 Columbus Avenue, and left word with the janitor that you would like to have her communicate with you? A No; that's not the way the appointment was made.

Q It was not? A No.

Q Now, Mr Fyshe, you say that, on this day that you met her in the ice cream saloon, that she said something about her Steel investment? A Yes.

Q You had, at one time, agreed to put some money into an investment in Steel stocks with her; had you not? A I had, yes.

Q She told you that she had what she thought was good information in regard to Steel, and you put in \$150, didn't you?

A I did.

Q Told her to invest \$150? A I did.

Q And in order that she might make that investment of \$150, you gave her this check; didn't you? (Indicating)? A I did.

Q And then, without making any inquiry as to whether she had made the investment, and become liable for it, you stopped payment on the check, isn't that so? A That is not so.

Q That is not so? A No.

Q But you did stop payment on the check, didn't you?

A Yes.

Q And you haven't made good the \$150 to her yet? A No; because I found---

Q No. Never mind the because. You have not? A No.

Q Now, you have stated that the reason why you stopped payment on that check was because you thought you had been done?

A I didn't think. I knew it.

Q All right. Thank you. That was back in June, 1902 or 1903, and you knew you had been done by this defendant then?

A No, I didn't think that I had been done intentionally.

Q Well, but you knew that you had been done?

A Not exactly putting it in that way.

Q Well, what did you mean by it then? A Well, I found that she had not handed the check to the broker that she was going to give it to, but had taken it to Thomas Cook & Sons, and, as soon as I found that out, I stopped the payment, knowing that, if there was anything wrong in it, she would hold me responsible.

Q That she would hold you responsible? A Yes. And she never did. She never mentioned the check afterwards. Now, as to the arrangement about the Steel, I think I ought to be allowed to explain this.

Q Oh, you will have time to do that later. Now, didn't you testify previously that you stopped the payment on that check, because you thought you had been done? A No; I didn't use those words.

Q Then I will have to read your examination in the Magistrate's Court, in this case, again. Do you remember that you were asked this question, and you made this answer to these questions:

"Q Did you do anything to interfere with the payment of the check? A I did.

"Q What? A I stopped payment on it.

"Q Why? A Because I imagined that I was being done."

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Did you make that answer? A I made some similar answer. I don't know that I made that exact answer.

Q Did you say, then,

"I had reason to believe that the check that I had given to her had been handed to Mr. Duryea, and that she was going to get the cash on it, and had not put up any money, in fact, on it, and so I stopped the check"?

A That is correct.

Q Well, you never made any investigation, to ascertain whether she had made any investment in stocks? A She said that she was so sure of the tip that she would make good to me my loss, if any.

Q Wait a minute. Answer my question. (Question repeated). A Yes, I did. Otherwise, I wouldn't have known that it was handed to Thomas Cook and Sons, to be cashed.

BY THE SEVENTH JUROR:

Q Who was the check made payable to? A It was made to Mrs. Hyland, but it was to be handed to a man named Duryea, who was to buy the stock for her, and instead of handing it to him, she handed it to Thomas Cook & Sons.

MR. WEEKS: I offer the check in evidence.

Any objection?

MR. CLARKE: There is no objection. But it



has nothing to do with this transaction. It was three or four months or more, before that. I have a standing objection as to the latitude of this cross examination. When your Honor thinks it has gone far enough, I hope it will be stopped.

BY THE SEVENTH JUROR:

Q This transaction took place in England, didn't it?

A No, sir; in New York.

Q But it is a foreign bank? A Those are my army agents. They make a business of that, attending to all army and navy officers' business when they are absent, at the front or away from the country.

Q Are they bankers in London? A Yes; in the City of London.

MR. CLARKE: It is a check drawn on the City of London, and as good as any other kind of check, but payment was stopped on it.

THE JUROR: I understand.

THE WITNESS: Had she handed it to Mr. Duryea, I would never have stopped payment on it, but she handed it to Thomas Cook & Sons, to be cashed, and I stopped it.

(It is marked Defendant's Exhibit 7, in evidence.)

BY MR. WEEKS:

Q Now, this necklace belonged to your wife; didn't it?

A It did.

Q And you claim that you delivered it to Mrs. Hyland on the night of the 2nd of December? A Yes.

Q And discovered on the 3rd of December that you couldn't find Mrs. Hyland. Now, when did you first inform your wife that there was any trouble about this necklace?

MR. CLARKE: Oh, I object to that. What materiality has it?

THE COURT: I will allow the question.

A I informed---

THE COURT: That is, if you mean by trouble, anything growing out of this transaction?

MR. WEEKS: That he had lost possession of the necklace; that is what I mean.

THE COURT: Allowed.

BY MR. WEEKS:

Q That you were uncertain as to the whereabouts of the necklace, I mean? A I informed her on the night of the 19th, or the morning of the 20th.

Q Was it not on the afternoon of Sunday the 20th?

A On Sunday the 20th?

Q Yes. A It was on Sunday the 20th, that I informed her.

Q You never informed her of anything in regard to it,

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until you had had the defendant arrested, and until the matter came out in the newspapers? A That is correct.

Q And you never said a word to her about it, until she called your attention to the articles in the newspapers about it? A No, that is not so. Beg pardon. That is not so. I handed her the newspaper with the article in it. I explained the matter first, and then handed her the newspaper with the article in it.

Q But you didn't tell her anything about it until the publication in the newspapers about it? A That is correct.

Q On the afternoon of the 19th, the defendant was arrested? A Yes, sir.

Q And the story came out in the papers in the morning of the 20th? A Yes, sir.

Q And you came down to Court, on the morning of the 20th? A Yes.

Q And at that time you hadn't told your wife anything about it? A I had not.

Q You hadn't told your wife that you had had this woman arrested? A No.

Q And you hadn't told your wife about it, until after the newspaper publication? A Quite so.

Q Now, your wife claims that you had no authority to part with the possession of the necklace, doesn't she?

MR. CLARKE: Objected to.

THE COURT: I sustain the objection.

MR. WEEKS: Will your Honor pardon me a moment?

THE COURT:

No; not as to her claim.

MR. WEEKS: I think I am entitled, if your Honor please, on the question of the motive of the complainant, to show that he himself has parted, in some way, with the possession of that necklace, against the wishes and authority of the true owner, and that, if he himself has done that, then he has a motive for charging someone else with this larceny.

THE COURT: Well, you may show that.

MR. WEEKS: That is what I wish to show.

THE COURT: But I do not think by that form of question---

MR. WEEKS: But I didn't wish your Honor to preclude me from that line of examination.

BY MR. WEEKS:

Q This necklace, you say, belonged to your wife?

A That is correct.

MR. WEEKS: Mr. Dooly, will you produce the diamond pin?

BY MR. WEEKS:



Q I show you this pin, Mr. Pythe, and ask you if that, also, doesn't belong to your wife? A It did belong to my wife; yes.

Q And, on the 24th of November, 1903, you pawned that at the Providence Loan Association, in this city, for the sum of \$700; did you not? A I did. I had a perfect right to do so.

Q Well, now, that is on the record, I hope. Now, what did you do with that money?

MR. CLARKE: I object to that.

THE COURT: When was the pawning?

MR. WEEKS: On the 24th of November, 1903, within eight days of the day when this necklace seems to have disappeared.

MR. CLARKE: Well, I have no objection. It corroborates our theory.

THE COURT: You may answer.

THE WITNESS: What was that?

BY MR. WEEKS:

Q What did you do with the proceeds of the pawning of that pin? A I object to answering that question.

MR. WEEKS: I thought you would.

THE COURT: Is this article in question one of



the articles assigned in the indictment?

MR. WEEKS: No, sir.

MR. CLARKE: It has nothing to do with it, if your Honor please. It is an entirely different transaction. I think it is going far enough to show that he did pawn it.

THE WITNESS: Well, I will answer that question, Mr. Clarke.

BY MR. CLARKE:

Q Then go ahead. A I have been kept so long on the stand, on the other examination, that this is getting a little tiresome. I gave the greater part of that money to Mrs. Fyshe. In the first place, some of it went to pay car fare up to Providence, Rhode Island, and some of it went for street car fare here, in New York, and to pay for a lot of things that we had during Thanksgiving, and, perhaps, Mrs. Fyshe can tell what happened to the rest of it. I handed most of the money over to her.

BY MR. WEEKS:

Q What was the amount of money altogether? A \$700.

Q Did you hand that all over to Mrs. Fyshe?

MR. CLARKE: Objected to. I think we have gone far enough.

THE COURT: Well, as long as this is not one

of the articles mentioned in the indictment, haven't we gone far enough in this direction?

MR. WEEKS: I propose to show that this piece of jewelry was not pawned by this man with her consent, but was taken out of her bureau drawer, and pawned, without her knowledge and consent, and that, therefore, goes to show the character of this man and his credibility.

MR. CLARKE: And what difference does it make? Suppose that the pawnbroker had lost it, would that be an offense?

MR. WEEKS: No. But, if this man had stolen it it would go to his credibility.

THE COURT: He may answer the question.

BY MR. WEEKS:

Q - Is it not a fact, Mr. Fyshe, that this diamond pin, belonging to your wife was pawned by you, without her knowledge at all, and that she never had any of the proceeds of it? A It is not.

Q That is your wife here in Court, Mr. Fyshe, sitting back there (indicating)? A That is my wife, yes.

Q Now, can you tell me, Mr. Fyshe, where it was that you got the diamond crown that belonged to your wife, and which was missing for a long time?

MR. CLARKE: Oh, I object.

BY MR. WEEKS:

Q And which you finally produced?

MR. CLARKE: Objected to.

THE COURT: This is not one of the articles mentioned in the indictment?

MR. WEEKS: No, sir.

THE COURT: I will sustain the objection. I do not see its materiality or relevancy here, to the subject at issue here.

MR. WEEKS: Well, is it not relevant and material, your Honor, to show that this man has persistently and deliberately misappropriated other property of his wife, practically from the time of their marriage . I want to show---

THE COURT: No, Mr. Weeks. Apart from the marital relations of this witness, at all, it is proper for you to show, or competent for you to show that he has either been convicted of crime, or that he has committed acts of moral turpitude. But to go into a long cross examination of various matters that may have occurred between himself and his wife, during coverture, I think is entirely immaterial and irrelevant. You may ask him if he did not do so and

so, just as you asked him if he had been convicted of crime, but we cannot go into the examination of these matters on this trial. I sustain the objection to this question.

MR. WEEKS: Very well, sir.

BY MR. WEEKS:

Q Now, is it not a fact, Mr. Fyshe, that you took from the bureau drawer a one thousand dollar Auditorium bond belonging to your wife, and sold it to the Gansevoort Bank, without her knowledge and consent?

MR. CLARKE: Objected to.

A That is not so.

THE COURT: I will allow the answer to stand.

BY MR. WEEKS:

Q Now, is it not a fact, Mr. Fyshe, that a diamond crown belonging to your wife was taken by you, and, after it had been missing for a long time, you told your wife that you had received a letter from Philadelphia, from some detective agency there, that they had located it, and that they would return it, provided that she would pay \$250?

MR. CLARKE: That I object to.

BY MR. WEEKS:

Q And that she refused to pay it, and that, thereafter, you produced the diamond crown? A It is not so; no.

Q Now is it not a fact that you took silver plated ware



from the Hotel Navarre and had it in your own trunks until recently, when you returned it to the hotel, after it was discovered in your trunks by other people?

MR CLARKE: I object.

A Emphatically, not. I would like to have some employee of the hotel Navarre come here, and say that it ever did happen. There is the cashier here. The cashier of the Hotel Navarre is here, and I would like to have him called as a witness to that.

BY MR WEEKS:

Q Now, it was between the 4th and 19th of December, did you leave the city? A Between the 4th and 19th of September?

Q No; of December, 1903? A Yes, sir, I did; between the 4th and 19th.

Q Where did you go to? A I went up to Providence, Rhode Island.

Q And did you go anywhere else? A Yes. To New London.

Q Anywhere else? A Yes. I went to Groton.

Q Anywhere else? A No.

Q Anywhere else? A No.

Q Sure of that? A Yes.

Q Did you go to Philadelphia? A No.

Q At any time? A I was in Philadelphia last spring; yes.

Q Well, I mean, in the last fall? A Yes; I went to



Philadelphia along in--no. I didn't go to Philadelphia.

Q Well, which is it now? You have had two guesses?

A I went to Philadelphia, last spring. You asked me two questions, as to the spring and the fall. I stopped in Philadelphia, on my way back from a place in Pennsylvania other than Philadelphia, and I went to Pennsylvania again, this last fall.

Q Now, Mr Fyshe, when were you married? A I was married on the 2nd of September, 1902.

Q To this lady who is now in court? A Yes.

Q Married where? A Edinburgh, Scotland.

Q At that time did you make affidavit that you had been a resident of Scotland for a year?

MR CLARKE: I object.

A No, no; I didn't make that affidavit.

Q Did you make a statement that you had been? A No.

Q Did you know that your marriage in Scotland, if you hadn't been a resident of Scotland for a year, would be invalid? A No. And that's not so, either. Twenty-one days. Allow me to correct you, Mr Weeks.

Q Well, did you make that affidavit? A No, I didn't.

Q Did you make any affidavit as to the length of your residence in Scotland? A I did not.

Q You hadn't been a resident of Scotland the necessary time, at the time you married there? A I had been. The

twenty-one days. And I had been a resident of Scotland a matter of thirty or thirty-five days.

Q And were proceedings taken for the annulment of that marriage?

MR CLARKE: I object to that.

THE COURT: I sustain the objection.

BY MR WEEKS:

Q Is that the only time you have been married? A It is not.

Q When and where were you married, besides?

MR CLARKE: Oh, I object to that. We have got to draw a line somewhere.

✓ THE COURT: I sustain the objection to that question.

MR WEEKS: We except.

BY MR WEEKS:

Q Have you been married to this lady more than once?

MR CLARKE: That I object to.

THE COURT: Objection sustained.

MR WEEKS: Exception.

THE COURT: To th lady spoken of before, I presume, Mr Weeks?

MR WEEKS: Yes.

BY MR WEEKS:

Q Is it not the fact that you---that your first marriage

in Scotland, was irregular, and was known by you to be irregular?

MR CLARKE: Objected to as immaterial, irrelevant and incompetent, whether it was regular or not, or whether he is married or single.

THE COURT: Objection sustained.

MR WEEKS: Exception.

BY MR WEEKS:

Q Now, Mr Fyshe, when did you last see Mr Hyland, this Mrs Hyland's husband? A I last saw Mr Hyland about the first of July, the fore part of July, 1902.

Q July, 1902? A Yes.

Q In London? A Yes; in London.

Q And did you have any conversation with him? A I did.

Q You were married in September, 1902? A I was.

Q When and where did you first see Mrs Hyland, in this country? A I first met her at No. 10 West 60th Street--No. 60 West 10th Street.

Q Yes, you get things turned around? A Yes. No. 60 West 10th Street.

Q When? A 1902; along in the latter part of April, 1902.

Q Along in the latter part of April, 1902? A Yes, sir; as far as I remember.

Q And then you were married in September, 1902? A Yes,

sir.

Q The letters that I showed you, you wrote two of those in October, 1902, to the defendant, did you not? A I couldn't say whether it was October or December. I think they were written in December.

Q I will show them to you, to refresh your recollection? A I don't deny that I wrote them to her. I have written her dozens of letters. October 15th is the date.

Q After you were married? A Yes, sir.

Q When did you first tell the defendant that you were married? A Why, I don't exactly remember when I did tell her that I was married.

Q Eh? A I may have written to her that I was married, as far as I know. There was no reason for my not telling her.

Q No. I am not asking whether there was any reason or not. But I ask you when you first told her? A I don't remember when I first told her.

Q You didn't tell her anything about being married until February, 1903, did you, when you called upon her, at 25 Columbus Avenue? A Yes. That was the time I told her. That was the first time I had ever seen her after I was married, if I am not mistaken.

Q And then you continued to call on the defendant there, at 25 Columbus Avenue? A No, excuse me. I would like to make



a correction there. I think, if I am not mistaken, that I had told Mrs Hyland that I was married, away along last April, a year ago; in fact, I am pretty certain that I had, quite positive that I had.

BY MR CLARKE:

Q He said February, 1903? A Oh, well, I had told her long before that.

BY MR WEEKS:

Q And you told her that before you were married; didn't you? A No, sir. I was married in September, 1903.

Q I thought that you said you told her in April, 1902? A Excuse me. I meant 1903.

Q And that is the first time that you told her you were married? A That is correct.

Q And then she was living at 25 Columbus Avenue, was she not? A She was.

Q And did you call there? A I had been there several times.

Q And she then represented, or shortly after that you found that she was an agent soliciting life insurance, did you not? A Well, that was the reason I called upon her, because she was an agent of the New York Life.

Q Did you call there just because she was an agent for the New York Life? A No.



Q That was the reason? A Because I had known her for a long time prior to that. I had known the lady, and she also interested me into New York Life so much that she wanted to insure my life.

Q Yes; and you agreed to take out a policy? A Yes. I practically agreed to take out a policy.

Q And she went through all the work of taking out a policy, and you didn't take it? A I didn't bind myself to take it. I told her I would take it, at my pleasure, afterwards.

Q Oh, no. And then you didn't see the defendant again-- well, did you see her very often during that time? A No, I can't say that I did.

Q Well, when was it that you told her that you wouldn't take the policy? A I never have told her that I would not take the policy.

Q Well, when was it that you declined to take it? A I never have declined to take it.

Q Well, when was the policy presented to you and returned by you? A Two or three policies were given to me, and sent back for correction, along in last July.

Q Along in last July? A Yes.

Q And she was then living at 25 Columbus Avenue? A She was.

Q And that is a little four-room apartment, is it not?

A I think so, as far as I know.

Q And did you know where--did you know of her being engaged in any other business? A I did not, at that time; no.

Q Did you--- A I only know what she told me.

Q Or did you know any place that she lived after moving from 25 Columbus Avenue? A No.

Q And on this night you didn't go to her house, did you? A I did not.

Q She hadn't any office? A No. She generally had a lot of papers lying around on her desk, when I called on her, at Columbus Avenue.

Q And you claim that you gave her this jewelry, which is on her receipt, this receipt that you show us here?

A Oh, no; not which is on her receipt.

Q She was not in any business, was she; to your knowledge; didn't have any business? A Well, she had an office with the agent for that district, for the New York Life, as far as I knew, at least I was given to understand that, and the agent also corroborated her statement.

Q Did you ever see her in that office? A I never did; no.

Q And you had met her by appointment at Ninth Avenue and

55th Street or 65th Street, and had gone into the Central Park? A Yes.

Q You had met her at Eighth Avenue and 30th Street?

A Yes.

Q Your appointments were always made on street corners; weren't they? A Yes. Because she said that there was a gentleman by the name of Faith, that called on her, and annoyed her and she didn't want to have him see me call. That's the reason that she gave. Or, otherwise, I would not have met her on street corners.

Q Now, Mr Fyshe, Captain Fyshe, I beg your pardon, if you will just answer my questions, and not go into such lengthy explanations, we will get along better? A I am trying to answer your question.

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Q On this night, you again met her on a street corner, and went into an ice cream saloon? A Not a saloon; a parlor, I should call it. There was nothing of the saloon about it.

Q Well, then, a parlor? A Yes.

Q And did you have any of the jewelry with you then? A I had the two rings, and the watch with me, at the time, but not the necklace, the most important part of it.

Q Then you went back to the hotel I believe you said? A Yes.

Q Now, you can't say whether you went to Schwartz's store after you had this interview with her, that afternoon? A I can't say that I did. I know that I went into Schwartz's either before or afterwards, but which it was, I can't say, for sure.

Q Is it not a fact that you went into Schwartz's Mr. Fyshe, within twenty minutes or half an hour of the time that you and Mrs. Hyland went over there? A No.

Q Just before you went over there? A No.

Q When was it that you had this interview with Schwartz, when you asked him to value the jewelry at \$10,000, and that you would make it all right with him? A I never had any such conversation with Mr. Schwartz.

MR. WEEKS: Will your Honor pardon me a moment?

I can't refer to that testimony just now. I can't seem to find it, although I am very sure that it is here.

BY MR. WEEKS:

Q Now, Mr. Fyshe, you claim to have left this jewelry with Mrs. Hyland on that night, and that she was to meet you, at the Hotel Navarre, next morning? A She was to meet me, at the Hotel Navarre, at ten o'clock the next morning.

Q At 10 o'clock? A Yes.

Q And she was to have the money, at that time? A She was to have the money or the jewelry.

Q She was to have the money or the jewelry? A Yes.

Q Whereabouts, at the Hotel Navarre, was she to meet you? A She was to meet me in the reception room at the Hotel Navarre.

Q She was to meet you in the reception room of the Hotel Navarre? A Naturally.

Q Naturally? A Yes.

Q Any other place would have been unnatural, wouldn't it? A It certainly would.

Q You remember testifying that your appointment-- that she was to meet you in front of the Hotel Navarre?

A I don't know that I ever did testify to that.

Q Do you remember being asked this question, and making



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this answer, at the examination before the Magistrate:

"Q You were to meet her, the next day? A Yes; at ten o'clock; in front of the Hotel Navarre."

A Well, if that is written there that way, it is an error.

Q Oh, that is an error too? A Yes. And I should think that the divorce case that you were trying in the Court, that day, would have been more of an error than that.

Q Now, don't talk so much, please. Now, you knew her mother was out of town, didn't you? You understood that her mother was out of town? A I understood that her mother lived out of town.

Q Yes. And yet you want us to understand that you believed that, between the night of the 2nd, late in the night of the 2nd-- A Not late. I beg your pardon. I left her about nine o'clock. That was the hour when I left the lady in question.

Q Well, between nine o'clock on the night of the 2nd, and ten o'clock on the morning of the third, you believed that she could take this jewelry to some place and have it appraised, and could communicate with her mother who was out of town, and could get money out of the Lincoln Bank, and could have it over in front of the Hotel Navarre, or somewhere at

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the Hotel Navarre, at ten o'clock in the morning; and that is what you understood was going to happen; did you? A No; I didn't understand that; and I didn't say so.

Q Well, but didn't you understand that she was to have the money or the jewelry there, at that time? A Yes, but presumably the jewelry. The jewelry was to be there, the money or the jewelry, but presumably the jewelry, whether the money was there or not.

Q Now, was there any discussion as to how the loan was to be made, what nature of memorandum there was to be?

A Why, certainly, there was to be a memorandum.

Q Well, who was to sign it? A Why, we were to sign it together.

Q Who was to sign it together? A I was to sign the mortgage, as it would be, something of that kind, a loan paper.

Q A mortgage or a loan paper? A Yes; and pay six per cent interest on the loan.

Q And pay six per cent interest on the loan? A Yes.

Q And you were going to sign it? A Why, of course, I was going to--- at least, Mrs. Hyland was going to give the note for the money-- for the jewelry--- I was to give a note for the money, and I presume she was to give a note for the jewelry.

