

**START**

255

**CASE**

2172

COURT OF GENERAL SESSIONS OF THE PEACE,

County of New York,

Part IV.

THE PEOPLE &c.,

Before

HON. JOHN W. GOTT, Judge