Q You were to give a note for the money? A Yes; I presumed I would, But matters hadn't come to that conclusion, yet.

BY THE COURT:

Q Now, are you stating facts, or simply presumptions?

A Simply presumptions. We hadn't come to that part of it at all.

BY MR. WEEKS:

Q Nothing had been said as to what evidence of indebtedness was to be given? A No; nothing had been arranged for that part of it, at all. She was simply to procure the money at six per cent. I stated that before, quite plainly.

Q And nothing was said as to whether a note was to be given, or how the note was to be given? A Well, naturally, I would not have arranged that until the money was produced.

Q Well, it hadn't been spoken of, then? A No.

Q And all that she was to do was to find out whether that amount of money could be advanced? A That is right.

Q And, if it could be advanced on the security, the other details were to be fixed up, later? A Yes.

Q But no arrangement was made as to any details of any kind? A No.

Q The only question that was discussed between you was

a question as to whether the jewelry was sufficient security for that amount? A Yes; and----

Q And that is all? A And whether she could get the money or not.

Q And whether she could get the money or not?

A Yes.

Q Now, you are sure of that, are you, Mr. Fyshe?

A Yes.

Q There wasn't any other detail entered into in regard to it? A No, there was no other, at that time.

Q Now, all right. You are not going to change your mind about that? A I never change my mind.

Q You are not going to change your testimony about that?

A I don't think so. There is no reason why I should.

Q All right, then. There was nothing said about depositing this money in a safe deposit vault; was there?

A That is what was to happen, after she raised the money, I thought.

Q Well, I just asked you if there was anything else? A Well, that came into the arrangement for procuring the money; that was the proposition of Mrs. Hyland.

Q Now, Mr. Fyshe, is it not a fact that, in the Police Court examination, you told some story about having an arrangement with her, making an arrangement with her, that night,

that the jewelry was to be put in a safe deposit vault, and that each of you were to have a key to it so that either one could get in there without the other? A Why, no.

Q You didn't say anything of that sort? A Not exactly in those words; no, sir, Mr. Weeks.

Q Well, in substance, that? A Oh, no; not quite in that way, at all. I said, as matter of fact, to save you looking that up, that she would give me the key.

Q Then your understanding was that the jewelry was to be put in a safe deposit vault? A Yes.

Q And you were to hold the key of it? A One key.

Q One key? A Yes.

Q And the person that loaned the money was to hold the other key? A Oh, no. The cashier of the bank would hold the other key.

Q And so that you would be the only person to go there, and get out the jewelry? A I couldn't get it out. I should think that your knowledge of such matters would show you that.

THE COURT: That is sufficient. You have answered.

BY MR. WEEKS:

Q Well, why didn't you tell us that before? A Why, I was so interested in when I was married, that I couldn't get to that part.

Q You were so interested when you got married that you couldn't get to that part? A Yes; in answering your questions



as to when I got married in Scotland and so on.

Q And that is your explanation of why you didn't testify to it? A Yes.

Q Now, is there anything else that happened that night, that you have forgotten? A I don't remember anything in particular.

Q Eh? Don't you remember anything else? A I don't remember anything, in particular. I will answer any question that you like to ask me.

Q Now, I ask you if there is anything else that happened that night, that you have forgotten. I want to give you an opportunity to testify to it?

MR. CLARKE: How can he testify to it, if he has forgotten it?

BY MR. WEEKS: Q If you can recall it, I mean? A (No answer).

Q Now, is it not the fact, Mr. Fyshe, that Mrs. Hyland never had possession of that jewelry, at any moment whatever, and that this receipt is just a device of yours in order to cover up your own concealment of the jewelry? A If that were the case, Mr. Weeks, I wouldn't be here.

BY THE COURT:

Q Answer. Is it the fact? A It is not the fact.

BY MR WEEKS:

Q Tell us why you didn't tell your wife about the disappearance of that jewelry, earlier? A Well, simply because my wife is of a very nervous disposition, and would have worried a great deal about it;; and, another thing was that it would probably become public, and we would have lost the chance of getting the woman.

Q Didn't your wife write to you, between the 4th and 19th of December, and tell you to bring that necklace to Providence? A She did write to me to bring some jewelry to Providence.

Q No; that necklace? A No.

Q Where is that letter? A I don't know, I am sure. I haven't got it.

MR WEEKS: Will you produce it, Mr District Attorney? It was produced, on the police court examination, and marked. It was produced by this witness and his counsel.

THE WITNESS: She mentioned jewelry in the letter, but whether it was the necklace or not, I couldn't say.

Q Well, did she mention the necklace specifically?

A I couldn't say whether she did or not.

Q Well, will you produce it? A I can't.

Q Why not? A Because it was taken from me.

Q Who took it from you? A It was taken from me, at the examination in the police station.

Q Who took it from you? A I couldn't say for sure. Mr Boland, I think, has it.

MR WEEKS: Mr Boland or Mr Kresel had it, at the police court, sometime.

THE COURT: Well, gentlemen, this examination must not extend to unreasonable limits.

MR WEEKS: I understand that, your Honor. I am almost through.

THE WITNESS: I say that my wife did mention jewelry, in the letter, but I am not positive whether or not she mentioned the necklace. Naturally, I didn't want to mention to her at that time, the trouble that I was in, until I could find this woman.

BY MR WEEKS:

Q Well, did you mention the fact of the disappearance of the necklace to her at that time? A I did not.

MR WEEKS: I think I have about finished with this witness. May we take a recess now?

THE COURT: Oh, no. This witness's examination must be concluded to-night.

MR WEEKS: Well, I certainly should not ask to con-

tinue the examination, unless I had something important to ask him.

THE COURT: Well, we will see whether the emergency arises. Your cross examination, Mr Weeks, has been quite thorough, over an extensive field, and I think you must draw a line now.

MR WEEKS: I would like to try to find this examination, in regard to his going to the---

BY MR WEEKS:

Q In regard to going to Schwartz Brothers, Mr Fyshe, when you left Schwartz Brothers on that night, you had all this jewelry in your possession, did you not? A Yes, I did.

THE SEVENTH JUROR: Let me see that receipt for the jewelry, Mr Clarke, please?

(Mr Clarke hands the exhibit to the Juror.)

BY THE JUROR:

Q Mrs Hyland wrote that receipt herself and signed it?

A Mrs Hyland write that receipt herself.

THE SIXTH JUROR: Mr Clarke, will you let me have that check, please?

(Mr Clarke hands the exhibit to the jury.)

MR WEEKS: There is no question, gentlemen, about the receipt being in the handwriting of the defendant. We don't question it.



THE SIXTH JUROR: But what is the face value of the check?

MR WEEKS: \$150.

BY MR WEEKS:

Q Now, you say, Mr Fyshe, that you didn't go into Schwartz's jewelry store, after you met the defendant, in the afternoon of the 2nd of December, until you went there with her late in the evening? A I said that I did or did not?

Q Did not? A Since I have been sitting here?

Q Yes. A I said that I thought I went there either before or after, I wasn't certain which, meeting her the first time. If you will turn back in my testimony, you will find out which I said.

Q Now, did you go into Mr Schwartz's jewelry store, that day, and ask him to appraise--- A No, I did not.

Q Well, did you go into that store twice that day?

A I think that I did.

Q And, the second time, when you went in with Mrs Hyland? A Yes.

Q And when was the first time on that day that you went there? A It was in the afternoon, either before or after having met Mrs Hyland, the first time.

Q For what purpose did you go there then? A I don't remember, in particular. I have often been in there to have



pieces of jewelry repaired, and Mr Schwartz has repaired pieces of jewelry for me.

Q Well, you went there on that day? A Yes, one

Q Once, at least? A Yes.

Q And what did you go there for? A I think I went there to buy a case to put some jewelry in, if I am not mistaken.

Q Now, is that the reason that you went there?

BY MR CLARKE:

Q Did you talk about the necklace while you were there?

BY MR WEEKS:

Q Did you say anything about the necklace while you were there? A I think we did discuss the necklace, while I was there.

Q Well, what did you say to him about the necklace?

A Well, I don't recall what I said about the necklace.

Q Well, I think you said a moment ago, that you went in there to get a case for a ring? A Jewelry, ring or necklace.

Q Did it have anything to do with a pin? A No, sir.

Q Do you remember being asked in the Magistrate's Court, this question: "Q Why did you go there that night, before you returned to Mrs Hyland? A I went there because I had engaged to buy a pin. Q Did you then have any conversation with any one there about this necklace? A I don't recall

having any conversation regarding the necklace"? A Well, I don't recall that I did.

Q You were asked by the District Attorney conducting the examination then: "Q Was this on your way to the Navarre?

A That's what I said. Q Is that what you said? A That's what I said. Q What is the fact? Was it before or after you had been to the Navarre, and got the necklace? A That's the fact. I was on my way to the Navarre"? A Well, if it is there it is the fact, then.

Q Now, what is the fact? I want to know? A I told you that I either went there before or after I saw Mrs Hyland. Now, I won't say which. Now, if you have my sworn testimony there before you, then it is that.

Q Then it is that? A I told you distinctly when you first asked the question, and you asked me, sometime ago, and it is here in the minutes, that I either went there before I met Mrs Hyland the first time, or after, and that I didn't recall which. I told you that plainly.

Q But you do recall distinctly that you did not ask Mr Schwartz to value that at \$10,000, and that you would make it right with him? A I have never had that conversation with Mr Schwartz, at any time.

MR WEEKS: That is all with this witness.

THE COURT: We will suspend now.

Gentlemen of the Jury:

Remember my caution, not to talk about the case, or form or express any opinion as to the guilt or innocence of the defendant, until it is finally submitted to you.

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

(The District Attorney consents for the defendant to go on her own bond.)

(The trial was then adjourned until Thursday morning, March 17, 1904, at 10:30.)

## TRIAL RESUMED.

J O S E P H     S C H W A R T Z, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. CLARKE:

Q What is your business, Mr. Schwartz? A I am in the jewelry business.

Q Whereabouts? A 1368 Broadway.

Q Where is that? A Near 37th street; right next to the Journal office.

Q What is the name of the firm? A Schwartz Brothers.

Q Now do you know Captain John A. Fyshe? A Yes.

Q How long have you known him? A About four or five months.

Q And in what way have you met him? A He was living at the Normandie Hotel, and I was introduced to him once, and he came into my store, and bought quite a lot of jewelry.

Q How many times do you suppose he has been in your store? A Oh, maybe four or five times or six times.



Q And when did he first come in there? A Well, he first came into my store and I sold him a diamond locket for his wife.

Q How long ago was that? A Four or five months.

BY MR. WEEKS:

Q Four or five months before this? A Yes, sir; four or five months ago. I have only known the man about that long.

BY MR. CLARKE:

Q And he bought the diamond locket? A Yes, sir.

Q And paid for it, I suppose? A Yes.

Q And what next occurred? A And he came into the store and showed me some very pretty jewelry.

Q Well, how much of it do you think, in value? A Well, eight thousand dollars or ten thousand dollars' worth.

Q Well, what did he show you? A He showed me a large diamond pin, a diamond crown, a diamond necklace, he showed me a Canary stone. It looks like a yellow one, but it is a Canary stone. Oh, he showed me quite a large quantity of jewelry.

Q What did he say about it? A He asked me to look at it, and I looked at it, and I asked him where he bought it, and he said he bought it in England.



Q Well, how many times have you seen that diamond necklace? A Three or four times.

Q Now, you are an expert in precious stones, I presume?

A Yes.

Q And buy and sell them, and trade in them? A Yes, sir. I have been in the business for forty years.

Q Well, give us some idea of the value of this necklace? A Well, it was a lot of diamonds, with a pearl in the center. They weighed from a half carat each up to a carat and a quarter apiece.

Q Was there not a pendant? A Yes, sir; a pearl.

Q That alone was worth considerable money? A That alone was worth \$500.

Q The pendant pearl? A Yes, sir.

Q And then were there not some pendant diamonds, pear-shaped diamonds? A Yes, sir; there were two pear-shaped diamonds, two, to come to think of it.

Q And those were large, too, weren't they?

A Yes. Those two stones were worth \$1200.

Q So that the pearl and the two diamonds were worth \$1700 alone? A Oh, yes.

Q And what do you think the whole thing was worth?

A Between \$3,500 and \$5,000. It couldn't be bought for that.

Q Well, what could it be bought for? A For \$7,500.

Q It was a very handsome thing? A Yes, sir.

THE COURT: Is this the necklace in question?

MR. CLARKE: Yes, sir; the necklace in question.

BY MR. CLARKE:

Q And you say that he brought it in there once and showed it to you? A Yes, sir.

Q Prior to the time the lady came in? A Well, I will explain the whole thing just as it occurred, if you will let me.

He came in with the necklace, and he told me that he was a little short---

MR. WEEKS: Objected to. I object to the conversation, at that time, when the defendant was not present.

THE COURT: I do not think it is competent.

BY MR. CLARKE:

Q Well, he brought it in? A Yes, sir; he brought the necklace in there, and he said he wanted to---

MR. WEEKS: I object. No. I withdraw the objection.

THE COURT: I think, gentlemen, we had better keep

close to the issues here involved.

MR. WEEKS: But I withdraw the objection, your Honor, because I recall now that it is, I think, somewhat material, and I think your Honor will see that.

BY MR. CLARKE:

Q How long was this before the final time he brought it in? A Well, what do you mean by the final time?

Q When the lady was with him? A How long before that?

Q Yes; how long before that? A Well, he brought it in several times before.

Q Well, a week or a month, or what? A Two or three days.

Q Now, tell us what occurred then? A Well, the last time he came in he said he knew of a lady from South Africa and her mother, and that he was about to make a loan of ten thousand dollars. He wanted to know if I wouldn't be so kind if he brings her in to tell her what it is worth.

Well, he come in one evening-- I just on my way going to supper-- it was raining-- and he showed me the necklace and wanted to know if the lady wouldn't be safe in loaning \$10,000. Well, I didn't say one way or the other, and he walked out.

Q Now, did you see him again after that? A Yes, sir.

Q In December? A I saw him a few days afterwards. I don't remember exactly what day it was.

Q The early part of December, was it? A Yes, sir.

Q And under what circumstances, did you see him then? A It was about half past ten or eleven o'clock in the morning.

Q When he came in, with the lady? A No. I saw him after the necklace was gone.

Q No. I am talking of the time when he came in with the lady? A Well, that was in the evening.

Q Well, tell about that? A He came in, with the lady and wanted to know what is the necklace worth.

Q Did he have anything besides the necklace? A Not that night.

Q Did he disclose the necklace to you, in the presence of the lady? A Yes, sir.

Q Did the lady have anything to say? A Not a word.

Q Where did she stand? A Right in the store, in front of the show case.

Q And did you put a price on it? A I don't remember.

Q Well, now, about a watch. Had he bought a watch from you? A Yes, sir; he bought a watch from me, a week or so before.

Q For how much? A For \$155.

Q Did he pay for it? A Yes, sir.

Q Do you remember on what bank his check was drawn?

A I think it was on the Lincoln National Bank--- the Lincoln Trust Company.

Q Did he say anything about that watch, when the lady was there? A No.

Q Or about any rings? A No.

Q Just brought the necklace in? A Yes.

Q And took it out of the paper? A Yes.

Q And you examined it? A Yes.

Q And didn't you say anything about it? A I don't remember if I said anything or not.

Q Well, what did he want you to do? A He wanted me to tell the lady that it was worth \$10,000.

BY THE COURT:

Q No. What did he say? A Well, I don't remember what he asked me exactly, that night, and it was raining, and dark, and I couldn't tell him exactly what it was worth, at night.



BY MR. CLARKE:

Q Well, was this the lady (indicating the defendant)?

A Well, I don't remember that.

Q Well, look at her? A Well, I couldn't say whether it was her or not.

Q Well, look at her and see if you think it was her? A I couldn't tell you that.

Q Well, what did you say to me, five minutes ago?

A Well, I said it may be the lady, that it looks something like her.

Q That it looked something like her? A Yes, sir.

Q And that is the most that you will say? A Yes, sir.

Q Now, did you see the Captain, again? A Yes, sir; I saw the Captain again.

Q How long after? A A day or two after he lost the necklace.

Q What did he do? A Well, he came to my place, and wanted to know the number of the watch, and we got it for him.

Q The watch that he had bought of you? A Yes, sir.

Q And what did he tell you about it? A He told me

that he lost it.

MR. WEEKS: That is objected to.

MR. CLARKE: I think it is material, to show the declarations of the complaining witness, at the time, as part of the res gestae, because it may be claimed here, that he never lost these diamonds, which, I understand, is the claim.

MR. WEEKS: Can he be allowed to go around and make evidence for himself?

BY MR. CLARKE:

Q Well, he came in and got the number of the watch that he bought from you? A Yes, sir.

Q And did he visit you afterwards with a detective?

A Yes; with a detective.

Q From the Central Office? A Yes, sir.

Q And what took place on that occasion? A Well, he told me that he was robbed---

MR. WEEKS: Objected to.

THE COURT: Do not state what he said.

BY MR. CLARKE:

Q Did he make any inquiries about the jewelry, or anything?

MR. WEEKS: I object.

THE COURT: Objection sustained.

MR. CLARKE: You don't want what took place there?

MR. WEEKS: I don't want any illegal evidence introduced. No, Mr. Clarke. I don't want to have this man going around manufacturing evidence.

BY MR. CLARKE:

Q Did you give him the number of the watch?

A Yes.

Q Was anything said about your being unable to tell what they were worth, in the night time?

MR. WEEKS: One moment. When?

MR. CLARKE: On the evening when the lady was with him.

A Well, he wanted to know if it was worth ten thousand dollars, and I told him I believed it was, and they went out, the lady and him, and I was there alone.

Q How was the lady dressed at the time?

A She was dressed in dark clothes.

Q Well, was she stout or slight, or tall or short?

A She was a lady just about the size of this lady sitting there (indicating the defendant), a lady like her; but I don't know whether it was she or not, because I never saw

her before.

Q Did he say anything to her--- about her, I mean, in connection with the case; whether the lady was going to lend him the money or not?

A Her mother.

BY MR. WEEKS:

Q On that night?

A Oh, he told me that three or four times.

BY MR. CLARKE:

Q Well, I am talking about that particular night?

MR. WEEKS: I ask that the witness's testimony be restricted to that night.

THE COURT: Yes.

BY MR. CLARKE:

Q When the lady was in there, what did he say?

A He said that he was going to get a loan of ten thousand dollars.

CROSS EXAMINATION BY MR. WEEKS:

Q Now, Mr. Schwartz, Mr. Fyshe-- taking this night of the 2nd of December, about what time was it that Mr.

By she came in, with the lady?

A It must have been between half past six and a quarter to seven.

Q And, at that time, the only piece of jewelry that was shown to you was a necklace?

A Yes, sir.

Q Who had possession of that necklace?

A He did.

Q Did he have possession of it during all the time it was in the store?

A He showed it to me in front of the show case, and the lady was with him.

Q She didn't have possession of it, at any time?

A No, sir.

Q And when he went out of the store, he still had possession of the necklace? A He put it in his pocket. I seen him put it in his pocket.



Q Did he then -- oh, you say the lady said nothing? Did he then ask you what the value of the necklace was?

A Not then, he didn't; no.

Q Well, what was it that he said, on that night, when he was with the lady? A Well, all he said was that he simply wanted to know if the necklace was worth \$10,000.

Q And, in reply to that, did you say that it was night, and you couldn't say about the value of diamonds at night? A Yes.

Q Now, you had seen that necklace before; hadn't you? A Yes.

Q You knew just what it was worth? A Yes.

Q You knew that under no circumstances was it worth \$10,000.; didn't you? A Well, it couldn't be bought for much less than that.

Q Well, you have just said that it could be bought for \$7,500.? A Well, it was worth that.

Q Well, but you said that it could be bought for that? A No. Well, you couldn't tell exactly what it could be bought for, because it has to be matched.

Q Well, what would it be worth in the market? A Well, the stones would have to be taken out and weighed .

Q Well, about how much? A I couldn't tell you exactly.

Q Well, you knew it was not worth more than four thousand dollars or five thousand dollars? A Well, I would give that much for it myself.

Q Well, but you wouldn't give any more? A Well, I don't know whether I would, unless I took them out and weighed them. I wouldn't on a rough estimate.

Q Well, about twenty minutes or half an hour before the lady and Mr. Fyshe came in, Mr. Fyshe came in alone; didn't he? A I don't remember that. I think he did.

Q You think he did? A Yes.

Q And, when he came in alone, didn't he say that he was going to bring a lady in? A Yes.

Q To ask about that necklace, and ask you if you would not say that it was worth ten thousand dollars, and he would make it all right with you? A I believe he said so; yes.

Q Well did he? I am not asking for your belief. That is the fact; is it not? A Yes.

Q And that was within twenty minutes or half an hour of the time that he came in, with the lady? A Yes.

Q Now, before that time, you say he had shown you a ring, with a Canary diamond in it; hadn't he? A Yes.

Q Did he offer that for sale? A No sir.

Q Did he want to borrow any money on it? A No.

Q How long before the night of the second of December

was it that he had shown you that ring, with the Canary diamond in it? A I can't tell you exactly the date. He showed me quite a lot of stuff that he carried in his pocket.

BY MR. CLARKE:

Q What do you mean by "stuff"? A A lot of diamonds and a fine watch. He had about \$8,000. or \$10,000. worth of diamonds in his pocket. He had a very fine little diamond watch and a diamond crown and pin and a lot of other fine stuff.

BY MR. WEEKS:

Q Among other things, at one time, he had this pin; didn't he (indicating a large diamond pin)? A Yes.

Q Did he also, at one time, show you a turquoise ring, a ring with a turquoise, surrounded by diamonds? A I think he did.

Q Now, he didn't show you the ring, with the Canary stone, or the ring with the turquoise, surrounded by diamonds, on the night of the second of December; did he? A That night, he showed me nothing but the necklace.

Q You say he had also shown you a diamond crown?

A Yes.

Q Now how long was that before the second of December, the night that he was in with the lady? A I don't really

recollect exactly when it happened, but it may have been within four or five days before he was in with the necklace.

Q Now, a little while before the second of December, you say he had shown this diamond necklace to you? And did you put a price on it? A Well I had a customer for it, and I told him to leave it with me.

Q You asked him to leave it with you? A Yes.

Q How long before the second of December was that?

A I don't remember exactly when it happened, when it was.

Q A Week or ten days? A Yes.

Q What did he say, when you asked him to leave it with you? A He said he couldn't give it out of his hands, and I told him all right.

Q Did you offer to give him a receipt for them?

A I did.

Q What did he say about that? A He couldn't leave it.

Q He said he couldn't leave it? A Yes.

BY MR. CLARKE:

Q How long had you known him? A Eh?

Q (Repeated)? A Oh, I had known him four or five months.

BY MR. WEEKS:

Q Your store was quite a large store there, on Broad-



way, Mr. Schwartz? A Yes sir.

Q At that time, was he trying to sell this necklace?

MR. CLARKE: I object to that. What did he say?

BY MR. WEEKS:

Q At that time, did he want to sell it? A Yes sir. At that time, he told me he wanted to sell it, or borrow some money on it.

Q Isn't this the only thing that you said, on the night of the second, Mr. Schwartz, when asked about the value of the jewelry, that he said, on that night, that he had paid \$10,000. for it, and you said, "If you paid that, it must be worth that, you know"? A Maybe I did.

Q Isn't that what you did say? A I don't remember. Maybe I did. As a rule, people comes into our store, to find out what stuff is worth, and we don't tell them, unless they pay for it.

BY MR. CLARKE:

Q Pay for what? A Paying for examining stuff, and telling them what the stuff is worth.

BY MR. WEEKS:

Q Well, you remember being examined, in the Magistrate's Court, don't you, Mr. Schwartz? A Yes.



Q And the recollection of the language was clearer then, on the 22nd of December, than it is now? A Yes.

Q So that if, at the Magistrate's Court, you said that your remark was, "If you paid that for it, it must be worth that, you know," does that refresh your recollection that that is what did occur? A Well, I really don't remember, but, if I said so, it may be so.

Q Do you recall that, when you offered to give him a receipt for this necklace, that he said he couldn't let it go out of his hands, that it didn't belong to him, that it belonged to his wife, and that she would not be willing that he should do such a thing? A Yes; that's what he said.

Q Do you believe that you could identify the Canary stone ring and the turquoise of diamond ring? A Yes.

Q If you saw them again? A Yes.

Q And the crown pin? A Yes. That is, I think I could. I am not sure, because there is so much of that stuff made, you know.

MR. WEEKS: If your Honor please, I would like to ask the privilege of not completing the examination of this witness. Mrs. Fyshe, a witness who has been subpoenaed, has not yet arrived;

THE COURT: I am very much opposed, as a rule, Mr. Weeks, to the non-completion of a witness's examination unless it is unavoidable.

MR. WEEKS: Only to identify the Canary colored diamond ring and the turquoise ring; that's all.

MR. CLARKE: It is not a part of the stolen property.

THE COURT: Well, even so, if it be for the mere purpose of identification, I will permit it.

RE DIRECT EXAMINATION BY MR. CLARKE:

Q Well, you say that he said that he couldn't let it go out of his hands? A Yes.

Q But he did tell you that he was going to make a loan on it? A Yes; that he was going to get ten thousand dollars from a lady that he used to know in South Africa, from her mother, who was very rich; and that he had to have the money for a short, to use in Providence.

Q And he said that he had been living in Providence; didn't he? A Yes.

Q And that he was only stopping at the Normandie?  
A Yes.

Q And did he say anything about bringing the lady in?  
A Yes.

Q So that he represented that the lady who came with him was the lady who was going to make the loan? A Yes.

Q Now, are you familiar with the diamond dealers in this City? A I am.

Q Did you ever hear of a man by the name of Holmes, at 16 Maiden Lane? A Holmes?

Q Yes? A No.

Q How long have you been in the jewelry business, in this City? A About 38 years, off and on.

Q And you never heard of such a man? A No sir.

RE CROSS EXAMINATION BY MR. WEEKS:

Q On this occasion, when he told you about obtaining a loan from some lady's mother, that was about two or three days before the night that he came in with the lady; was it not? A Yes.

BY MR. CLARKE:

Q Well didn't he repeat it all, when he came in, that evening? A He simply, that evening, when he came in with a lady that looks something like this lady --

Q Well he introduced you to this lady; didn't he?

A I don't recollect that. I think he did.

Q But didn't he say that she was the lady who was to make the loan? A Yes I think he did.

L I D A F R E E M A N, (Colored), a witness called on behalf of the people, being duly sworn, testified as follows,

DIRECT EXAMINATION BY MR. CLARKE:

Q Where do you live Mrs. Freeman? A I live 357 West 30th Street.

Q What is that establishment? A It is a furnished room house.

Q What is your business there? A I am housekeeper.

Q You have entire charge of the building? A Yes.

Q Of the letting of it to tenants? A Yes.

Q Do you know this defendant? A Yes.

Q Mrs. Hyland? A Yes.

Q Did she take a room in your house, in November last?

A She took two rooms, from Mr. Keiley, the owner of the building, and paid him twenty dollars in advance, up to the first of December.

Q 1903? A Yes.

Q Did she occupy the rooms? A Yes.

Q You recognize the defendant; do you? A Yes.

Q And she gave what name then? A Hyland.

Q Mrs. Hyland? A Yes.

Q Now when did she leave those rooms? A She left the third of November. Her month was up --

Q December, you mean? A Her month was up on the first, and she left the third of December, on Thursday.

Q Now did she give you any notice that she was going?

A No sir.

Q Well how did you first know that she was going?

A When I saw the wagon -- the storage wagon -- at the door, I went upstairs, and I met Mrs. Hyland, coming downstairs. She said she was going, going to leave, now, and I said, "All right."

Q And she left then? A Yes sir.

Q That is the first you knew of it? A Yes.

Q And what baggage did she have? A She had nothing with her but her satchel, her hand satchel.

Q Well what baggage did she have in her room? A She had some trunks and a packing case.

Q Well, what became of them? A The storage man took them.

Q The Columbia Storageman? A Yes sir.

Q Now do you know Captain Fyshe? A No sir. But I know him now.

Q You saw him afterwards; didn't you? A I saw him at the house.

Q And do you know Mr. Faith? A No sir.



Q Stand up, Mr. Faith. Do you know that gentleman (indicating)? A No sir.

Q What? A I don't think I do.

Q Well, did any gentleman use to come there, to see Mrs. Hyland? A There was one man that come there, and passed through the kitchen, and asked for Hyland, and I showed him where she was; and, the next morning, she told me that that was her husband. That is all I know.

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Q Well, she answers that gentleman's description?

A Short man? A Yes; a short man, but I couldn't say, ---

Q Well, can you see that gentleman (indicating) or do you want him brought over nearer to you? A No, sir; I can see him.

Q I refer to Mr. W. J. Faith? A No, sir; I don't recognize him.

Q Well, did she give you any directions as to receiving and forwarding mail for her? A No, sir.

Q And have you received any mail there since she left? A Yes, sir.

Q You received these four letters addressed to her, which you hand to me? A Yes, sir.

MR. WEEKS: May I have them, if they are addressed to her?

MR. CLARKE: Yes. They seem to be all from the same person.

BY MR. CLARKE:

Q Did you receive any instructions as to forwarding her mail? A No, sir.

Q Or as to where she was going to? A No, sir.

Q Or whether she was going to stay in the city or not?

A No, sir.

Q Did she say where her husband was? A Travelling on the road.

Q And she said that this gentleman that came to see her was her husband? A Yes.

Q Did she tell you that she had obtained a divorce?  
A No, sir; she never said that.

Q At what time did she leave the house? A In the afternoon, about three o'clock.

Q On the 3rd of December?

A Yes.

Q And what time did the trunks go? A They went right after her. Some of them were in the wagon when she went, and the man was nailing up the packing case when she went out. I went up, as he took the case out.

Q Was she making any preparations to leave, the day before, to your knowledge? A I don't know, I didn't see any. I don't never go into the rooms, you know. They do their own---

Q Well, did you see or notice any preparations whatever for moving? A No, sir.

Q When did those men first come to take her stuff?  
A In the afternoon.

Q What time? A Well, they were about 15 or twenty

minutes getting the things out.

Q They took only that time to get the things out?

A Yes, sir.

Cross examination none.

EDWARD J. GALLAGHER, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. CLARKE:

Q You are a detective sergeant? A Yes, sir.

Q Of the New York Police Force? A Yes, sir.

Q Attached to the Central Office? A Yes, sir.

Q Now, do you know Captain John A. Fyshe? A Yes.

Q Where did you first meet him? A On the evening of December 4th.

Q December 4th? A Yes, sir.

Q Where? A At the Detective Bureau, 300 Mulberry street.

Q Now, as the result of your meeting him there, what did you do, first? A Well, will I relate the whole story?

Q You can't tell what he said, Mr. Weeks objects to

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having you tell what he said to you. Just tell what you did first as the result of anything that he said to you?

A Well, that evening, I asked him--

MR. WEEKS: No, no. Don't give the conversation, sergeant.

BY MR. CLARKE:

Q State what you did? A Well, on the next morning, the 5th I accompanied Captain Fyshe to the outgoing steamers of the American Line, and he said that Mrs. Hyland---

MR. WEEKS: Objected to.

BY MR. CLARKE:

Q Well, who were you looking for?

MR. WEEKS: I object.

MR. CLARKE: Otherwise, if your Honor please, there will be no sense in his testimony, if he can't tell who they were looking for.

THE COURT: What object is there, Mr. District Attorney, in showing by this witness that he was looking for any person?

MR. CLARKE: To show that he couldn't find her. Flight is an indication of guilt, your Honor, and it also shows the good faith of Captain Fyshe, that he should waste all his time hunting for a woman. Now, if he cooked up a story, and this woman didn't



rob him, why should he waste his time, day and night, going around to steamers and other places.

THE COURT: You can show the places that he went to. I think that it is proper, Mr. Weeks, and that the District Attorney can show on his contention that flight is an evidence of guilt, that the witness sought the person of the defendant, by enabling him to show the places that he went to, and what he did, in his efforts to reach her person.

MR. WEEKS: I think, your Honor, that, if that evidence were permissible, all that a person would have to do who desired really to cover up his tracks, would be to go to the police and say, "Go to 47th street or 67th street, or go to a thousand places," where they knew the person couldn't be found.

THE COURT: Yes. I see the point.

MR. CLARKE: Well, I will change the form of the question.

BY MR. CLARKE:

Q Well did you ever visit 357 West 30th street?

A Yes, sir; I visited that place.

Q On what day? A Well, it was quite sometime after.

And I interviewed that lady that was a witness here, just now.

Q The colored woman? A Yes, and she said---

MR. WEEKS: Objected to.

BY MR. CLARKE:

Q Now, we want just what you did. Now, it ought not to take you five minutes to tell us what you did, in company with Captain Fyshe? A Well, Captain Fyshe was not in my company on that occasion.

Q Well, tell us what you did, without his company?

A Well, I said--

Q Not what you said, officer? A Well, I made inquiry as to this Mrs. Hyland, as to whether she---

MR. WEEKS: Objected to.

THE COURT: Objection sustained.

BY MR. CLARKE:

Q Now, where did you go? Start it from the beginning again? A Well, the very next day after the case was reported to the Detective Bureau, in company with Captain Fyshe, I went to the American Line steamers and from there we went to the Post Office. From the Post Office we learned that---

THE COURT: No. Do not state that.

MR. WEEKS: No.

BY MR. CLARKE:

Q Now, you made investigations and learned something?

A Yes.

Q Where did you go then? A To the General Post office we went first, and from there to the Columbia Storage warehouse.

Q And did you leave any instructions there? A Yes, sir; we left instructions--

MR. WEEKS: Objected to.

THE COURT: Well, do not state what the instructions were.

BY MR. CLARKE:

Q Did you see anyone connected with the Columbia Storage warehouse? A Yes; the superintendent.

Q Did you see any trunks there? A Yes.

MR. WEEKS: It is conceded that the trunks were in the storage warehouse. I don't want to keep anything out of this case that is proper.

MR. CLARKE: Well, this witness would have been through long ago, if you said that at first. We don't want your concession now, because it took three detectives to find the trunks, and now you concede it.

BY MR. CLARKE:

Q Well, you went to the Columbia storage warehouse?

A Yes; and notified them---

Q No. Don't ~~you~~ say that. What did you do next? A Well, I went to a place in 7th avenue, between 26th and 27th street, a stationery store.

Q Where they have private letter boxes, haven't they?

A Yes. And I went in the neighborhood and watched the place, covered the place.

Q Well, what do you mean by covered? That means nothing to us? A Watched the place, to see if a person by the name of Hyland, whom we were looking for, would call there for mail. I subsequently learned---

Q No, no matter about that? A (Answer continued) That there was a transfer of mail.

Q We can't have that, officer, what you learned. What did you do, thereafter? A Well, I learned that there was a person hired a room on 105th street near Manhattan avenue, whom we had reason to believe was---

THE COURT: No, no.

BY MR. CLARKE:

Q You went up there and watched that house? A Yes.

Q Did you have any results there? A No, sir.

MR. WEEKS: I suppose he learned that from Mr.

Fy she.

MR. CLARKE: No. From the Post office authorities if you want to know.

A (Answer continued) Well, during that time, Mr. Fy she was with us early and late.

MR. WEEKS: I move that that be stricken out as irresponsible to any question.

THE COURT: Motion granted.

BY MR. CLARKE:

Q Well, how long did this search continue? A Well, from the 4th right on. We were detailed night and day by the Inspector to find this Mrs. Hyland, and to do nothing else.

Q How many of you were detailed? A McAuley, Deevy, and myself.

Q Three of you? A Yes.

Q Now, you say that you went to this Post Office box place? A Yes.

Q On 7th avenue? A Yes.

Q And you found that there had been a transfer?

MR. WEEKS: Objected to, what he found.

MR. CLARKE: Well, we can easily prove it, if you want to put us to that trouble.



THE COURT: I do not think that is competent.

MR. CLARKE: It is admitted that this lady received her letters at that letter box. Now, if you want ~~in~~ us to call Post Office officials to prove that she changed it--- do you, Mr. Weeks?

MR. WEEKS: I don,t want you to call anybody to prove anything that is not proper, Mr. Clarke.

BY MR. CLARKE:

Q Well, you went to the 105th street house? A yes, sir.

Q Did you find the lady there?

A No, sir.

Q Who did you find there?

A There was a woman there by the name of Mrs. Lowther.

Q Yes.

A Kept a boarding house. That is, I didn,t see her personally, but I learned there was a woman let out furnished rooms there, by that name.

Q never mind what you learned. To what extent did you watch that house? A Well, we were watching that house, from nearby places there, for near a week.

Q Did you see any mail delivered there for this lady?

A There was mail delivered for a Mrs. Hyland, and at the request of some person---

THE COURT: No, no.

BY MR. CLARKE:

Q Now, don't be too indefinite. Did you see a letter?

A No, sir.

MR. WEEKS: That is objected to, and I move to strike out the previous answer, if your Honor please.

THE COURT: Motion granted.

A (Answer continued) Well, then, we learned afterwards-- on the 17th, we got a notification, from the Columbia Storage warehouse people that the trunks were about to leave.

THE COURT: No, no.

BY MR. CLARKE:

Q Well, what did you do? A Detective Sergeant Flay and Sergeant Deevy were assigned to trace the trunks.

Q You didn't do that, then? A No sir.

Q And did you ever visit the house in 121st Street?

A Yes; on the 19th.

Q Well, on what date did you first go there? A On the 19th.

Q You, personally? A Oh, into that house?

Q Yes? A Well, we were in the neighborhood, on the street, on the 18th.

Q And that was Friday; was it not? A Yes.

Q On Friday, the 18th, you began to watch, 227 West 121st Street? A Yes.

Q And how long did you watch it? A All that day of the 18th. We tried to communicate with Captain Fyshe, who was out of town, for the purpose of identification, to make sure.

Q Well, did you finally see this defendant? A On the 19th.

Q Where? A On 121st Street, coming out of 227.

Q Did you speak to her? A Captain Fyshe was in my company at the time, and he said, "There is the person we

want."

Q Yes? A I followed on up 121st Street, and, when we got in the neighborhood of Eighth Avenue, I spoke to the lady.

I said, "Are you Mrs. Hyland?" She said, "No sir I am not."

"Now, I said, "Lady, I have reasons to know, other than my own, that you are." I says -- she says, "Who are you?" I said, "I am a detective sergeant from police headquarters. Did you have any transaction with Captain Fyshe, relative to some diamonds or jewelry?" And she said, "I refuse to answer any further questions. If you have any further questions to put to me, take me before your superior officers."

Detective Sergeant Deevy was there at that time, and Deevy took this -- took Mrs. Hyland to Police Headquarters.

I called up on the 'phone, and notified the Inspector of the arrest, and told him, that I would cover the house.

THE COURT: No no.

BY MR. CLARKE:

Q Did you go back to the house? A Yes.

Q Did you see any trunks there? A Yes.

Q Do you remember how they weremarked? A There was one of them I noticed particular, marked, "I. H."

Q And w hat did you do with regard to those trunks? Did you open them or do anything with them? A No sir.

Q Whose charge did you leave them in? A In the charge of Mrs. Weber, who let out furnished rooms there.

Q She was the proprietress of the house? A Yes.

Q And you left the trunks in the room occupied by Mrs. Hyland? A Yes.

Q And charge of Mrs. Weber? A Yes. And gave her explicit instructions --

MR. WEEKS: One moment. I object.

BY MR. CLARKE:

Q Well, then, did you see the defendant again?

A Mrs. Hyland?

Q Yes? A I afterwards saw her, yes.

Q That's what I want to know, where? A At the Police Court.

Q Did you see her down at Police Inspector McCloskey's office? A Yes.

Q What did she say, down there? A I don't know about that. I didn't go there. Deevy went down there.



Q Well, that is all you know about the case? A Yes. I would like to state the reason why Captain Fyshe didn't notify his wife of the theft of the property, if the Court will allow it.

THE COURT: No no.

THE WITNESS: Detective Sergeants Macauley, Deevy and I told him ourselves --

THE COURT: No no.

MR. WEEKS: That is very kind of you Sergeant.

BY MR. WEEKS:

Q But you don't know it of your own knowledge, do you?

THE COURT: No. We cannot receive that, officer.

GEORGE H. ABBOTT, a witness called on behalf of the people, being duly sworn, testified as follows,  
DIRECT EXAMINATION BY MR. CLARKE:

Q What is your business? A Attorney and counsellor at law.

Q Who do you work for? A Weeks, Battle & Marshall.

Q Did you visit the premises 227 West 121st Street, in this City, on Sunday, the 20th of December, 1903?

A I did.

Q And to whose room did you go? A To a room -- to an apartment or room?

Q I don't care which? A Mrs. Weber's.

Q That is her house, is it not? Is it an apartment house or what? A An apartment house.

Q And she occupies a flat there? A Yes.

Q And you knew Mrs. Weber, who lived there, didn't you? A Not at that time.

Q Didn't she use to work for your firm? A As a Miss Rankin, she did work for our firm.

Q Had you met her before? A No sir.

Q Had you known that she worked for you before?

A Not as Mrs. Weber, but as Miss Rankin, I was in the office with her, and knew her as a stenographer.

Q And so, when you went up there, you knew her?

A When I met her, I recognized her.

Q And she took you into a room formerly occupied by this defendant; didn't she? A Yes.

Q And you opened the defendant's trunks, didn't you?

A Yes.

Q And you took out everything in them, practically?

A Yes.

Q Letters and jewelry? A Yes.

Q Clothing? A Yes.

Q And what did you do with this stuff that you took out of the trunks? A I requested Mrs. Weber to pack up certain clothing --

Q No. What did you do with what you took? A The things that I had, I took to Mr. Weeks.

Q You took them down to Mr. Weeks? A Yes.

Q Where did you get the keys for the trunks? A From Mr. Hyland.

Q Yes. And that was on Sunday; was it not? A Yes.

Q And what was your hurry about it? A I was requested to go there by Mr. Weeks.

Q At once? A No sir.

Q Did you know that this lady was under arrest?

A Yes.

Q Did you know that the detectives had instructed that nothing be touched? A No sir.

Q Didn't Mrs. Rankin or Weber tell you that? A Yes.

Q But you didn't believe it? A I did.

Q Then you knew it? A Yes; at the time I knew it, but didn't know it when I started out.

Q And you disregarded those instructions? A Cer-

tainly.

CROSS EXAMINATION BY MR. WEEKS:

Q Now, Mr. Abbott, was there any diamond necklace there? A No sir.

Q Was there any gold watch there? A No sir.

Q Were there any diamonds rings there? A No sir.

Q Now did you give me all the jewelry that you found there? A Yes.

Q Now, I will ask you to identify these articles, and ask you if that is all the jewelry that you found there?

MR. CLARKE: I object to that question. Let him describe what he found. I object to showing him some jewelry and asking him if that is all the jewelry he found there. Let him state what he found.

THE COURT: I sustain the objection.

MR. WEEKS: We except.

BY MR. WEEKS:

Q Tell us as nearly as you can what jewelry you found there? A To the best of my recollection, there was a string of jewels, and, from what I know about them, I should think they were imitation pearls.

MR. CLARKE: That I ask to have stricken out.

BY MR. CLARKE:

Q You don't know anything about jewels; do you? A No.

THE COURT: Strike it out.

A (Continued) Well a string of jewels resembling pearls; and a ring, with two large jewels in it, resembling pearls, and that is all the jewelry that I found.

BY THE COURT:

Q All that you can say, is it not, is that, so far as your observation went, they purported to be pearls? A Yes sir.

Q Not that they resembled pearls? A No sir.

BY MR. WEEKS:

Q That is all that you recall? A Yes sir; all at present.

Q Now I show you this article, and ask you if that is the string that you say purported to be pearls (indicating)?

A Yes.

Q I show you this article, and ask you if that is the ring that you refer to (indicating)? A Yes.

Q Now, in addition to those things, didn't you find this single pearl earring (indicating)? A Yes.

Q And didn't you find a little Society pin?

MR. CLARKE: I will admit it.



MR. WEEKS: And this little piece -- this little pin, with a possibly coral top?

A Yes.

Q And is that all the jewelry that you found there?

A Yes.

RE DIRECT EXAMINATION BY MR. CLARKE:

Q Did you find any packages in that trunk? A No sir.

Q Do you mean to say that there was nothing done up in anything? A Simply rolled up, clothes; and this jewelry laid there, in with the clothes.

Q Did you go through all the clothes? A Yes.

Q Every pocket of every dress? A Yes.

Q What were you looking for? A For letters.

Q You were looking for letters? A Yes.

Q In the pockets of a lady's dress? A Yes.

Q Is that the best answer you can make? A Yes.

Q Did you open every package you found in the trunks?

A Yes.

Q What were you looking for? A Letters.

Q Why did you take these pearls, then, out of the trunk?

A I took everything, pearls or letters, that I found there.

Q Why? A Because --

Q You were looking for letters, you say? A Yes; and pearls , also. I was looking for jewels or letters, or anything of value that I found.

Q Who told you to bring anything of value? A Mr Weeks.

Q Did he tell you to look out for jewelry? A Yes.

Q And to bring it to him? A Yes. I was looking in the trunk for everything that bore on the case at all.

Q Then why did you say that you were looking for letters? A Because I went there expressly with that idea.

Q Well, what did you want letters for? A We thought that they might be of use, in the case.

Q Now, do you know Mr. Faith? A Yes.

Q Is he a client of your office? A No sir.

Q Well, he procured bail for this lady; didn't he?

A I don't know.

MR. WEEKS: I object to that. I don't know that that is material, your Honor.

THE COURT: No.

BY MR. CLARKE:

Q You mean you don't know it, of your own personal knowledge? A No sir.

Q Did you have anything to do with getting her bail?

MR. WEEKS: Objected to.

THE COURT: Objection sustained.

BY MR. CLARKE:

Q Have you been through his trunks?

MR. WEEKS: Objected to.

THE COURT: Objection sustained.

Q And you haven't been through his pockets; have you?

A No sir.

Q Now, did you think that there was anything improper, while this woman was under arrest, charged with the larceny of valuable articles of jewelry, to go to her house, while these trunks were in the custody of the Police Department, and go through them, and remove every article of value?

A I thought it was most proper.

Q You knew that, if there was any in there that could be used against her in evidence, that the police would get it, and use it against her, didn't you? A They know best how to prepare their cases.

Q And you went up there to get that evidence; didn't you? A No sir; I went up there to get everything that bore on the case.

Q Well, can you produce the things that you got there?

A Mr. Weeks has them in his possession.

Q Have you the letters? A Mr. Weeks has them.

Q Those are the letters that he produced here, yesterday? A Yes.

Q Letters that passed between Captain Fyshe and this defendant? A Yes.

Q And you wanted to use those to intimidate the Captain; didn't you? A I am not trying the case.

Q Now, did Mrs. Hyland ever tell you how she came to hire a room in the house of a lady who was formerly employed by your firm? A No sir.

Q And you have you ever discovered that remarkable fact? A No sir.

Q And you didn't know, when you went there --

THE COURT: Gentlemen, this case is taking entirely too wide a range.

MR. WEEKS: Yes. I think that the District Attorney is intimating that we were a party to the larceny, or ~~are~~ concealing evidence; and I am perfectly willing to have him do that, and try that issue before this jury.

THE COURT: No. I think that is sufficient, Mr. District Attorney.

BY THE COURT:

Q Do you think, sir, that you discovered all the pock-

ets that were in the lady's dresses? A. I am very sure I did. I made a very thorough examination.

THE COURT: Well, you are a very remarkable young man to do that.

A Well --

MR. WEEKS: Well, the modern dresses are supposed to have very few pockets, your Honor.

THE COURT: well, Mr. Weeks, of course, you are better acquainted with them than I am.

J O S E P H S C H W A R T Z, being recalled by counsel for the defendant, for further cross examination;

MR. WEEKS: I want to prove, by Mr. Schwartz, that the Canary colored diamond ring and the turquoise ring, surrounded by diamonds -- that Mr. Fyshe showed to him -- were the property of Mrs. Fyshe.

MR. CLARKE: Well, I will concede it, for the present. We will find out, afterwards.



MR. WEEKS: And also the diamond crown, which Mr. Fyshe showed to Mr. Schwartz was the property of Mrs. Fyshe.

MR. CLARKE: Is that so, Mrs. Fyshe? Do you own a diamond crown?

MRS. FYSHE: yes, sir; I own a diamond crown, and I have it in my possession, and I have a canary diamond ring in my possession.

MR. WEEKS: Have you it now, Mrs. Fyshe, in your possession.

MR. FYSHE: I don't mean now, I have it in the safe deposit.

MR. WEEKS: Then that is all, Mr. Schwartz.

WILLIAM J. FAITH, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. CLARKE:

Q Mr. Faith, now do you live in the city of New York?

A Yes, sir.

Q Are you in business? A Yes, sir.

Q Whereabouts? 116 Spring street? A Yes.

Q Now, do you know this lady, the defendant?

A Yes.

Q How long have you known her? A Almost three years.

Q And you knew her in 357 West 30th street, didn't you?

A Yes.

Q And you are the gentleman who visited her there?

A I visited her there once.

Q Now, you know her handwriting, don't you?

A Yes.

Q And you recognize that receipt, People Exhibit 1, as being in her handwriting? A I imagine so, yes.

Q You have seen her write a great many times, haven't you? A No, sir.

Q You have received letters from her? A Yes.

Q And is that in her handwriting? A Well, I should imagine it is. I should think it is her handwriting.

Q Didn't you swear in the Police Court, that it was?

A Yes.

Q Now, you had this lady's trunks carried from the Columbia Storage warehouse to your office, didn't you?

A Yes.

Q How did you come to do that? A I received a letter from Mrs. Hyland---

Q Have you got it? A No, sir. Asking me to have her

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trunks taken from---

THE COURT: Is there any objection to this?

MR. WEEKS: No, sir.

THE COURT: Then you may state, there being no objection.

A (Answer continued) Asking me to have her trunk taken from the Columbia storage warehouse, and removed to some place where, in the near future she would notify me.

Q When did you last see her before that, before the receipt of that letter? A On the eve of Thanksgiving Day.

Q When did you learn that she had left 30th street?

A I never knew it before.

Q Well, then, she had never notified you of her leaving there? A No, sir.

Q Well, she was a close friend of yours? A Well, she was, but since last July, I hadn't seen very much of her.

Q Well, you were sufficient of a friend to take charge of her baggage? A Yes, sir.

Q And to bail her out? A Yes.

Q Did she tell you where she was telephoning from?

A No, sir, but she told me--- or, rather, she wrote in this

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letter-- I am not talking about the telephone now--- she wrote me in this letter that she was about either to go to her mother's or to Lakewood, and, when she made up her mind to which place she would go, she would ask me to transfer her trunks.

Q Did she telephone you, did you say? A No, sir; she wrote me.

Q When was that? A That was about the 7th of December, I imagine.

Q And, between the 3rd and 7th, you didn't know where she was?

A No, sir. And she enclosed an order in the letter for the trunks.

Q And you sent up one of the wagons and got the trunks?

A Yes.

Q And what did you do with them? A I did nothing with them. I told my shipping clerk, when they arrived, to put them in the basement, and when I knew the address I would forward them.

Q Well, you stored them in your basement?

A Yes.

Q Did you hear from Mrs. Hyland again? A yes. She called me up on the telephone.

Q When? A Either the Thursday before the arrest or Friday morning, I think.

Q About the 17th of December? A Yes.

Q You were at your place of business? A Yes.

Q And she called you up on the phone? A Yes.

Q Did she say where she was? A No, sir.

Q Did you ask her? A No, sir.

Q Did she say where she had been? A No, sir.

Q Did you ask her? A No, sir.

Q Well, what did she say? A She said that she wanted me-- she asked me if her trunks had arrived. I told her I really didn't know, that our man had been very busy, and I wasn't sure whether they were there or not, and she said, "Well, if they haven't arrived yet, I want you to send for them, and send them to 227 West 121st street, care of Weber".

Q Did she tell you what name to send them under?

A Harris.

Q Sure about that? A Yes.

Q Ines Harris or Irene Harris? A No, sir; just Harris.

Q Mrs. Harris? A No. She didn't say Mrs. or Miss or Irene or Ines.

Q What did she say? A She said "Send them in the name



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of Harris, in care of Weber".

Q Mrs. Weber's boarding house in 121st street? A yes.

Q Did you ask her why she took the name of Harris?

A Yes, sir.

Q What did she say? A She said "That man Fy she has been bothering me about"--- she said either that or those--- "letters". That was her answer.

Q How were these trunks marked? A To the best of my recollection, one was marked "H", another "I. H.", and the third one I don't believe had any mark on it.

Q And do you know Captain Fyshe? A I don't know him, no. I saw him on one occasion, prior to the examination, the police examination.

Q What? A I saw him on only one occasion, at the time of the police examination, in Jefferson Market Court.

Q And when was that? A That was sometime in the summer in Columbus avenue.

Q Oh, at Mrs. Hyland's flat? A Yes.

Q You were both there? A What do you mean?

Q You were both there in her flat, or else you wouldn't have seen him? A Well, he was outside of the door. He was not in the apartment.

Q He was there first, and you came in? A No, no.

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Q How was it, just tell us? A Mrs. Hyland and I had been playing golf, and after we had played, she invited me to dinner, and after dinner we were sitting in the drawing room, and I was reading a newspaper, and I don't know what she was doing, and I heard a noise at the door, and I went and opened the door and Captain Fyshe had his ear up against the door, trying to listen, I suppose.

Q Was he in the private or public hall at that time?

A In the public hall.

Q And when was that? A I couldn't say what month it was. Along abouts July.

Q Well, now, she said to you, over the phone, the reason why she was travelling under the assumed name, had something to do with Captain Fyshe? A Yes.

Q What did she say? A She said "That man Fyshe wants that letter," or, "those letters", I don't know which.

Q Well, did you know what letters she referred to?

A Yes.

Q What letters? A One letter that I had read in her apartments, from Captain Fyshe.

Q Well, have you got that letter? A I suppose it is here.

Q Well, can we have that letter? If we can, can you

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identify it? A I think so.

MR. WEEKS: Here it is.

BY MR. CLARKE:

Q Had you read the letter? A Yes, sir.

Q In her apartment? A Yes, sir.

Q A letter from Captain Fyshe to Mrs. Ines Hyland?

A Yes, sir.

Q And she said he was trying to get it back? A She used the words "that letter", but she didn't say that "express letter".

Q But you understood that it was that letter?

A Yes.

Q Now, look at that letter. Is that the one (indicating)? A This one.

Q Now, had he been to her apartment before that?

A I don't know about that.

Q And couldn't he have got that letter then? A I don't know anything about that.

Q Well, why did you understand that it was that letter, when she telephoned to you about a letter? A Well, I knew of only one letter.

MR. WEEKS: I object to your reading the letter if you are not going to offer it in evidence, Mr.

District Attorney.

MR. CLARKE: Well, you have read all my papers  
BY MR. CLARKE:

Q Did she say anything more about the letters over the  
phone? A Nothing.

Q Did she say that she wanted you to come up and  
see her?

A yes.

Q Did she say--- did she say she was going to stay  
under this assumed name? A No, sir.

Q Did she say that Fyshe was looking for her?

A No, sir.

Q But you say she said "That man Fyshe is after me for  
those letters"? A No, sir; that he wanted those letters.

Q Didn't you get the idea that Captain Fyshe was look-  
ing for her? A No, sir.

Q Well, then, why should she take an assumed name and  
go to a remote part of the city? A I haven't the slightest  
or most remote idea about that.

Q Have you ever found out? A No.

Q As soon as this lady was arrested, you called upon  
her immediately, and offered your assistance? A Yes.

Q And you have never found out-- you have had confer-

ences with her? A Yes.

Q And you don't know, to this day, why she went up there and stayed there, under an assumed name, except what she told you about that letter? A No, sir.

Q She has never amplified that matter of that letter so as to make it plain to you? A What do you mean?

Q Has she amplified or explained it? A No.

Q She never mentioned a diamond necklace to you, did she? A Yes.

Q Oh, when? A Since she has been out on bail; yes, a number of times.

Q Where did you see her? Down in Mr. Weeks office?

A Where did I see the diamond necklace?

Q Yes. A I never saw it.

Q No. I say Mrs. Hyland? A Oh, I met her two or three times and went to lunch with her several times and met her uptown two or three times.

Q At those conversations, she has talked about the diamond necklace, hasn't she?



A Oh no, not on every occasion that I met her. She spoke about it two or three times.

Q Did she ever repeat the fact that he was looking for the letters? A Yes sir; she said that he was very anxious to get the letters.

Q Did she say that he had done anything about it?

A In what way?

Q Well, since she has been out on bail? A No sir.

Q Or at any time? A No sir.

Q Did she claim that he ever came to see her, to get the letters? A No sir.

Q Has he ever written her for the letters? A I haven't the slightest idea.

Q Well, what did she say he had done to get these letters back? A She didn't tell me.

MR. WEEKS: You are the people's witness, but I suppose I must ask you something.

CROSS EXAMINATION BY MR. WEEKS:

Q Mr. Faith, did you ever see this diamond necklace?

A No sir.

Q Or hear of it, before the arrest of Mrs. Hyland?

A No sir.

Q You have no knowledge of it whatever? A No sir;

none whatever.

RE DIRECT EXAMINATION BY MR. CLARKE:

Q Now, did Mrs. Hyland have any jewelry? A Yes.

Q You have seen --? A When? At what time?

Q Well, during your acquaintance with her? A Yes.

Q You have seen these paste, five cent affairs that have been produced here (indicating the string of pearls)?

A Well, that is not a five cent affair. I paid \$25. for that (indicating the string of pearls).

Q Oh, you did? A Yes. You're a little off, in value.

Q Oh, you purchased that; did you? A Yes.

Q And gave it to her? A Yes.

Q And this, too, that ring (indicating)? A Yes. I think it cost thirty dollars.

Q They are real pearls? A Hardly.

Q Fish skin pearls? A Yes.

Q Well, what other jewelry did she have? A Well, she had a diamond crescent, worth \$800. She had a six caret diamond ring, that I paid \$1,100. for.

Q Did you give it to her? A Yes.

Q \$1,100.? A Yes.

Q When did you give her that? A In 1902, along about

July.

Q Did you give her the crescent? A No sir.

Q Well, what else did she have? A She had another -- oh, she had two or three other smaller solitaires rings.

Q Well, she had several other smaller rings, worth eight or nine hundred dollars, didn't she? A Yes.

Q Where did she get them? A I haven't the slightest idea.

Q Did you give her those? A No sir.

Q Well, when did you last see that jewelry? You saw her in November, didn't you? You saw it then; didn't you? A Well no. She rarely wore them.

Q What had become of the \$1,100. ring? A I haven't the slightest idea. She very rarely wore any jewelry.

Q Well, you would know, if she had gotten rid of it; wouldn't you? A Hardly. I rarely saw her wear jewelry, not more than four or five or six times during the two years and a half that I knew her, or met her.

Q Did you ever know of her having a Safe deposit box? A No. I did not.

Q She was fond of diamonds; wasn't she? A No sir, not very. She had a number, and didn't wear them.

Q Well, you gave her more than \$1100. worth; didn't

you? A No sir; I gave her one ring; that's all I ever gave her, in the line of diamond jewelry.

Q Well, she expressed a desire to have it; didn't she?

A She asked me for the ring?

Q No. But didn't you show it to her, before you gave it to her? A No sir.

Q It was a surprise? A Yes sir; a surprise.

Q Well, she was fond of diamonds; wasn't she? You will admit that? A No sir.

Q She was not fond of them? She had an aversion to them? A Well I don't know about that. She had them, and didn't wear them, and therefore I don't see where the fondness comes in.

BY THE EIGHTH JUROR:

Q What business did you say you were in? A The dry-goods commission business.

Q Are you a married man? A No sir; a widower.

BY MR. CLARKE:

Q Did you ever meet Mr. Hyland, this lady's husband?

A No sir.

Q Did she say that she was divorced? A No sir; that she was separated from her husband. I don't know whether it was a divorce or what kind of separation it was.



C O R A W E B E R, a witness called on behalf of the People,  
being duly sworn, testified as follows,

DIRECT EXAMINATION BY MR. CLARKE:

Q Where do you live Mrs. Weber? A 227 West 121st  
Street.

Q Do you know this defendant? A Yes sir.

Q When did you first meet her? A Well I don't re-  
member the date.

Q Well, how long before the unfortunate occurrence  
when she was arrested; how many days before? A It was on  
Wednesday evening.

Q She was arrested on Saturday morning? A On Satur-  
day afternoon.

Q That was about the 16th of December, 1903? A I  
presume that would be about it. It was on Wednesday.

Q She came to your house? A Yes sir.

Q And that is the first that you ever knew of her?  
A Yes sir; the very first.

Q Well, state what occurred? A Well, she answered  
my advertisement, in regard to a room. I had an advertise-  
ment in the Evening Telegram, to rent a room, and she answer-  
ed my advertisement. That's the first I ever met the lady.

Q She came to your house? A Yes sir. Answered my ad-  
vertisement.



Q What did she say? A Well, she asked me to show her the room, and I showed her the room; and she said she liked it, and would take it; and then she came back, the next day, and took the room, the next evening.

Q What did she say her name was? A Well, she gave her name then as Lowther.

Q Mrs. or Miss? A Well, she only said Lowther.

Q Well, do you recollect this lady as the lady (indicating the defendant)? A Yes.

BY THE COURT:

Q The defendant? A Yes sir.

BY MR. CLARKE:

Q And she said that she would take the room? A Yes sir.

Q And for how long did she say? A Well, she said that she thought she would keep it permanently.

Q Well, did you ask her where she came from? A No sir I didn't ask her.

Q Did you get any idea of whether she had been living in New York or not? A No sir.

Q Well, did she bring any baggage with her, any hand baggage? A Well, not the first time, no.

Q Well, the second time? A Yes sir the second time

she brought a grip, a valice.

Q How large? A A large one, about that high and that long and that broad. Well I will tell you, I wasn't there when she got there, but I came home later. I am only home evenings. And so she was there, the next evening, when I got home.

Q And what became of this bag? A It was taken away.

Q By whom? A Well, I think Mr. Abbott took that away.

Q He did? A Yes.

Q And did you allow him to do it? A Yes.

Q By what right? A Well, I didn't think I had any right to hold the things; and, of course, I didn't think very much about it.

Q He asked for it, did he? A Yes; he asked for it.

Q And you allowed him to go through her trunks, I believe? First, however, we want to get about the name. She took the name of Lowther first? A Yes sir.

Q And she didn't say whether it was Mrs. or Miss?

A No sir. I didn't ask her anything about that.

Q And when did she change her name? A When I got home, the next evening, she told me her name was Mrs. Harris.

Q Harris? A Yes.

Q Did she tell you why she had told you it was Lowther?

A I don't think she did. I think she simply said that her name was Harris, instead of Lowther.

Q But you had already got the name as Lowther? A Yes sir.

Q Didn't you express any surprise? A No sir.

Q Well, I suppose you are accustomed to that? A Well, I am accustomed to a great many things, and I have seen a great deal of the world, and I didn't express my surprise.

Q Well, did she say it was Mrs. or Miss Harris?

A Mrs. Harris.

Q And, shortly after that, some trunks came? A They came, the next day.

Q And they were marked, "I.H.", weren't they?

A Yes.

Q And did anybody call on her while she was there?

A No sir; not to my knowledge.

Q Now, she was there from Wednesday to Saturday?

A Well, she didn't stay Wednesday night. She was only there Thursday and Friday night.

Q Where was she Wednesday night? A Well, she left, you know. She just wanted to look at the room.

Q Did she tell you where she was staying? A No. I didn't ask her. She didn't say anything about that, and I didn't ask her.

A No. I didn't ask her. She didn't say anything about that, I didn't ask her.

Q But she occupied the room, Thursday and Friday night? A Yes.

Q Did she stay in her room? A Yes; she was there both nights.

Q I mean, was she there all day too? A Well, you see, I am not at home during the daytime.

Q Who is there? A Nobody.

Q Well, then the house is not looked after by anyone there during the day? A No, sir.

Q What is it? An apartment or house? A An apartment.

Q How many rooms? A Six rooms.

Q Well, was she the only tenant? A Well, I rented the three rooms, but there was only one occupied at the time, one young man, but he works all the time, during the day.

Q And so that you don't know whether she stayed at home or not? A No; I don't know a thing about it.

Q Did you have any talk with her? A Well, on Friday night I talked with her just a few minutes; that was all.

Q What was it about? A Well, when I got--- I was late getting home that night-- I was held up on a



street car, and when I got home I was home a few minutes when she came in-- that is about seven o'clock--- and she brought some mail back to me, and I asked her something about it. My husband was mad because I wasn't at home, and then we began talking about it, and I said my husband was cross when I wasn't at home, and that's about all our conversation amounted to.

And she said something about her husband, as two women will, and that is all that she said.

Q Well, did she say that her husband was travelling?

A No, sir.

Q Did she say that she was separated from her husband?

A Yes, sir; she said that she was separated from her husband.

Q Oh, you remember that, do you? A Yes; I remember that. She said they were separated.

Q Now, about the opening of the trunks, and then we will let you go. She went away on Saturday and didn't come back?

A No, sir; she didn't come back.

Q And the detectives came there? A They were waiting for me, when I got home.

Q On Saturday night? A About two o'clock. I get off at one o'clock and they were waiting for me when I got



home.

Q The detective sergeant who was on the stand here?

A Yes.

Q And they told you that she had been arrested?

A Yes; they told me that she had been arrested, and they had her, so that she wouldn't be back.

Q And what did they say about the baggage?

MR. WEEKS: Objected to.

A They said to me not to let anybody---

MR. WEEKS: Objected to. We object to the conversation.

MR. CLARKE: You don't object to that, do you? For this lady's own protection let us have what took place.

THE COURT: Objection sustained.

BY MR. CLARKE:

Q Well, where was the baggage? A In her room.

Q It consisted of three trunks, didn't it? A Yes, sir; three trunks and a hand bag.

Q Now, Mr. Abbott came up there? A Yes.

Q When did he come up there? A On Sunday, about two o'clock.

Q What did he say? A He said he wanted to get Mrs.

Harris's things.

Q Did you know him? A yes, sir; I knew him.

Q And how had you known him? A I had known him because I had worked in Mr. Weeks' office, in last August. But that is my only acquaintance with him. I had only known him in that way.

Q Well, you let him go through the trunks? A yes, sir.

Q Did he take about everything that was in the trunks?

A Oh, no; he couldn't have done that.

Q Well, did you watch him when he went through the trunks? A Yes.

Q Well, what did he take? A He went through and took some things.

Q Well, just give us an idea. Did he rummage or what?

A Well, we examined everything that she had in the room.

Q Did she have anything that was not in the trunks?

A Well, in the writing desk, you know, a few things were lying around. We meant to examine everything in the room.

Q What did he say he was looking for? A Well, he didn't say he was looking for anything; and it never occurred to me that the diamonds were there, and so I didn't think about it. I just simply wanted-- the reason why I went in there and watched him was so that if anybody should say that I stole

anything---

Q You knew the lady had been accused of taking some diamonds; didn't you? A Well, the detectives told me that. That's all I knew.

Q Well, I say, you knew that? A Yes, sir; because the detectives told me that. That's the only way I knew it.

Q And didn't you afterwards describe the jewelry that Mr. Abbott had taken out of the trunks? A I didn't see him take any. He didn't get anything.

Q Well, but you afterwards told the people who came there, described it, and said that it was a necklace?

A No, sir.

Q Weren't you correctly reported on that subject?

A No, sir.

Q You remember that the newspapers said that, don't you?

A I don't remember---

THE COURT: Well, I would not go into that.

BY MR. CLARKE:

Q Well, didn't you tell anybody that you saw the necklace? A No, sir; I never did tell anybody that I saw the necklace.

Q Well, where was the black bag? A Well, it was a leather bag.

Q And that was where? A Sitting on a chair.

Q And did he take that away with him, Mr. Abbott?

A Yes.

Q Did he open it? A Well, I have one just like it, and I showed him how to open it, and we went through it together, both of us together.

Q And did you see him go into the pockets of dresses?

A No; he didn't go in any pockets of any dresses.

CROSS EXAMINATION BY MR. WEEKS:

Q You were there during all the time that Mr. Abbott was there, wasn't you, Mrs. Weber? A Yes, sir.

Q And you saw everything that was taken out of the trunks and the bag? A Yes, sir; I think I saw everything.

Q And was there any large diamond necklace there?

A I didn't see anything of that kind; no, sir.

BY MR. CLARKE:

Q You saw some jewelry, didn't you?

A Yes, sir.

BY MR. WEEKS:

Q You saw a rope of pearls, didn't you; this rope of pearls (indicating)?

MR. CLARKE: Oh, just tell her what she saw.

A Yes, sir; I saw that.

Q And a little society pin (indicating)? A Yes, sir; a little pin.

Q And did you see that ring (indicating the pearl ring)?  
A No; I didn't see that.

Q And you helped Mr. Abbott to get some clothing, didn't you? A Yes. I gave him some things to take to her.

Q To Mrs. Hyland? A Yes, sir.

Q And the room was not locked at all, was it? A No, sir; the room was just open.

Q The bag was not locked? A No, sir; nothing was locked, except two trunks were locked.

Q The two trunks were locked? A Yes, sir.

RE DIRECT EXAMINATION BY MR. CLARKE:

Q Now, I just want to refresh your recollection. You testified before the Magistrate? A Yes, sir.

Q Don't you remember this question being put to you:

"Q Do you remember one of those gentlemen saying to you 'It was a pearl necklace,' and that you said, 'No, it was a diamond necklace with a pearl pendant, etc.'"

(Mr. Clarke reads the question)? A Well, I was surprised,



because I had seen it in the paper that it was a diamond necklace, and when he spoke of it being a pearl necklace, I was surprised.

MR. WEEKS: What page is that on?

MR. CLARKE: page 97 of the transcript of the minutes before the Magistrate.

BY THE SEVENTH JUROR:

Q Did you suppose in that conversation, that that was the necklace that has just been shown you by Mr. Weeks, the necklace that the papers had written about?

THE COURT: No. I cannot permit that, Mr. Juror.

MR. CLARKE: That is the case.

THE COURT: The case rests with you, Mr. Weeks.

MR. WEEKS: Now, may it please the Court, we move to dismiss the complaint, on the ground that there is not sufficient evidence here to establish a case here against the defendant.

THE COURT: I deny the motion.

MR. WEEKS: And we except. I don't know that it is necessary for me to call your Honor's attention to the special grounds, at this time.

## OPENING ADDRESS FOR THE DEFENSE

of

BARTOW S. WEEKS, ESQ.

May it please the Court:

And Gentlemen of the Jury,

You have heard the evidence in this case offered by the prosecution; and the whole thing seems to hinge upon the testimony of this man Fyke, that he gave Mrs. Hyland this jewelry for the purpose of having her mother loan \$10,000 on it, and that that interview occurred on the afternoon of the 2nd of December, and that he gave her this jewelry on the night of the 2nd, according to his story, in the Marlborough restaurant.

Now, he had not had any conversation with her about loaning this money until the afternoon of the 2nd of December, because he had not seen her.

He met her by appointment on the street, and they went into an ice cream place, and if it were not that I want you gentlemen to have the whole truth about this matter, and to have an opportunity of letting this defendant tell you just what did happen, I would be perfectly willing to rest my case right here, because the prosecution has put in evidence here, by one of its own witnesses, the absolute undeniable proof that this whole thing is a scheme and conspiracy of Fyshe to cover up his own wrongdoings with that diamond necklace.

Because Mr. Schwartz testified that, two or three days before Mrs. Hyland was brought into that jewelry store by Fyshe, Fyshe had told him that he knew a lady from whose mother he was going to get a loan on some jewelry.

Fyshe comes to Schwartz, before he ever had had any talk with the defendant upon that subject, and tells him that he has his plan all laid out for a woman, whose mother was going to lend him \$10,000 on that jewelry; and that was before he had seen Mrs. Hyland, or talked with her about it.

Now, gentlemen, that is just the whole milk in this cocoanut,

We will prove to you that Mr. Fy she never had any right or authority to dispose of that necklace in any way, either by sale or by borrowing money on it; that he had got it from the possession of his wife upon a ruse, stating that the jewelry was not worth as much as she thought it was, and that he was going off to have it appraised; and he promised to return it to her, and he didn't do it; and she was demanding the jewelry from him, and he didn't return it.

And, finally, it got to a point where, if he was going to keep that jewelry or its proceeds, he had to make some sort of an explanation to his wife.

Now, how could he do it?

If he had sold it or put it with anybody where it could be appraised, then he would have to account for it.

Instead of that he devised the scheme in his own mind that he would get from this defendant a receipt that he could use to satisfy his wife, and so he

lays his plan to have that receipt.

In order to get that receipt he has got to tell some sort of a story that will get her to give it to him, and, in order to carry out his own scheme afterwards, he has got to get her, this defendant, into a jewelry store, where someone can identify her, as having some possession of that jewelry.


At the same time, if the worst comes to the worst, he can make a charge against this poor woman.

She is separated from her husband. She hasn't any friends here, as he thinks, that will take care of her, that will give her any support.

He has been writing letters which he wants to get from her, which ~~ix~~ he is trying to get from her.

And he had got her to invest money in a Steel speculation, and gave her a check, which he stopped, after she had put her money in it, after she had pawned her own jewelry to make that speculation, based upon the strength of Mr. Fyshe's check for \$150.

She goes and pawns her own jewelry and puts it into a stock speculation, on the strength of his false representation, and this man stops that check.





Now, he knows that he hasn't done right.

MR. CLARKE: Is this summing up?

MR. WEEKS: No; it is my opening. I am stating what I intend to prove.

Well, I will not go into the details of that any further, because we will prove it all.

I will only say that, after he was married to Mrs. Fyshe, he recontacted to this defendant, and talked about taking her away from her mother. He, within a month or two after his marriage to his present wife, is writing affectionate letters to this woman, looking towards their getting married.

And then he comes on here and finds her trying to make a living, doing some life insurance business, and he took \$150 on that check, and \$100 that he got from his wife at the same time, but did not put it into this Steel scheme.

Well, he comes, at last, down to the time when he has got to account for this diamond necklace.

And so he makes an appointment with this young lady and tells her that he is going to straighten all this out now; that he has advertised for a loan

on this jewelry, and will get some money.

And he showed her letters in answer to the advertisement, and said, "Why I can get \$10,000 on that jewelry, and I will have plenty of money, and I can straighten that all up with you."

Well, he invites her to dine with him, shows her the jewelry and he says to her-- and she at once says, because she had some knowledge of jewelry, she has owned some jewelry, some considerable amount of jewelry in her life, for she lived in South Africa, where her husband was the Chief Engineer of a Mining Company, where she met the very best people that were in that place, where she met---

MR. CLARKE: Including the Captain?

MR. WEEKS: No, sir. She met the Captain because he was a timekeeper on that railroad there, and that is all he was, working under her husband, who was the Chief Engineer.

Of course, she met him.

And she says, "Why, no, you can't get any ten thousand dollars on that jewelry. It isn't worth it."

He said, "Oh, yes, I can. It is easily worth \$10,000. You can have it appraised for \$10,000 any-

where."

And she said "Oh, nonsense. It isn't worth \$10,000."

And he said, "Now, you take it right across the street to that jewelry store there and have it appraised."

And so his plot is laid, two days before, with Mr. Schwartz, as to the story that he is ultimately going to tell, about borrowing ten thousand dollars from some lady's mother.

But not he has got to get a receipt.

And so he says to her, "Why, take this over there, and get it appraised, and just give me a receipt for it."

And he pulls out his memorandum book, and gives her the pen, and she gives him the receipt.

And he puts the memorandum book in his pocket, and engages her in conversation for a little while.

And then he says, "Oh, excuse me just a minute. I want to go and telephone to somebody."

And he leaves the table and goes away, presumably to telephone; and comes back and says, "Oh, I might just as well go over to that jewelry store with you."

Remember that, twenty minutes before Mr. Fyshe and Mrs. Hyland went into the jewelry store, Mr. Fyshe had gone over there alone, and had said to Mr. Schwartz, "Now, I am going to bring a lady in here, and I want you to tell her this is worth ten thousand dollars, and I will make it right with you."

That is what he went to the telephone for, or pretended to go to the telephone for.

He comes back, and the receipt is forgotten. He has it all safely put away in his pocket here (indicating).

And the two go over to the jewelry store.

And remember what Schwartz says: That, in the jewelry store, Mr. Fyshe had the diamond necklace-- there were not any rings or any watch shown over there--- he had the diamond necklace all the time in his possession, and he did all the talking and the lady never said a word.

And Mr. Schwartz was rather non committal.

He didn't like to commit himself to saying that the necklace was worth \$10,000.

But he said, "Well, if you paid that much for it, it must be worth that much."

And then he said that he couldn't tell much about diamonds at night, though he had seen the necklace before and knew all about it.

And then they returned to the restaurant, and she says to him, "I saw, by that man's manner, that that necklace isn't worth ten thousand dollars, and you could never borrow that much on it.

Now, what are you trying to make me believe. It is your wife's necklace anyway, and I don't think that you have any right to part with it anyway."

And then they talked there for a considerable time, and then started home.

And, when they got on the way home, she then told him that she was through with him.

She said, "Now, you have never made that check good. You are a fraud. I think you are trying to defraud me about this jewelry and just trying to keep me along here about that thing. I don't know whether you are married or not."

MR. CLARKE: I must object to this. You wouldn't allow what Captain Fyche said, and now you want to tell everything that she said. Isn't that



manufacturing evidence?

MR. WEEKS: I am telling what she said to him, that night.

MR. CLARKE: All right.

MR. WEEKS:

And she said, "No. I won't have any more to do with you. I am going to show those letters to your wife, and I am going to show the British authorities what sort of a man you are."

And then they quarreled, right then and there.

Now, she never took that jewelry from him, never took it anywhere, and never telephoned him anywhere about it.

And she left her apartment because her time was up, or a day over; and she left that place, and went up and stayed with a friend, in 64th street, I think, and from there went up and took this room with Mrs. Weber.

Now, she never had that jewelry.

If she had that jewelry, if it could be traced in some way. She hadn't any way of concealing it, a valuable necklace like that.

And then Mrs. Fyshe commenced to make

trouble about that necklace, insisting upon its return, and finally, on the 19th, Mr. Fyshe had this defendendant arrested.

Now, I won't go into all the details of that. I will call, as my first witness, Mrs. Fyshe.

## THE DEFENDANT'S TESTIMONY.

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

## DIRECT EXAMINATION BY MR. WEEKS:

Q Now, Mrs. Fyshe, you were married to John A. Fyshe, first, in Scotland, I believe, weren't you, in September, 1902?

A I was married to John A. Fyshe, in Scotland.

Q And, subsequently, married in this city?

MR. CLARKE: Now, I object. That was disallowed.

THE COURT: I sustain the objection.

MR. CLARKE: They are married; that is the end of it.

MR. WEEKS: And, subsequently re-married in this city.

THE COURT: It is immaterial. The witness says that she is the wife of the person mentioned.

BY MR. WEEKS:

Q Now the necklace referred to in this indictment, Mrs. Fyshe, was your property? A My property.

Q And, on the 2nd day of December, 1902, had Mr. Fyshe any authority to part with its possession? A Well, when you come to dates, I have none of them down correctly, so I wouldn't like to swear to it.

Q Well, you had the necklace in your possession about Thanksgiving? A Off and on, I have had the necklace in my possession, and, off and on, Captain Fyshe has had it in his possession.

THE COURT: Wait, wait. Pardon me, Mr. Weeks.

The lady must raise her veil.

THE WITNESS: I must do what?

THE COURT: Raise your veil.

THE WITNESS: certainly, sir.

BY MR. WEEKS:

Q Did you ever authorize Captain Fyshe to borrow any money whatever on that necklace? A I never authorized him to borrow any sum of money whatever on it.

Q Did you ever authorize him to offer that necklace for sale? A I can't say that I did. We have joked a great deal about the necklace, and possibly he may have misunderstood it.

Q (Question repeated).

A I never authorized him to offer it for sale.

Q Now, did you, shortly before the--- in the early part of December, 1902, you were in Providence; weren't you Mrs. Fyshe? A Yes. Before when?

Q In the early part of December, 1902? A 1903, you mean?

Q Yes, 1903? A Yes.

Q And did you write to Mr. Fyshe requesting him to bring you that necklace? A I did; because I wanted to wear it.

Q Did you receive any reply from him? A No; because he was detained in New York.

Q Did he reply at all about the necklace? A Not regarding the necklace at all.

Q On Friday, the 4th of December, about two weeks, before the arrest of the defendant, did you see Mr. Fyshe in New York, at the Murray Hill Hotel? A I see him when.

Q At the Murray Hill Hotel? A What date?

Q Friday evening, about two weeks before the arrest of the defendant? A Well, I did see him, at the Murray Hill Hotel, but I couldn't tell you whether that was the exact date. I think it was about that time.



Q Well, did you say anything to him about the jewelry then? A No; I didn't speak to him, because I didn't have time. I only saw him for about five minutes.

Q And, on the following day, did you say anything to him about it? A Yes, sir; I asked him where it was.

Q And what did he say about it? A That it was in perfect safekeeping.

MR. CLARKE: This is after the alleged taking?

MR. WEEKS: Yes.

BY MR. WEEKS:

Q After he claims to have given it to Mrs. Hyland?

A Oh, I don't know anything about that.

BY MR. CLARKE:

Q But you know that it was after the 2nd of December? A Yes, sir. But I don't know anything about his giving it to Mrs. Hyland.

THE COURT: Mr. Weeks, of what importance is it in this action whether this witness gave to the complaining witness authority to sell or dispose of this necklace? How does it become material?

MR. WEEKS: I think we are entitled to show, in the defense of this defendant, that the real culprit is the complaining witness;

THE COURT: of course, you may show that.

MR. WEEKS: And that, according to his own story, he parted with the possession of it, without authority from the real owner.

THE COURT: Well, if he did that, and if he, as he claims gave to the defendant that necklace, that would not justify the defendant in converting it to her own use, if she did.

MR. WEEKS: \_ certainly not, your Honor. But I think we are, also, entitled to show that, during the time that he claimed it was in the possession of the defendant, under this receipt, he was telling his wife that it was perfectly safe.

THE WITNESS: Well, perhaps he thought it was safe in Mrs. Hyland's hands.

THE COURT: No, madam. I do not wish to restrict you, Mr. Weeks, but I can see that the latitude of this examination may reach to points that will be clearly beyond all reasonable or legal bounds.

We must keep the issue here before us; and that is, whether or not ~~this~~ Mr. Fyche gave to this lady, the defendant, the necklace, and the articles of jewelry in question, and whether or not, if he did,

she converted them to her own use.

Now, that is the sole question, whether she, while acting as a bailee or for any specific purpose converted them to her own use, with the intent to deprive or defraud him of that property.

That is the simple question that this jury will have to determine.

MR. WEEKS: But doesn't it go to the credibility of the complaining witness?

THE COURT: Well, but you may ask as to statements or declarations made by him, as to which you may have asked him, which you consider affects his credibility, touching the main transaction, and having relevancy to it. But we must not go into the marital relations of this witness with the complaining witness, at all. We must confine ourselves to the issue here.

MR. WEEKS: Oh, no. I don't intend to do that.

BY MR. WEEKS:

Q When did your husband first tell you that he had given the necklace to Mrs. Hyland? A Sunday morning.

Q Sunday morning? A Yes, sir.

Q That was after you had seen it in the paper? A No; I hadn't seen it in the paper.

Q Sunday, the 20th of December? A Yes.

Q On the Saturday before, had you spoken to him about it? A I did; in the morning.

Q And what did you say to him? A I just simply told him that I would like to have them, to wear; and he said he would bring them up, they were all right.

Q He said he would bring them up? A No; he said they were perfectly safe.

Q He said they were perfectly safe?

A Yes.

Q That was on Saturday, the 19th of December; is that right? A Well, I don't know whether it was Friday or Saturday; it was either the one or the other; but I think it was Saturday morning, though.

Q Well, Saturday morning?

A I think so. I can't say as to whether it was Saturday or Sunday.

Q Now, in regard to this diamond pin that was produced here, Mrs. Fyshe. Did you see it when it was exhibited here in the Court room? A No; I didn't see it.

MR. WEEKS: I will have it brought in.

MR. CLARKE: That is objected to. It has nothing to do with the jewelry in question.

THE COURT: I sustain the objection.

MR. WEEKS: I show you this pin, and ask if it

yours (indicating).

MR. CLARKE: Objected to, as irrelevant and immaterial.

THE COURT: I sustain the objection.

MR. WEEKS: We except.

MR. CLARKE: Let it appear on the record that is not one of the articles mentioned in the indictment.

THE COURT: The court is ruling upon the evidence, so far, as to this matter, that the article shown is not one of the articles mentioned in the indictment. There is no question about that, is there, Mr. Weeks?

MR. WEEKS: Not at all.

(The pin is marked "Defendant's Exhibit 8 for identification).

BY MR. WEEKS:

Q Now, I ask you, Mrs. Fyche, whether you ever gave your husband any authority to pawn this diamond brooch, Defendant's Exhibit H for identification?

MR. CLARKE: Objected to.

A I don't know that it is mine, until I see it.

THE COURT: No, no.

MR. WEEKS: I asked him about it on his cross



examination.

MR. CLARKE: And you are bound by it. And that answer may stand, that she doesn't know whether it is hers or not, until she looks at it.

BY MR. WEEKS:

Q Now, look at the pin, and see if it is yours?

MR. CLARKE: Objected to.

THE COURT: Well, you may show it, but she need not answer the question.

THE WITNESS: I don't know whether it is mine or not. I am not an expert. I will have to have it examined by a jeweler.

MR. CLARKE: I object to this line of questions as to other jewelry, not mentioned in the indictment.

BY MR. WEEKS:

Q You say you don't know whether that is yours or not?

A I don't know a real diamond from an imitation. I depend upon my jeweler. They are all brilliant to me, just the same, fish pearls and real pearls.

Q Mrs. Fyfe, didn't your husband take a diamond crown from your bureau, and dispose of it?

MR. CLARKE: Objected to. Don't answer the

question.

A I never saw him take it.

THE COURT: I sustain the objection.

MR. WEEKS: We except.

THE COURT: Madam, where there is an objection made to a question, do not answer.

THE WITNESS: Oh, thank you. I am not familiar. I will do so. I didn't know.

BY MR. WEEKS:

Q Did your husband take a thousand dollar Auditorium bond from your bureau drawer, and sell it at the Gansevoort Bank, a bond that belonged to you, and sell it without your authority?

MR. CLARKE: Objected to.

THE COURT: Objection sustained.

MR. WEEKS: Exception.

MR. CLARKE: I object, both on the ground that it is incompetent, immaterial and irrelevant, and because it is collateral matter brought out on the cross examination of Mr. Fyshe, by the counsel for the defendant, and because he is bound by it.

BY MR. WEEKS:

Q Did you have a conversation with your husband, Mrs. Fyshe, in the month of June, in regard to some investment in

Steel?

MR. CLARKE: That I object to.

THE COURT: Objection sustained.

MR. CLARKE: June, 1903.

MR. WEEKS: Yes; June, 1903.

MR. CLARKE: That is six months before the larceny.

MR. WEEKS: Exception.

BY MR. WEEKS:

Q On or about that time, did your husband get from you \$100 to invest in a speculation in United States Steel stocks?

MR. CLARKE: I object. I do not see the materiality of it.

THE COURT: Objection sustained.

MR. WEEKS: Exception.

BY MR. WEEKS:

Q Did he ever return that money to you?

MR. CLARKE: Objected to.

THE COURT: Objection sustained.

MR. WEEKS: Exception.

BY MR. WEEKS:

Q Did you, on or about the 21st of December, 1903,

make a complaint against your husband, for stealing this same diamond necklace?

MR. CLARKE: Objected to.

THE COURT: Objection sustained.

A No.

MR. CLARKE: You should wait until I make my objections.

A Oh, I beg pardon.

MR. CLARKE: And I also object, on the ground that it is not the best evidence. If the complaint is here, produce it.

THE COURT: No. It is entirely collateral. I will not permit any further testimony.

MR. WEEKS: Well, the objection was made on that ground, if your Honor please.

THE COURT: Well, without that ground of objection, the question is manifestly incompetent.

MR. WEEKS: Mr. Wolf, please produce that complaint.

THE COURT: Now, Mr. Weeks, I direct you to discontinue on that line, and you have my exception on that ruling.

And I direct the Clerk not to comply with any

request except such as is given by the Court.

Manifestly, this is not a question for this jury to pass upon here.

MR. WEEKS: We except to your Honor directing the Clerk not to produce a paper subpoenaed by us from the Clerk.

THE COURT: Well, even if it were produced, I would not admit it in evidence.

And I will give you that ruling now, so that you will have the benefit of your exception.

So that you can take it as assumed that that paper was produced, and that I refused to admit it in evidence.

MR. WEEKS: Well, I haven't identified it by the witness.

THE COURT: Well, I will allow it to be taken that you have done so.

MR. WEEKS: Then I ask to have it marked for identification, so that there can be no question on the record as to what it is.

THE COURT: Then mark it.

MR. WEEKS: Will the Clerk please produce it?  
(The Clerk produces the paper).

MR. WEEKS: Well, so that I may have my



record straight---

BY MR. WEEKS:

Q I show the witness that paper and ask her if it is her signature?

MR. CLARKE: Objected to.

THE COURT: Well, she may answer. Judicially now, I do not know what the paper is, but she may answer.

A That is my signature, yes.

BY MR. WEEKS:

Q Now, I ask you if that is also your signature (indicating)? A That is my signature.

MR. WEEKS: Now, we offer those two papers in evidence, your Honor.

THE COURT: What do you say, Mr. District Attorney?

MR. CLARKE: Well, I say just this, your Honor: There is no desire to conceal the fact that some steps were taken by this lady, but to go into all of them, and to do justice to the subject, would take hours.

THE COURT: Oh, we cannot do that. Do you object?

MR. CLARKE: Yes, sir. And, therefore, I say that the whole line of testimony should be excluded.

THE COURT: Do you object?

MR. CLARKE: Yes, sir; I do. It is too long a story; that is all.

THE COURT: I sustain the objection.

MR. WEEKS: And we except. May I have the papers marked for identification, sir?

THE COURT: Yes.

(The papers are marked Defendant's Exhibit 9 for identification).

MR. WEEKS: That is all, Mrs. Fy she.

MR. CLARKE: I have no questions.

I N E S H Y L A N D, the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. WEEKS:

Q Mrs. Hyland, did you ever have the necklace and rings and watch? A No, sir, I did not.

Q That are charged in this indictment?

A No, sir.

Q And which you are charged in this indictment with stealing? A No, sir.

Q On the 2nd day of December, 1903, did you meet Mr. Fyshe, in 9th avenue in this city? A Yes.

Q About what time of day? A On the 2nd, I met him about three o'clock.

Q Did he then have this diamond necklace with him?

A Yes.

Q Did he say anything to you about it? A He said he was going to borrow ten thousand dollars.

Q Yes. Did you agree to loan him ten thousand dollars on it? A No, sir.

Q Where does your mother live? A Carthage, New York.

Q Did Mr. Fyshe know that? A Yes, sir.

Q He had addressed letters to you there? A Yes, sir.

MR. CLARKE: Can't you lead the witness a little?

MR. WEEKS: Well, that had already appeared in the case, I think. I didn't mean to lead, at least.

Q When he said-- tell us what occurred at that interview; go on and tell us as well as you can, Mrs. Hyland?

A Well, he said that he would borrow ten thousand dollars,

and would pay me back the \$150 that I had advanced, and, also, he would pay his life insurance.

Q Yes. A He said that he had several letters from different people, who would loan him that amount of money, or even more, as well as I remember.

Q What followed after that? A Well, after that, he asked me if I would go to dinner, at the Marlborough, and, at first, I objected, because I was not dressed, and he insisted upon my going.

And, so, finally, I went home and changed my clothes and went with him to dinner; met him again at the ice cream saloon and went over to the Marlborough, to dinner.

And there he spoke again of the jewelry, and said that he could borrow ten thousand dollars.

And I told him that it was perfectly preposterous; that he would never get ten thousand dollars on the jewelry, and he said that he could.

And so he said, "Well, if you don't believe that, you can take it over somewhere, anywhere, and have it valued."

And so I said, "Well, I don't mind doing that. I can do it."

And he produced a memorandum, and he said, "Give me a little receipt, and take it over and have it valued."



BY MR. WEEKS:

Q Did he suggest any place? A Yes, sir; any place.

Q Did he suggest any particular place? A No, sir.

He said there were plenty of jewelers around in the vicinity. And so I wrote the receipt in the book with his pen, and he put the receipt in his pocket, and I didn't see it again.

And then he excused himself, and said that he had to see a man for a moment; that he was going up to telephone, and wanted to see a man in the Hotel Normandie.

He came back again and said, "I will go over with you to the jewelers.

And so we went upstairs and out of the place, and across the road to the jeweler.

But, before we went he said that he would go into the clerk and ask him if there was a jeweler in the vicinity, because it was snowing.

I said, "It is snowing hard; it is no use of going over there now. We might better wait a while."

And he said that he would ask where the nearest jeweler was, and he left me waiting in the hall, and went in and asked him, and he came back, and said that there was a jeweler across the road, and went with me.



Q Well, did you cross the street with him? A Yes, sir; we went across the street.

Q Who had the necklace? A He had the necklace. And he showed this necklace to the jeweler, and the jeweler seemed very non-committal about it.

He said that it was night, and he didn't like to value things in the night time; and possibly it was worth ten thousand dollars, but that he couldn't be sure.

Mr. Fyshe seemed to urge him, urge him to say that it was worth ten thousand dollars; and he said that he couldn't be sure that it was worth that, and that he wouldn't like to put that valuation on it; that he didn't like to value things in the night time.

BY MR. WEEKS:

Q And from there where did you go? A Back to the Hotel Marlborough.

Q And what occurred there? A We sat there for awhile, to see if it would stop snowing, and then started to go home, or, at least, I did.

I wanted to say good night to Mr. Fyshe, but he refused, saying that he was going home with me, and I told him I didn't care to have him go.

And we started to quarrel there about that, and about various other things.

I told him I didn't believe he intended to borrow any money on it at all; that it was simply like his other stories, that he had told me before, about borrowing money, and getting money, and doing this, that and the other for me, and bothering me all the while, and then, in the end, I would have nothing for my trouble.

And so we went home, and when we got there, he insisted upon coming into my house, and I refused.

And, finally, I had to ring the janitor's bell, in order to get him to go away.

He did go away, finally.

Q Was there anything else said in the quarrel, about anything else than what you have testified to, so far?

A I told him that I would at the first opportunity, tell his wife; that I would go down at once and try to find her; and he said I didn't know where his wife was; that I couldn't do it. He said that I would find that he was a different man from my husband, and he threatened to knock my head in.

BY THE COURT:

Q What did he say? A I beg your pardon, sir.

Q Give us his words, as nearly as you can? A He said "You will find I am a different man from your husband. I would just as soon give you a slap in the head."

BY MR. WEEKS:

Q And then you left and went into your apartment there?

A Yes, sir.

Q How long had you had those apartments in West 30th street? A One month.

Q And how much did you pay for them? A Twenty dollars.

Q And your month had expired on the 1st? A Yes, sir.

Q And this was the 2nd? A Yes, sir.

Q Now, on the following day-- oh, did you make--- I don't know whether I made it distinct or not-- did you have any conversation at all with Mr. Fyshe, in regard to your mother having money in the Lincoln Trust Company, or the Lincoln Bank and that you could lend that money on this jewelry, if you could get it appraised?

A No, sir.

Q Did your mother have any such amount of money?

A No, sir.

Q Did you have any amount at all in the Lincoln Bank or the Lincoln Trust Company? A No, sir.

Q Did you know that Mr. Fyshe had an account in the Lincoln Trust Company? A No, sir; I did not.

Q Did you make any promise to meet Mr. Fyshe or communicate with him the next day?

A No, sir.

Q Did you telephone him the next day? A No, sir,  
I did not.

Q On the following day did you have your trunks removed  
to the Columbia storage warehouse? A Yes.

Q You had other articles--

MR. CLARKE: Now, one moment.

BY MR. WEEKS:

Q Did you have other articles at the Columbia Storage  
warehouse at that time? A Yes, sir.

Q Furniture? A Yes, sir; furniture.

Q And in what name was it there? A Mrs. Hyland's.

Q Mrs.-- A Mrs. J. F. Hyland.

Q Mrs. J. F. Hyland? A Yes, sir.

Q Did you make any secret of the sending of the trunks  
there?

MR. CLARKE: Objected to.

A No, sir; I did not.

MR. CLARKE: One moment. When I object,  
don't answer.

THE WITNESS: I beg your pardon, sir.

MR. CLARKE: I ask to have it stricken out.

THE COURT: Strike it out.



BY MR. WEEKS:

Q How did you get the Columbia Storage warehouse Company to send for your trunks? A I telephoned the storage warehouse.

Q And, after having sent your trunks away, where did you go? A I went to 42 West 64th street.

Q To visit---

MR. CLARKE: One moment.

A To visit a friend of mine.

BY MR. WEEKS:

Q Who did you visit there? A Mrs. Charles O'Connell.

Q And how long did you remain there? A Nearly two weeks.

Q And then where did you go? A I went up to Mrs. Weber's. I found her address in the paper, that she had a furnished room to rent, and I went up there to see it.

Q Now, you did give the name of Lowther first, to Mrs. Weber? A Yes, sir.

MR. CLARKE: I wish you would allow the lady to testify. She may deny that. But if you tell her that you don't want her to deny it, she will not. I want fair dealing here. Don't tell her what she did and what she said.

MR. WEEKS: Mr. Clarke doesn't imagine, I hope,



that I am putting a defendant on the stand without knowing something about what they are going to testify to, do you?

BY MR. WEEKS:

Q What name did you first give Mrs. Weber? A Lowther.

Q And what name subsequently? A Harris.

THE COURT: Gentlemen of the Jury,

You will remember my caution to you, not to talk about the case, or form or express any opinion concerning the guilt or innocence of the defendant, until the case is finally submitted to you.

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

## AFTER RECESS

I N E Z H Y L A N D, defendant, recalled as a witness.

DIRECT EXAMINATION CONTINUED

BY MR. WEEKS:

Q I think you testified, Mrs. Hyland, that you went to Mrs. Weber's because of an advertisement which you saw in the paper? A Yes sir.

Q Now when you first went there what name did you give Mrs. Weber? A Lowther.

Q Do you know anyone of that name? A Yes sir.

Q Who is the person of that name that you know?

A A lady who keeps a lodging house in 105th Street.

BY MR. CLARKE:

Q Near Manhattan Avenue? A No sir. I think it is -- well I am not sure whether it is near Manhattan Avenue or not.

BY MR. WEEKS:

Q Why did you give the name of Lowther when you went there? A Because I had known this person who was called Lowther, and because I did not intend to come back, and she insisted on knowing my name, and so I said, "Well my name

is Lowther."

Q When you came there the next day and took the rooms, what name did you give Mrs. Weber? A Harris.

Q What was your reason for taking that name?

MR. CLARKE: Oh I object unless she told it there, unless she expressed her reason in words at that time.

THE COURT: I sustain that objection.

Q When you left 30th Street did you leave any instructions with the post office authorities? A Yes sir.

Q In regard to your mail? A Yes sir.

Q Where did you request your mail to be sent? A To 105th Street, to Mrs. Lowther.

Q To Mrs. Lowther. And before your arrest had you received any mail of Mrs. Lowther's? A Yes sir.

Q Did you go there for it? A Yes sir.

Q When the detective, Detective Gallagher, came up and spoke to you on the street, called you "Mrs. Hyland", did you say that you were not Mrs. Hyland? A Why yes sir, I did at first, because I didn't know the man, and he came up to me.

MR. CLARKE: No. Just answer the question.

THE COURT: Just answer the question.

Q And after you were taken down to Police Headquarters, did you send for any attorney? A Yes sir.

Q For whom did you send? A Mr. Nichol.

MR. CLARKE: Well that does not seem to be material.

Q MR. WEEKS: While the line of the District Attorney's examination seemed to indicate practically that there was some conspiracy between my office and this defendant.

THE COURT: Oh I do not think I would waste any time on that at all, Mr. Weeks.

MR. WEEKS: I thank your Honor.

THE COURT: The District Attorney, I am sure, does not seriously purpose to make such a contention.

MR. CLARKE: No, I do not contend that Mr. Weeks got the diamonds.

Q Now, before you left 30th Street, Mrs. Hyland, did you have some furniture stored at the Columbia Warehouse?

A Yes sir.

Q For how long a time? A Since the end of October.

Q Was that the time that you gave up 25 Columbus Avenue? A Yes sir.

Q And it was stored there in what name? A Mrs. J.



F. Hyland.

Q Did you at any time, Mrs. Hyland, ever say anything to Mr. Fyshe about your mother having any money in any place or having any money to loan? A Why, no, sir. Mr. Fyshe knew my mother had no great amount of money.

BY MR. CLARKE:

Q How did he know it? A Because he had seen my husband send money to my mother from East Africa, and he had all of our letters, and very often brought letters from the coast to us, and he heard all our business, because he took his meals with us at one time.

Q Whereabouts? A In East Africa.

Q Years ago? A Well, no sir; four years ago.

THE COURT: Let Mr. Weeks finish his examination.

BY MR. WEEKS:

Q You met Mr. Fyshe in the Summer of 1902 here in New York did you not, Mrs. Hyland? A Yes sir.

Q At that time you were separated from your husband, were you? A Yes sir.

Q I show you this letter; "For identification," and an envelope, and ask you if you received that letter in that envelope from Mr. Fyshe? A Yes sir.



Q Did you ever have any words with Mr. Fyshe subsequently in regard to that letter? A Yes sir.

Q When did you have the last words with him about that? A The night of the second of December.

Q What was said between you in regard to the letter then? A He wanted me to let him have this letter, and a letter that he had written me asking if I would have Col. Austin promote him; and I told him that I would not let him have any letter that I had or that he had written to me.

Q At the time that letter was received by you, did you know that Mr. Fyshe was married? A No sir.

Q Prior to that time had Mr. Fyshe suggested marriage to you? A Yes sir he had.

Q Now on the night of the second of December did you say anything as to what -- as to your purpose in regard to that letter and others? A I told him that unless he gave me the money that I had invested at his suggestion, that I would send to Col. Austin that letter, and first I would show it to his wife.

MR. WEEKS: I offer the letter in evidence.

MR. CLARKE: Why certainly.

BY MR. CLARKE:

Q How much money did you want from him? A (No answer)

(The said letter is admitted in evidence and marked Defendant's Exhibit 4).

Q I show you these letters also (handing papers to witness) and ask you if you received those from the defendant -- from Mr. Fyshe, -- at the time of their date? A Yes sir.

Q Did you at the time you received those know that Mr. Fyshe was married? A No sir.

Q When did you first hear from him that he was married? A I first found it out myself, or rather, I told him that I believed he must be married, and then he said he was married in -- some time in June.

Q In June? A Yes sir.

MR. WEEKS: I offer those letters in evidence.

MR. CLARKE: I will have to read those to see if they are material.

MR. WEEKS: Certainly.

MR. CLARKE: When were they written, do you know Mr. Weeks?

MR. WEEKS: 1902; shortly after Mr. Fyshe's marriage.

(The said letters are admitted in evidence and marked Defendant's Exhibits 2 and 3.

Q (after reading Defendant's Exhibits 2, 3 and 4, to

the jury) Now, at the time those letters were written, Mr. Fyshe had been talking to you about marrying you, had he?

A Yes sir.

Q And subsequently, when you had learned that he had married some one else, what happened? A I told him at that time that he was acting in a very dishonorable way, and that I didn't care to have anything further to do with him. That I would be pleased if he would leave me alone. That I would forgive him the money that I had given him, and if he would just simply go away from me and let me alone I would be glad of it.

Q What did he say to that? A Well, he didn't take it seriously. He said that I did not mean it, and he refused to take it seriously. He said that I would think differently of it and change my mind, and so on.

Q Now, in the Spring of 1903, where were you living?  
A At Columbus Avenue.

Q Did Mr. Fyshe call there? A Yes sir.

Q And what did he do when he called there, in regard to your ? and so forth, the hours that he called, and all that? A Well, he would call at all hours, and sometimes very inconveniently, ring the bell, and ring it for three or four hours. Then when he finally did get in, he would want to borrow five dollars, perhaps, or some frivolous

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thing.

Q Now, in the Spring of 1903, were you engaged in any business? A No sir, other than life insurance.

Q Did you attempt to go into any business? A Yes sir; life insurance business.

Q In what capacity? A As agent.

Q Soliciting insurance? A Yes sir.

Q Under a salary or on commission? A On commission.

Q And did the defendant -- or did Mr. Fyshe agree to take out a policy of insurance through you? A Yes sir.

Q And did you take any trouble in <sup>regard to</sup> the matter? A Yes sir. I wasted two or three months over it.

Q And did he ever take it out? A No sir.

Q Now, along in June, did you have any conversation with the defendant, in regard to an investment in Steel? A Yes sir.

Q What was that? A I told him that I had some very good information about some Steel stocks, and that I would be very glad if I could use it; and he said it was a very good idea, and that he would -- if I could get two hundred and fifty dollars that he would get two hundred and fifty dollars, and that I could invest it in Steel, and that we would share the profits. So he gave me a check for one



hundred and fifty dollars --

Q I show you Defendant's Exhibit 7, and ask you if that is the check? A Yes sir; that is the check.

Q Yes. June 16th, 1903, he gave you this check?

A Yes sir.

Q Relying upon that check --

MR. CLARKE: One moment. Don't read it.

MR. WEEKS: I was not going to.

Q After receiving this check, did you invest money in Steel?

MR. CLARKE: That I object to as reading.

What did you do.

THE COURT: Objection sustained.

BY MR. WEEKS:

Q Well what did you do after receiving that check, the District Attorney asks?

MR. CLARKE: I don't ask it, but that is the proper form. I object to it.

Q After receiving the check, what did you do?

MR. CLARKE: I object to it.

THE COURT: Sustained.

Q When did you learn that payment had been stopped on this check? A Some time in July; I think about the end of



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July.

Q Before you learned that payment had been stopped on this check, had you invested money in Steel? A Yes sir.

MR. CLARKE: That I object to.

THE COURT: Go on, Mr. Weeks.

Q Did you invest that money, or part of the money that you invested, did you invest because you relied upon that check being good? A Yes sir.

MR. CLARKE: If you can't examine the witness fairly, go ahead. I am not going to stop you any more.

Q And is that the \$150. that you talked with the defendant about on the night of the second of December?

A Yes sir.

Q Did you ever have possession, Mrs. Hyland, of the watch or the rings referred to in that receipt (indicating)?

A No sir.

Q You have already testified that you never had possession of the diamond necklace? A No sir I never had.

CROSS EXAMINATION BY MR. CLARKE:

Q You were a married woman when you received these letters from Mr. Fyshe, weren't you (indicating Defendant's

Exhibits 3, 4 and 5)? A I did not know.

Q Were you a married woman or not? A I did not know.

Q That is the best you can answer, is it? A Yes sir.

Q Did you ever object to these letters, couched in these affectionate terms? A No sir, I don't think I did.

Q You also answered them, didn't you? A I answered them.

Q And you were then a married woman, were you not?

A I don't know, sir, whether I was or not.

Q Are you a married woman? A I don't know.

Q Is that all the explanation you want to give us?

A I can explain it if you like.

Q When did you marry Mr. Hyland? A December 10, 1894.

Q Yes, 1894, and have you ever been divorced from him?

A I don't know whether I have or not. He said he would get a divorce, and I don't know whether he did or not.

Q You never received any notice of it, did you?

A No sir.

Q You never were served with any papers? A No sir.

Q Then, aside from that, you don't know of any divorce? A I do not know.

Q Now, how was it any more proper for the Captain to write you these letters when he was married, than for you to answer them when you were married? Can you answer that?

A I beg pardon.

Q You answered these letters when you were a married woman, didn't you? A Well I didn't answer his letters in that same vein.

Q Didn't you? A No sir.

Q You never called him "Darling Jack"? A I may have done; I don't know.

Q Well, that is the same vein, isn't it? A I don't know whether I did or not.

Q Well, would you know if you saw the letter? A I might.

Q Did you write that letter (showing)? A Yes sir; I believe I did.

MR. CLARKE: I offer it in evidence.

(The said letter is marked in evidence People's Exhibit B.)

Q Did you write this letter (showing)? A Yes sir.

MR. CLARKE: I offer that in evidence.

(The said letter is marked in evidence People's Exhibit C.)

Q Did you write that letter (showing)? A Yes sir.

MR. CLARKE: I offer that in evidence.

(The said letter is marked in evidence People's Exhibit D.)

Q Now, refreshing your recollection from these letters, is it not a fact that in corresponding with Mr. Fyshe, you addressed him as "My darling Jack," "My dearest Jack", and "Dear Old Fyshe?" A You may read the, sir, if you have them.

Q Well, is that a fact? A I don't know, sir. You may read them if you have them.

Q Well you can answer my question, can't you?

MR. WEEKS: Well, the letters speak for themselves. I don't object to the question. I have admitted the letters in evidence.

THE COURT: The letters speak for themselves.

Q Now, when you wrote those letters, you were married?

A Yes sir.

Q Your husband didn't know you were writing them, did he? A My husband certainly didn't care, because he said he would get a divorce, and we had agreed to that.

Q Oh, didn't care. He didn't know it, did he? A I don't know whether he knew it or not.

Q Now, isn't it a fact that when you went from 357



West 30th Street, you went directly to Mrs. Lowther's up there in 105th Street? A No sir.

Q Where did you go first? A I went to 42 West 64th Street.

Q Mrs. O'Connell? A Yes sir.

Q How long did you stay there? A Stayed there about ten days.

Q Did you go out at all? A Yes sir.

Q Eh? A Yes sir I went out.

Q Who with? A With myself.

Q Did you go out with Mrs. O'Connell at all? A I think I did.

Q Then you went to this Mrs. Lowther's, didn't you? A Yes sir.

Q And you sent word to your letter box on Eighth Avenue to send your mail up to Mrs. Lowther's? A Yes sir. Not to my letter box; to 30th Street, if I am not mistaken.

Q To whom at 30th Street? A To 357 West 30th St.

Q To this colored woman that was here? A Yes sir.

Q You heard her say she did not know where you were?

A I said I thought it was on 30th Street.

Q Did you put it in writing, your instructions? A I notified the postal authorities.



Q To send your mail to 30th Street? A Yes sir.

Q But as a matter of fact they sent it to 105th Street, didn't they? A 105th Street. -- no, sir; you have it wrong; I wrote to the postal authorities to send any letter that may be addressed to 30th Street to 105th Street.

Q Yes. Well, you got some, didn't you? A Yes sir; I got one letter.

Q But you didn't get any of these that were found at 30th Street, did you? None of them were forwarded by the postal authorities? A Well, no, sir, what you have in your hand.

Q Now didn't you tell the postman on post up there at 105th Street, if any letter came for Mrs. Hyland, to drop it in the letter box? A I believe I did; yes sir.

Q And then, when you went away to 227 West 121st Street, you would call back at 105th Street to get your mail, would you not? A I beg your pardon. I did not understand.

Q You went back to 105th Street to get your mail? A No sir, I did not.

Q You told Mr. Weeks you called there and got one letter? A No sir.

Q Whom did you tell to forward your mail from 105th Street? A Whom did I tell to forward my mail from 105th Street?

Q Yes? A I went there myself and got it.

Q That is not what I asked you? A Yes sir. I went there myself and got it.

Q You didn't tell them to forward it? A No sir.

Q And you didn't tell Mrs. Lowther where you were?

A She didn't ask him.

Q Did you tell her? A No sir; I don't think I did.

Q Did you tell Mrs. O'Connell where you were? A She knew where I was. I was living with her.

Q Did you tell her where you were after you left her?

A I didn't go there after I left her.

Q Now, Mrs. Hyland, can't you answer my question?

A Yes sir.

Q You answered Mr. Weeks long involved questions. Can't you answer my simple one? Did you tell Mrs. Lowther where you were going when you left her house? A Why I have not been there, sir.

Q You never went back to Mrs. Lowther's? A I went there for my letters, but I had not lived there.

Q Well, did you ever tell her that you were over at

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Mrs. Weber's? A No sir. I only went there once, I think.

Q Did you ever tell Mrs. O'Connell that you were at Mrs. Weber's? A I didn't have any opportunity.

Q Did you ever tell Mr. Fyshe that you were at Mrs. Weber's? A No sir; I don't believe I did.

Q Did you ever tell anybody in the City of New York that you were at Mrs. Weber's? A No sir; I don't believe I did.

Q Why were you concealing yourself from all your friends? A I wasn't concealing myself.

Q Now, as a matter of fact, you have known Mr. Fyshe a long while, haven't you? A Mr. Fyshe?

Q Yes? A Yes sir.

Q Very intimately, too, haven't you? A Well, quite intimately.

Q You considered him a man of his word, didn't you? A I thought he was.

Q You have always got along all right with him? A Why yes sir, we had no difficulty.

Q Now, as a matter of fact, this \$150. check which he gave you, you didn't **give** anything for that money, did you? A Yes sir.

Q To him? A No sir; to the broker.

Q You took the check to Cook & Sons, didn't you, and got it cashed? A Yes sir.

Q Got \$150. and gave it to the broker? A I gave my own money to the broker. You know yourself, sir, that no broker would take a check on London to begin a stock transaction with.

Q Well I didn't ask you about that. You got \$150. from Thomas Cook & Son on this check, didn't you? A I did not, sir.

Q What did you do? A I sent it to be collected.

Q And then paid your money in; is that it? A Yes sir, paid my money in.

Q Now, you consider that Captain Fyshe owes you one hundred and fifty dollars, don't you? A Yes sir.

Q Is there anything else he owes you? A Well, he owes me small sums of money, that I paid no attention to.

Q And he owes you for your trouble in getting that insurance policy, doesn't he? A Yes sir.

Q Three months you say you worked on that? A Yes sir.

Q Now, you told him that you were going to read these letters to his wife or to this Captain -- A Colonel.

Q Colonel; unless he paid this money, didn't you?



A Yes sir I did.

Q How much money did you want? A I didn't advance any sum.

Q How much did you ask him for? A I didn't ask him for any amount, but I told him that he had deceived me, and acted in a most dishonorable and unofficial manner.

Q Yes? A That if he considered that I ought to wait my time and lose my money, that I couldn't afford to do it; I was too poor; that I had pawned my jewelry to go into this stock transaction, and it had left me with almost nothing; it had left me very poor indeed, to carry it on; and unless he acted in a gentlemanly manner -- that he lived at the Hotel Navarre and spent money, and seemed to have everything he wanted; and yet he wanted to allow me to wait for this money when he knew himself that he had promised to give it to me; and unless he did it I would let Col. Austin know.

Q And his wife? A And his wife.

Q That is, you said, unless he paid you some money you would show these letters to these people? A Unless he paid me what he justly owed me.

Q And he refused? A He said he didn't have it. He did not refuse.

Q Now, he did have the diamond necklace there on the night of December 2nd? You saw that, did you? A No sir.



Q Where did you first see it? A I first saw it in a restaurant, Sixth Avenue.

Q A little ice cream parlor? A Yes sir.

Q That is true? A Yes sir.

Q How did you come to meet there? A The night before I had met him there and made the appointment.

Q The night before how did you come to meet there?  
A He wrote me a letter and asked me if I would meet him.

Q You met by appointment then? It was not a mere casual meeting? A No sir.

Q What was the purpose of the meeting? A I did not know until he told me.

Q What did he tell you when he got there? A He told me he was going to get some money and would pay me back and take his life insurance policy.

Q Said he was going to raise some money on these diamonds? A Yes sir.

Q And then he went and got the diamonds? A No sir. He had the diamonds in his possession at that time.

Q The very first time he mentioned the diamonds --  
A The second time.

Q Then he met you on the first of December? A Yes sir.

Q And talked about it at that time? A Yes sir.

Q Then the next day he met you and had the diamonds?

A Yes sir.

Q And you went with him to the Marlborough? A Yes sir.

Q Is that true? A That is true.

Q You examined the diamonds? A Yes sir.

Q They are as described here, are they not? A Yes sir.

Q They are very valuable? A I don't know how valuable they are.

Q There were two large pendants? A No sir; there were two small pendants, two stones.

Q Was there a large pearl? A I think there was a pearl in the middle of it.

Q He showed you his watch, too, didn't he? A I don't remember whether he showed me a watch or not. I don't think he did.

Q Did he show you two rings? A He showed me two rings.

Q And you went with him to Mr. Schwartz's store, did you not? A Yes sir.

Q And that gentleman that was on the stand is the gentleman that saw you there with Mr. Fyshe? A Yes sir.

Q And you were perfectly amicable and friendly when you went in there? A Yes sir.

Q Now, had he that receipt in his pocket when you went into Mr. Schwartz's store? A Yes sir, he had.

Q Didn't you think it was a strange thing that a man should want a receipt for diamonds? A Why, no sir. I didn't think it was extraordinary. He dictated the receipt and said, "Give me a receipt", and I gave it to him at his suggestion.

Q The intention was that you should keep the diamonds, wasn't it? A Why, no sir; that I was to go across the street and have them valued, not to keep them. There was no question about keeping the diamonds.

Q Why did you give a receipt for them? A He asked me to give a receipt, and tenders me his book and the pen.

Q Yes; but you intended to keep the diamonds until you got the receipt back; didn't you? A No sir. I did not. I had no motive to keep the diamonds.

Q Why did you give the receipt for them then? A Why, because he asked me to give him the receipt.

Q If I asked you to give me a receipt for these diamonds, would you give it to me? A If I knew you as well as I did Captain Fyshe, I would.

Q Did he tell you what he wanted the receipt for?

A No sir; he didn't tell me what he wanted it for. He wasn't supposed to use it for anything that I know of.

Q Did you have the diamonds in your possession when you signed the receipt? A No sir.

Q Where were they? A In his possession.

Q In his hand? A I don't know where they were. They were in his pocket, I presume.

Q Did you have them in your hands at all? A No sir.

Q Did you examine them? A Never had them in my hands at any time.

Q Where were they when you examined them? A He had the diamonds in a large box and with it there were two rings.

Q Did he take them out of the box? A I didn't take them out; no sir.

Q Did he take them out? A No sir.

Q Then how do you know what they were? A I saw it was a diamond necklace. He said, "Here is this diamond necklace and two rings that I am going to borrow some money on."

Q And you thought it wasn't worth ten thousand dol-



lars? A I thought from the size of it that it was not.

Q But you couldn't see it if it was done up in paper?

A It was not done up in paper. It was in a box. He didn't take them out of the box. He just showed them to me in the box.

Q And yet you took and signed the paper in which you said that you had received them; is that true? A Yes sir.

Q Wrote it out yourself? A At his dictation, I wrote out his receipt; yes sir.

Q And he held on to the diamonds all the time? A Why certainly.

Q Had you any intention of taking them away from him? A No sir.

Q That wasn't a part of your plan at all? A No sir I had no such intention.

Q Didn't you intend to go across the street with them? A Why, I had no money to deal in diamonds.

Q Didn't you intend to go across the street with them? A I expected to go somewhere with them. I didn't know about the man across the street.

Q Did you intend to go with them alone and have them valued? A Yes sir.

Q And you did intend to take them, didn't you? A Why,



as I have already told you from the beginning, I understood that I was to take the diamonds and have them valued, and then he said he would go upstairs and telephone to a man, and then he came back and said we would both go.

Q But I asked you a moment ago if it was your intention to take them, and you said no? A I thought you meant to take them, to steal them.

Q Was it your intention to take these diamonds in your possession? A Why, yes. He suggested that I take them and have them valued.

Q How long were you going to keep them? A I was supposed to bring them back right away.

Q You were going alone to the jewelry store? A Yes sir. He suggested that I go myself and see how much they were worth, and in the meantime he would go and telephone to a man, but he didn't give me the jewelry. He went to telephone to a man.

Q Had you given the receipt to him before he went to telephone to the man? A Yes sir.

Q And he took the jewelry and the receipt and left you? A He did.

Q He left you with the jewelry?

MR. WEEKS: That is not a fair question. He with the jewelry left her is the true statement of

her testimony.

THE WITNESS: He left me with the jewelry in his own possession. Yes sir. He took it himself.

Q And you had already signed this receipt? A Yes sir.

Q And he took it with him? A Yes sir.

Q Then he came back from telephoning? A Yes sir.

Q Did you ask for the jewels? A No sir.

Q Did you ask for your receipt? A Why, I never thought anything more of the receipt. He had the receipt in his pocket. And then he said we would both go.

Q Can you explain why he should go through the formality of your signing a receipt and you never take the diamonds? A I don't know what was in his mind, or what his intentions were, ~~xx~~

Q It didn't surprise you at all? A At that time I couldn't tell what he wanted the receipt for.

Q Well, you expected to get the diamonds, didn't you? A Yes sir; most certainly.

Q And you expected to take them to a jewelry store? A I expected to take them to some jeweler in the vicinity, as he suggested.

Q To find out what they were worth? A Yes sir.

Q Why were you going to do that? A Because I had told him they weren't worth any such money as ten thousand dollars.

Q He didn't owe you anything like ten thousand dollars did he? A No sir; but he said he was going to have ten thousand dollars, and he was going to pay all his debts, and all that sort of thing; and I knew the man had no money, and he had told me repeatedly he would get money and never got any.

Q Why did he agree to give the necklace to you?

A It was his own idea to give it to me. I didn't ask him for the necklace.

Q You were to have nothing whatever to do with lending him any money? A No sir.

Q At any time? A No sir.

Q You didn't say anything to him about loaning the sum of money? A No sir. I didn't know anybody who would lend him such a sum of money.

Q Or any sum? A Or any sum.

Q Or make any transaction at all? A No sir.

Q He was going to borrow the money from somebody else, was he? A Yes sir I presume he was.

Q Well, you took the diamonds and gave him a receipt

for them? A Yes sir -- no sir. I gave him a receipt but I didn't take the diamonds.

Q Did you ever ask him for the receipt back? A No sir.

Q You had a quarrel with him that night? A I had a quarrel.

Q Pretty severe quarrel? Wasn't it? A Yes sir.

Q When he left you did you say that you wanted that receipt back? A I never thought any more about the receipt. I didn't suppose it amounted to anything anyhow.

Q Oh you didn't? A No sir I did not.

Q You didn't think a receipt for diamonds amounted to anything? A Well I certainly didn't think he would put me in the Tombs for that piece of paper.

Q Did you know he was after you when you left all these addresses uptown? A I couldn't have known it.

Q Why did you tell Mr. Faith --? A I didn't tell Mr. Faith any such thing.

Q What did you tell Mr. Faith? A I told him that he wanted his letters back, that I had some bother with him, and so I was going to take another name.

Q What had he done to show he wanted his letters back? A Why he had asked for them that night, as I told



you.

Q Did he ask for them before you said anything about it? A Yes sir.

Q What? A I don't know whether he asked before o-r after. I know he asked for the letters.

Q Now, you said something about getting paid for your trouble. Isn't it a fact that when you got hold of these diamonds you said, "Now, unless you give me back the one hundred and fifty dollars that I invested, unless you give me back themoney I have loaned you, and unless you pay me for the trouble with the life insurance policy, you won't get the diamonds back." A You know, sir, that I never had the diamonds.

Q I know it? A I have told you.

Q Do I know it? A I have told you so.

Q Yes. That proves it, doesn't it? A (No answer).

Q Where were the diamonds when you last saw Mr. Fyshe that evening? Where were the diamonds? A He always had them, as far as I know.

Q He hadn't lost them, had he? A I don't know whether he had or not.

Q They werein his possession at the time he left you2, were they not? A He put the diamond s in a bag at 54th



Street, and I don't know anything more about them.

Q Did he say whether his wife knew about it or not?

A No sir; he didn't say.

Q Did he tell you that he had pawned other articles of hers? A No sir; he didn't tell me anything about her affairs.

Q He didn't? A I don't think he did; no sir.

Q Did he say that he had to account to his wife for these diamonds? A I don't know whether he told me that or not. He told me so many different stories that I can't remember.

Q Well, your counsel in opening here, said that, in order to account to his wife for these diamonds, he had to get up this story.

MR. WEEKS: I don't say he told her that.

MR. CLARKE: Where is your evidence for it then.

MR. WEEKS: Why, the evidence in the case is the best evidence of it.

Q Did he say anything about his wife in connection with the jewelry? A He said they belonged to his wife.

Q He said he got them out of the hotel safe, didn't he? A He didn't tell me where he got them; no sir.

Q Now, you knew at that time that he was a married man, did you not? A Yes sir; he said so.

Q But you were corresponding with him, still, were you not? A Yes sir.

Q Did you know his wife was herein New York? A I didn't know where his wife was.

Q He never told you where his wife was? A He didn't tell me at that time; no sir. I knew she had left New York, he told me she was out of New York.

Q And you were meeting him, making appointments with him, knowing that he was a married man? A To get my money back; yes sir.

Q To get your money? A Yes sir; to get my money.

Q Was that the purpose of this meeting? A Yes sir.

Q At the ice-cream parlor? A Yes sir.

Q Did you tell him that was the purpose of it?

A Yes sir; principally.

Q Did you go home and change your dress and come back?

A Yes sir.

Q With a married man?

MR. WEEKS: She has already stated that.

THE COURT: She has already stated that.

MR. WEEKS: I beg your pardon, though. She

did not go home with a married man and change her dress, Mr. Clarke. That is not a fair question.

Q He was talking about marrying you, you say? A Yes sir.

Q When you were already married; do you mean that?

A I didn't know I was married.

Q Well, did you tell him that you were not married?

A I told him that my husband had told me in the Summer of 1901, at Trouville, that we had both agreed that he had better get a divorce, and that my husband's brother, a solicitor in London, had written me and said he was about to get a divorce, and I presumed he had.

Q And so you considered yourself free to marry again?

A Yes sir.

Q And you were receiving the Captain's attentions?

A Yes sir.

Q And you expected him to marry you? A I don't know that I expected him.

Q Now, when you discovered he had a wife, didn't you get very angry? A Why yes sir.

Q What? A I don't think I was in love with him enough to get very angry.

Q Then you went right along with your friendship, after

you discovered he was a married man and had deceived you; is that so? A No sir; I did not go along with my friendship.

Q Now, weren't you afraid to give a receipt for these diamonds to a man who had betrayed your confidence?

A Afraid of what?



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Q Weren't you afraid of anything? A Why, no, sir. I didn't know-- there wasn't any reason I should be afraid that I know of.

Q He had treated you very badly? A Well, he had acted dishonorably.

Q He had suppressed the fact that he was married?

A Yes, sir.

Q And agreed to marry you, hadn't he? A Yes, sir.

Q And then you discovered that he was already married?

A Yes, sir.

Q And then he still wanted to make appointments with you? A To pay me the money.

Q And then he gets you to receipt for ten thousand dollars, and you didn't suspect anything? A Why, no, sir; I couldn't suspect anything.

Q But you knew you didn't have them, didn't you?

A Well---

Q Now, you are something of a business woman, aren't you? A I don't know that I am, particularly.

Q Well, in the insurance business you give receipts for premiums, don't you? A I never have done it.

Q Don't you know that you can't collect a policy of insurance unless you show the receipts for premiums?

A I don't know, for I never insured anybody's life.



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Q Didn't you always represent to Captain Fyshe that you were a very busy woman? A No, sir; not particularly.

Q Didn't you have insurance policies strewn around your desk there at the flat? A No, sir; because I had never insured anybody's life. I didn't have any policy.

Q Well, application papers? A No, sir. To get rid of him I very often told him I was busy, and to run along and see about his affairs.

Q Now, what has become of the \$1100 ring? A What is that?

Q Do you keep all your jewelry in a little red box?  
A No, sir.

Q Isn't it true that this little brown box produced by Mr. Weeks here you used to keep all your jewelry in?

A No, sir.

Q Didn't you use to keep your <sup>crescent</sup> diamond in that?  
A I don't think I did.

Q And your diamond rings in that? A I don't think I did; not particularly.

Q What has become of the \$1100 diamond ring? A That is pawned.

Q When did you pawn that? A Last June.

Q And what did you do with the diamond crescent?  
A pawned it.

Q So none of your diamond jewelry was in this case then after the 2nd of December? A No, sir.

Q Where did you pawn these things? A providence Loan Association.

Q With Mr. Deely here? A Yes, sir.

MR. WEEKS: Do you want to see the ticket, Mr. Clarke? (Handing paper to District Attorney)

Q This (indicating ticket) is for the \$1100 diamond ring that Mr. Faith gave you? A One of these two (indicating).

Q Are you in the habit of receiving diamond rings from gentleman? A No, sir, not particularly.

Q What? A No, sir.

Q You did accept it from Mr. Faith, didn't you?  
A Yes, sir, I did.

Q Did he know you were a married woman? A Why, I don't know whether he knew it or not. I told him that I was in process of getting a divorce.

Q Didn't you tell the lady there, the janitress in 30th street, that a gentleman who called on you was your husband?

A No, sir; I certainly did not.

Q Sure of that? A I am sure.

Q It was Mr. Faith, wasn't it? A I don't know who she

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alluded to.

Q He called on you there at your house? A She said somebody came through her basement; I don't know who it was.

Q Didn't Mr. Faith call on you there? A He called there once; yes, sir.

Q And he called on you at 25 Columbus avenue?

A Yes, sir.

Q He has been paying attention to you for sometime, has he not? A He has called on me very frequently.

Q Did Mr. Faith give you the pearls? A Yes, sir.

Q Now, it is in evidence here that Mr. Fyshe went to Mr. Schwartz's and said he was going to bring you in there and asked Mr. Schwartz to put a price on the necklace?

A Yes, sir.

Q Or \$10,000? A Yes, sir.

Q Why did Mr. Fyshe want to convince you that that was worth \$10,000? A I am sure I don't know.

Q No idea, have you? A Except that he said he was going to borrow some money on it.

Q He said he had advertised it, did he not?

A Yes, sir.

Q At Mr. Schwartz's suggestion? A He said he had advertised. He didn't tell me at whose suggestion.

Q To see if he could get somebody to loan money on it?

A He didn't say at whose suggestion.

Q Didn't you say you could help him out? A No, sir; I did not; because I knew no one who could loan any such sum of money.

Q You didn't represent that you did, did you?

A No, sir.

Q Then why did he get you into the thing? He only owed you about \$200, didn't he, altogether? A Yes, sir; I presume so.

Q Not more than that? A Not more than that.

Q Now, if the diamond necklace is worth a thousand dollars, it would be ample security to raise money enough to pay you, wouldn't it? A I don't know what his intentions were.

Q Well, wouldn't it? Wouldn't the thousand dollars satisfy all your claim? A I presume likely.

Q And yet you say he wanted to make you think it was worth \$10,000? A I don't know what he wanted to make me think.

Q He told you it was worth ten thousand dollars?

A He said he could sell it for that.

Q And you wouldn't believe it? A I didn't believe he could.

Q And you wanted to take the diamonds yourself and have

them appraised? A No, sir; I did not want to take them ~~at~~ at all. It wasn't anything to me whether he borrowed the money or whether he didn't.

Q I thought you said you wanted to get your money?

A Well, I did, yes.

Q I thought you said you made the appointment expressly to get your money? A Yes, sir, but I didn't make the appointment to pawn the diamonds.

Q Have you ever at any time demanded the return of this receipt? A I haven't seen Mr. Fyche to demand anything.

Q Have you ever written him? A No, sir.

Q Have you ever at any time disavowed this receipt until you took the witness stand here? A What do you mean?

Q Denied that it represented the diamonds? A Nobody asked me.

Q Did you ever in the Police Court? A No, sir.

Q Have you at any time said that this was given to you for the purpose that you now state? A To whom.

Q To anybody?

MR. WEEKS: You mean to include her counsel?

MR. CLARKE: No, of course not; anybody except your counsel.

THE WITNESS: No, sir; certainly not; no, sir.



Q How did you hear of Mrs. Weber? A I found the advertisement in the newspaper.

Q Did you know that she had ever worked for Mr. Weeks?

A No, sir.

Q Did she tell you so? A No, sir; never told me so.

Q How did you come to send Mr. Abbott up there?

MR. WEEKS: To do what?

MR. CLARKE: To send Mr. Abbott up to your room.

A I asked Mr. Abbott to go and get some linen when I was detained in the Police Court, Jefferson Market.

Q Did you ask him to go through the pockets of your dress? A I have no pockets in my dress.

Q Did you ask him to ransack everything in your trunks? A yes, sir.

Q Looking for linen? A Well, they were in all three different trunks, and he asked me where they were, and I said, "Look and find."

Q Well, linen was the main thing, something to put on, wasn't it? A Something to put on; and I told him to bring anything else any letters or anything that he might find there.

Q What did you want these pearls for? A I told him to bring anything that would be there, that would be valuable.

Q what was the whole of it? A Well, I wanted a towel or something to wash my face with in Jefferson market.

Q And he brought this little bag that you have here?

A No, sir.

Q Where is the little black bag he brought down?

A It was not a black bag.

Q What was it? A It was a dressing bag.

Q Now, where were you when you telephoned to Mr. Faith to take your trunks out of that storage warehouse?

A I couldn't say.

Q Well, didn't you tell him where you were? A Why, he wasn't there; I couldn't tell him.

Q You talked to him over the phone, didn't you?

A Yes.

Q And told him to send them up to 121st street?

A Yes, sir.

Q But you didn't tell him where you were, did you?

A Well, I telephoned from some drug store; it was not necessary for me to tell him where I was.

Q Did you ask him to come up and see you up there?

A Yes, sir.

Q What? A I believe I did; yes, sir.

Q You were good friends with him? A Well, I wasn't bad

friends with him.

Q Why didn't you tell him the first time when you put the things in storage where you were? A Because I had intended to go to my mother's, and I told him that I would tell him that as soon as I had definitely arranged, I would tell him where I was.

Q Did you go to your mother's? A No, sir.

Q Why didn't you? A Because I was ill.

Q At Mrs. ~~22~~ O'Connell's? A Yes, sir.

Q Didn't you represent that you owned some property?

A I beg pardon.

Q (Continuing) Or your mother? Didn't you represent to Mr. Fyshe that your mother owned some property? A Why he knew that my mother had a small annuity.

Q And don't you or your mother own some property in Dakota? A I myself have some property there.

Q A considerable amount; real estate, isn't it?

A No, not a considerable amount.

Q And you represented that you went out there to get a divorce, didn't you? A I don't know that I ever represented any such thing.

Q Did you go out there to get a divorce? A I may have told him that I might go there.

Q You never have been there, have you? A No, sir.

Q What did you need to go and get a divorce for, if you were already divorced? A Because he had asked me to find out something definite about the divorce.

Q You were misleading him about your marital status, weren't you? A Who? Captain Fyshe?

Q Yes. A Well, since he saw my husband between the time that he had seen me, he could certainly find out if he liked all about me.

Q Well, you didn't tell him anything? You led him to believe that you were free, didn't you? A I did not; no, sir.

Q Well, you said you thought you were yourself? A Well, I told him exactly what I tell you; that my husband was going to get a divorce.

Q And he was not to marry you until you got a divorce, was he? A Why it would be impossible, would it not?

No re direct examination.

THE DEFENSE RESTS.



## REBUTTAL TESTIMONY.

J O H N     A.     F Y S H E, recalled as a witness for the  
People, testified as follows:

DIRECT EXAMINATION BY MR. CLARKE:

Q   Now, Mr. Fyshe, is it true that Mrs. Hyland represented to you that she was unmarried?   A   She did.

Q   Why you knew that she was married, did you not?  
You knew Mr. Hyland, didn't you?

A   She represented to me that she had received a divorce, I believe.

Q   Where did she say she got it?   A   She got it in South Dakota.

Q   When did she tell you she got it?   A   She told me she got it along in 1902, I think along in that year.   She said it was due in May or June, she expected the letter. She said it had been granted, but she had not received the papers.   She expected the papers any day.

Q   That was in June?   A   That was in June, 1902.

Q   That was long before you were married?   A   Yes.   At



the time I wrote those letters that are alluded to here, I was not living with my wife.

My wife and I were not living together, at the time, the 15th of December.

MR. WEEKS: I do not want to know about that.

THE COURT: No, we have had too much of this matter between this complaining witness, and this defendant. Just limit yourself to absolute, actual rebuttal, Mr. District Attorney.

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Q Now, when did you go into Mr. Schwartz's, and first tell him about this proposed loan?

MR. WICKES: One moment. We object to that. It is not proper.

THE COURT: Objection sustained.

MR. CLARKE: Well there is a single point here that I wanted to clear up. It was brought out for the defence and I wanted to make it plain.

THE COURT: I will allow the question for that purpose.

Q When did you go into Mr. Schwartz, and first tell him about this proposed loan? Was it a day or two before this transaction with Mrs. Hyland? A It was.

Q How many days before? A I think it was either the day before or the same day; I won't swear to the day.

Q Had you seen Mrs. Hyland before that? A No I had not.

Q Then how did you know you were going to lend her any money? A

MR. WEEKS: I object to that. That is certainly cross examination.

THE COURT: I sustain the objection.

Q Had you had any negotiations with him? A I had

not entered into any --

THE COURT: I sustain the objection.

Q Let me ask you this. Did what you told Mr. Schwartz involve Mrs. Hyland?

MR. WEEKS: We object.

A No it did not involve Mrs. Hyland.

THE COURT: Objection sustained. We shall not reopen this case.

MR. CLARKE: I am not going to reopen it, if your Honor please, but there is a point that Mr. Weeks is going to lay emphasis on, and I want to straighten it out if it can be straightened out.

Q I want to know when was the first time that you mentioned the fact that a lady, or her mother, was going to lend you this money?

MR. WEEKS: I object to that. That has all been gone into on the direct.

THE COURT: I sustain your objection.

Q Now, this defendant has testified that the purpose for which this receipt was given was to enable her to take the diamonds from your possession and go to a jeweler --

MR. WEEKS: Don't answer it, Mr. Fysher.

Q (Continued) -- and find out whether they were worth

ten thousand dollars, in order that you might raise money on them to repay her the one hundred and fifty dollars for the Steel transaction, and something for her trouble in getting you a life insurance policy.

MR. WEEKS: Objected to as going into the same matter again.

THE COURT: Objection overruled.

MR. WEEKS: Exception. And we object further on the ground that that is not a proper statement of the defendant's testimony.

THE COURT: Well, of course, if it be not, the answer is not of value.

Q Is that true? A I didn't owe Mrs. Hyland any money.

Q Was that the nature of the transaction, that she was interested in getting these diamonds appraised --

A Certainly not.

Q (Continuing) -- in order that you might raise money to repay her? A Why no; I didn't owe her any money.

Q Is it a fact that she on that night had a quarrel with you as to the possession of certain letters?

A No; certainly not. I never objected to her having any letters that I had written.



Q Were you friendly when you left her that night?

A Why certainly I was friendly.

MR. WEEKS: Objected to. This is all going over the same grounds.

THE COURT: Objection overruled.

Q Did you threaten to strike her? A Certainly not.

Same objection. Objection overruled.

Q That is all. A Mr. Weeks asked me for some letters yesterday to establish my standing as a Captain in the army and also my medals.

Q Well, all right.

MR. WEEKS: Well we certainly object to that.

THE COURT: I think that the witness has a right, as long as Mr. Weeks questioned him.

Q What have you got? A Those are medals, one given while a Captain in the war in South Africa.

Q What is it?

THE COURT: One moment. Mr. Weeks asked the Captain as to his standing in the British Army. The witness desires to show some evidence that he is a Captain. Have you any objection Mr. Weeks?

MR. WEEKS: Not the slightest, providing it is any part of evidence.

THE COURT: I understand. Let me see what you



purpose to offer.

THE WITNESS: (Handing papers to Court). Tho se show the various battles or engagements I have been in. This is the envelope that was sent in, sir.

THE COURT: Show that to Mr. Weeks. I am of the opinion, Mr. Weeks, that that is fair to the witness, to allow that to go in.

MR. WEEKS: I have no objection.

THE WITNESS: And that (indicating) is from the Army post office in *Rafat* And here is a letter of introduction from a well known firm in London.

MR. WEEKS: I do not see that that is any evidence, your Honor.

THE COURT: Well, it may not be conclusive, Mr. Weeks, but then I think it is fair to the witness to allow him to exhibit it. I do not mean to rule that we will receive it in evidence, subject to the test of a Court of law, as to this witness's rank; simply, when you asked him if he was a Captain, he has a right to make answer to that, and refer to certain things that he thinks support his claim,

if those things are susceptible to examination here by you.

MR. WEEKS: I asked him if he has any to produce them. Now, I am satisfied. I have looked at them. I haven't any further questions to ask.

BY MR. CLARKE:

Q I want to ask him what they are. What is this (indicating)? A That is a medal.

MR. WEEKS: I object.

THE COURT: Well, it may be exhibited to the jury.

MR. WEEKS: I object to it as not proper evidence, or any evidence whatever.

THE COURT: Mr. Weeks' question, as I remember it, was: What are the evidences of your Captaincy?

MR. WEEKS: I asked him have you any evidence that you are a Captain and he said he had. Now, that does not make anything that he chooses to produce admissible in evidence.

THE COURT: Yes; but his conception of what is evidence may be different from yours.

MR. WEEKS: Yes; but then I am not obliged to accept his conception and therefore I am not obliged to admit it as evidence.

THE COURT: Oh yes; that is true.

MR. WEEKS: But it is really too trivial to waste so much time upon it.

THE COURT: Oh yes.

THE WITNESS: Here (indicating) is a letter from Baron Steinaker to me.

Q Who is that from? A That is from Baron Steinaker.

Q And here is something Captain Fyshe. What is that?

A That was sent to me from the Army post office in Cape-town, Baron Steinaker commanded a regiment during the war.

Q What is this (indicating)? A That is my receipt from the bank.

Q State whether or not he had a box there in the hotel?

MR. WEEKS: I object.

MR. CLARKE: It won't take two minutes.

MR. WEEKS: It is not in rebuttal, and it is immaterial.

THE COURT: I sustain the objection. The witness Fyshe has not been contradicted on that point.

MR. CLARKE: Well, I asked Mr. Weeks to concede it, and he would not.

MR. WEEKS: I can't concede it, Mr. Clarke, on Mr. Fyshe's testimony. I may not be able to con-

tradict things that he says, but I shall not admit that they are true.

T e s t i m o n y C l o s e d .

MR. WEEKS: I renew my motion for a dismissal, or a direction of acquittal.

THE COURT: Motion denied.

MR. WEEKS: We except.

TRIAL RESUMED.

New York, March 18, 1904.

(During the summing up of Assistant District Attorney Clarke).

MR. WEEKS: We desire to except to the remark of the District Attorney, to the effect that the defendant did not make any statement at the Police Court, or Magistrate's examination, on the ground that it is improper to make such a remark, as the law specially provides that the failure to make a statement, at the Magistrate's examination, shall not be used against the defendant; and I ask that the jury be instructed in that regard.

THE COURT: That is true. And I so instruct the jury.



# THE COURT'S CHARGE.

Gentlemen of the Jury,

It is a wise provision of the criminal law that every person accused of crime is presumed to be innocent of that crime, until the guilt of the person be proven beyond a reasonable doubt, and, when that guilt is so proven, then the presumption of innocence is destroyed.

In the conduct of criminal cases, the burden of proof rests upon the prosecution, throughout the case, and a jury cannot find the defendant guilty of the crime charged, unless the prosecution proves its case to their satisfaction, beyond a reasonable doubt.

There is nothing that has occurred, of a special nature, during this trial, outside of the evidence that I feel called upon to direct your attention to, with possibly this exception, that, on last evening, the defendant was committed to the City

Prisen, pending the close of the trial of this case; and, in order that you gentlemen might not take that action as any indication whatever of an impression or a belief or a conviction regarding her guilt, I simply mention it to you, as a course of procedure in the Court, with which you have nothing at all to do.

We must consider, here, gentlemen, that there is a specific charge against the defendant, that she committed a certain act, which the law characterizes as criminal; and it is necessary that you should concentrate your attention upon the specific charge against the defendant; while it is equally necessary that you give to all the testimony that you have heard fair and candid consideration, and treat it as you think it is entitled to be treated, and your action, in the end, must resolve itself into answering the question, whether or not the defendant committed the special criminal act which is charged against her by the indictment.

I also mention to you, in this relation, that you are the judges of the credibility of every witness that has taken the witness stand. You are

to attach to the testimony of such witness the weight that you think it entitled to, and you are the judges of the motives of every witness that has appeared before you.

The indictment charges the defendant with the crime of grand larceny in the first degree. The first count of the indictment charges what is commonly known among lawyers as a common law larceny; and that count charges the defendant with stealing one necklace, of the value of ten thousand dollars, a pendant, of the value of one thousand dollars, a gold watch, of the value of three hundred dollars, and two finger rings of the value of three hundred dollars each, the goods and personal property of John A. Fyshe.

I apprehend, Mr. District Attorney, that the prosecution does not rest its case upon this count in the indictment?

MR. CLARKE: No, sir; the second count.

THE COURT:

The second count of the indictment charges the defendant with grand larceny in the first degree, in that she was a bailee of John A. Fyshe, and, as

such bailee, she had in her possession certain articles of jewelry, which I have before described, and they are mentioned in the first count of the indictment as belonging to and being the property of John A. Fyshe, and that, while those articles were in her possession, she feloniously appropriated them to her own use, with intent to deprive and defraud John A. Fyshe of their use and benefit. That is, briefly, the charge against the defendant.

Now, gentlemen, you, of course, know, from your experience as jurors in this Court, that you are the exclusive judges of all questions of fact in the case, and that you must accept the law of the case as I give it to you, without question.

Upon the facts in the case, it is not the purpose or intent of the Judge to in any way comment upon them, or express any opinion whatever upon them, because upon your shoulders rest the responsibility of determining upon the facts in the case. The duty of the Judge is to instruct you upon the law applicable to the case.

The law defining the crime charged against the defendant, the substance of which I have just stated

to you is contained in Section 528 of the Penal Code, and I will read to you only that portion of the statute which applies to this case. There are other provisions which it is unnecessary to read, and unnecessary for you to have in your minds. The language is as follows:

"A person who, with the intent to deprive or defraud the true owner of his property, or of the use and benefit thereof, or to appropriate the same to the use of the taker or of any other person, having in his possession, custody or control, as a bailee, servant, attorney, agent, clerk or trustee of any person, authorized by agreement to hold or take such possession, custody or control, any money, property, or article of value of any nature, appropriates the same to his own use, or that of any other person, other than the true owner or person entitled to the benefit thereof, steals such property, and is guilty of larceny."

In other words, gentlemen, and expressing it in simple language, a person who is a bailee or trustee for another, and who has in his possession property be-



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longing to that other, and who, while such property is in his possession, feloniously appropriates it to his own use, with intent to deprive or defraud the true owner of the property, steals it, and commits the crime of larceny.

Briefly expressed, it is charged that the defendant had in her possession certain articles of jewelry, the property of John A. Fyshe, and that she was a bailee of those articles, and, as such bailee, while they were in her possession, feloniously appropriated them to her own use, with intent to deprive or defraud John A. Fyshe of the use or benefit of those articles.

It is not my purpose, gentlemen, as I have before observed, to comment upon the facts of the case. I will briefly remind you for the purpose of refreshing your memory, and of aiding you in having a clear understanding of the question at issue, by reading one or two extracts from the testimony of the complaining witness.

The complaining witness testified:

"She told me about her investments in Steel, and she said the people had told her that they were bad investments, but she believed she would pull

through, and, in the end, would be a winner; and she talked about investing some money for her mother, saying that her mother had some money lying in the Lincoln Bank, in 42nd street; and I then broached the subject of a loan to her."

"I said that I had then in my possession a necklace belonging to my wife, and two diamond rings, which were my own property, and a gold watch, which was my own property, and that the value of them was in the neighborhood of, I should imagine, eight thousand dollars or ten thousand dollars, or possibly more, and I was very anxious to raise a loan of from eight thousand dollars to ten thousand dollars on them; and Mrs. Hyland at once agreed, after some little consideration, that, if the jewelry was worth the amount, that she would be only too glad to advise her mother to advance it, if the jewelry-- if she was satisfied that the value was correct, and it was taken before some reliable person, some person that she knew, and that her mother knew, that would pass upon the value of the property."

He then testified that they went over to a jeweler, Mr. Schwartz's place, and that there the

defendant said:

"That she thought the value of the necklace was somewhere around \$12,000 or \$15,000, that was her idea at the time, expressed there, in the jewelry place; and she thought they were very satisfactory, that the whole thing was very satisfactory."

Then they returned to the Hotel Marlborough, and he testifies that, after having had some light refreshments:

"Mrs. Hyland gave me the receipt, and I was a little backward in giving her the jewelry, and she said, 'Why, you don't mean to say that you mistrust me, an old friend that you have known as long as you have known me?' And I said, 'Why, certainly, I don't mistrust you; don't think that for a moment; but I don't think it is quite safe that you should go about the City with them in your possession, especially if any one should see them', and she said, 'Oh, well, you can see me home yourself.'"

And then he testified that he gave her the articles. The necklace was rolled up, the watch was given to her without any covering at all, and the two rings were given to her rolled in tissue paper.

Then he testifies, further, that she unbuttoned her dress, and put the articles, which he says that he delivered to her, in there, saying "I think it is perfectly safe there."

Then he says that he said:

"Well, you will give me a receipt, in case of an accident, or that anything should happen?"--- the very words that I used were, 'Suppose you should die in the night. I would have no means of showing that the jewelry belonged to me', and she said, 'Well, I will give you a receipt'".

Then he said that he pulled a note book out of his pocket, and that she wrote the receipt, and signed it, and I do not understand, gentlemen, that there is any dispute by the defense but that the defendant did write and sign the receipt.

MR. WEEKS: Not the least, your Honor. She wrote it at the dictation of the complainant, and signed it.

THE COURT: This receipt reads, gentlemen, "Received one gold watch, one necklace, diamond, two rings, diamond, of Mr. Fyshe, value to be estimated-- Ines Hyland."

And he testifies that she wrote that in the book, as I have before said.

Then he testifies:

"She said that she would take it," meaning the jewelry, "to 16 Maiden Lane, and there have it appraised by Mr. Holmes, and that, if Mr. Holmes thought that it was worth the money, she would advise her mother at once, and that Mr. Holmes would also write in her behalf to her mother; and that one reason why she wanted Mr. Holmes to see the jewelry was because she had made some investments for her mother before, which had not been good, and she thought her mother would be rather scary of letting her invest any more money for her on her own word, and that her mother would prefer to have someone that she knew, and that her mother had known Mr. Holmes for years, and that he was an old friend of the family."

And, speaking of the money to be loaned, and the rate of interest to be paid on it, the complaining witness testifies:

"It was to be eight thousand dollars, if the jewelry was worth only that amount, but, if the jewelry was worth ten thousand dollars, it was to be ten



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thousand dollars, at six per cent."

"She said that her mother had, in the Lincoln National Bank, at 42nd street, a great deal of money which was lying there at Savings Bank interest, four and a half or four percent-- I don't remember which-- and that her mother would allow her one per cent for making the loan-- I was to pay six per cent-- and her mother would then get one per cent more than she was getting in the bank."

I will not read any further from the complaining witness's testimony, beyond stating that he said that, the next time he saw her, was at 121st street, three weeks later, after the night in question.

Now, gentlemen, that, in substance, is the testimony of the complaining witness, and it is upon that testimony, mainly, that the prosecution rests its contention that the defendant received those articles from Mr. Fyshe for the purpose of having them appraised as to their value, as a means to negotiate or obtain a loan of money from her mother to Fyshe, on those articles of jewelry, as security; and that, while she had them in her possession, instead of going down to Mr. Holmes, in Maiden Lane, and having them

appraised, as to value, and, instead of carrying out her promise to negotiate this loan, as was proposed, and have them given as collateral security for the loan, that she went away, and was lost sight of for a period of three weeks; and that she appropriated that jewelry to her own use, or to the use of some other person, it matters not whom, and that the complaining witness, Mr. Fyshe, has never received his jewelry; and that, in doing so, she did an act of misappropriation with intent to deprive or defraud Mr. Fyshe of those articles of jewelry, or their use and benefit.

Now, gentlemen, if that contention of the prosecution be proved to your satisfaction beyond a reasonable doubt, I charge you that the acts so stated constituted the crime of grand larceny, under the statute which I have read to you.

On the question of the grade of larceny, it is charged that it consisted in grand larceny in the first degree, and the law defining that grade of crime uses this language:

"A person is guilty of grand larceny in the first degree, who steals or unlawfully obtains or

appropriates in any manner specified in this Chapter, property of the value of more than \$500, in any manner whatever."

I have not understood, gentlemen, during the course of the trial, that there is any serious question as to the value of these goods.

MR. WEEKS: I have made no question, your Honor, but there is no proof as to the alleged value of some of the articles. There is no proof of the value of the articles which the complainant claims belonged only to him. There is some proof of the value of the necklace, which belonged to Mrs. Fyshe, and we have made no effort to contradict it.

THE COURT: And that proof would tend to show that it was of a value of more than \$500? That is myunderstanding.

MR. WEEKS: Yes, sir.

THE COURT:

So that, gentlemen, if the defendant received those articles of jewelry from Mr. Fyshe, as bailee, for a special purpose, and if, instead of using them for a special purpose, she appropriated them to her own use, or any other person's use, with an intent to

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deprive or defraud Mr. Fyshe of their use and benefit, she committed the crime of grand larceny in the first degree.

Now, gentlemen, the defendant has been upon the witness stand in her own behalf. She admits having signed the receipt in question. She admits having gone over to Mr Schwartz's jewelry store with the complaining witness, and admits that the jewels were there at that time.

I will not refer to the details of her testimony regarding the conversations which she says took place, but she denies that she received those jewels into her possession.

So that you see, gentlemen, that there is a clear conflict of evidence between Mr. Fyshe and the defendant.

He says that he gave those jewels into her possession, for the purpose mentioned. She says that she did not receive them into her possession, but that he himself retained them.

The prosecution urges that the defendant signed a receipt for those articles, when she took them into her possession; and the defense contends that that was part of a scheme or plan on the part of Fyshe

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to obtain from this woman a receipt, for the purpose of covering up or masking his own intention regarding this jewelry, some of which belonged to his wife, all of which, however, was in his care and keeping.

Now, gentlemen, you are to determine this conflict of evidence. You are to say where the truth lies.

The prosecution urges that, as an evidence of her having taken the jewelry, and having misappropriated it, she took to flight, or left her accustomed abode, and could not be found for the period of three weeks, when she was arrested by the detective officers; and that, if she had not taken the jewels in the manner claimed by Fyshe, she would not have vanished, and that there would have been no occasion for her disappearance.

She, on her own behalf explains to you the reasons of her apparent disappearance, or of her whereabouts, or where she went.

All these questions are to be taken into consideration by you, when you are determining the question of her guilt or of her innocence.

Now, gentlemen, I do not mean to take up your time unnecessarily, or to burden your memories



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with matters that are not necessary for your clear understanding of the question at issue before you.

I have observed to you that it is a plain and simple question.

The defendant claims that she did not commit the act charged against her. The prosecution claims that it has submitted evidence, which proves, beyond a reasonable doubt, that she did the act charged against her; and, on that question, the defendant is entitled to the benefit of a reasonable doubt, a reasonable doubt upon the whole evidence in the case, and the lack of evidence in the case; and, if you entertain a reasonable doubt of her guilt, you must give her the benefit of that doubt, and acquit her.

As you understand, gentlemen, no doubt, the reasonable doubt contemplated by the law, does not mean any doubt whatever, or any guess or speculation. It means, just as the phrase expresses it, a reasonable doubt arising from the evidence in the case, and from no other cause.

One word regarding the personality of the complaining witness and the defendant.

Inasmuch as both the learned counsel for the prosecution, and the learned counsel for the defense

have commented upon those respective personalities,  
I think it best to refer also to that matter.

Every criminal case is prosecuted by the  
People of the State of New York. It is not prosecuted  
by the person claiming to have been injured.

The People, where a criminal act has been  
committed in their sovereign capacity, are the ones  
that are injured. That is, the peace and preservation  
of society, and the lawful and peaceable possession of  
property, rightfully belong to every man; and,  
when the law protecting property or person has been  
violated, it is the People who prosecutes, and not the  
person who claims to have been injured.

The People of the State of New York, accuse  
the defendant, and, through their representative,  
the District Attorney, conduct the prosecution. It is  
not Mr. Fyshe, who is simply a witness here.

You are called upon to determine, not a  
controversy between John A. Fyshe and this defendant,  
but between the People of the State of New York, and  
this defendant; and it matters not what John A. Fyshe  
may think, or whether he may be at a loss or a gain.  
That must not enter into your consideration.

The question that is presented for you to determine is: Did the defendant commit an act which the law declares to be criminal; and, if she did, she should be declared guilty?

And, in considering that question, I deem it almost unnecessary to remind you, each and every one of you, that, on your examination as to your qualifications for service as jurors, stated that you would not be influenced by the question of the sex of the defendant in the case. The law knows no distinction of person or of sex, so far as crimes of this nature are concerned. If the defendant committed the crime charged against her, she should be declared guilty, without regard to her sex.

If you are not satisfied beyond a reasonable doubt that she did commit that crime, she should be declared innocent, on the merits of the case, and without regard to her sex.

I submit the case to you, gentlemen.

MR. WEEKS: I have but one request, I think, your Honor, to make.

In view of the remark made by the District Attorney, in his summing up, "Put Fyshe out of the case; place no reliance on the story of the loan from

the mother," I ask your Honor to charge the jury, that, unless the jury believes that the conditions were such as Mr. Fyshe testified to, they cannot act upon any supposition as to what may have occurred between them, except what is based on the evidence.

THE COURT: Yes, certainly. They must determine only on the evidence in the case.

MR. CLARKE: Why, if your Honor please, they may believe any part of the witness's story, and reject any part of his story.

THE COURT: Oh, yes. But what I meant to say in reference to Mr. Weeks' request was, that the jury should confine themselves to the sworn testimony before them. And it is in your power, gentlemen, to reject all or any part of the testimony of any witness, or to believe a part, or believe the whole, or believe a part, and reject a part.

MR. WEEKS: And we ask your Honor to charge the jury that the circumstances of the alleged bailment must rest upon the testimony of Mr. Fyshe, and cannot rest upon some imaginary or supposititious case as outlined by the District Attorney.

THE COURT: But, so far as that part of the request is concerned, that the evidence rests

solely and exclusively upon the testimony of Fyshe regarding the transaction, I will say that it does not so rest, because the District Attorney contends that there is other evidence, in the receipt made by the defendant herself of that transaction.

MR. CLARKE: Yes, sir. And she concedes it, one form of the transaction, but gives a different version.

MR. WEEKS: I ask your Honor to charge the jury, that, in considering the probability of the story told by Fyshe of the proposed loan by the defendant's mother, they should also take into consideration the fact that the jeweler testified that Fyshe spoke about a loan from some woman's mother two days before the alleged interview between Fyshe and the defendant.

THE COURT: I will not make any specific charge, Mr. Weeks, touching the testimony, beyond this: That it is for the jury to take into consideration all of the testimony. They have heard it.

MR. WEEKS: Thank you, sir.

(The jury found the defendant, Not Guilty).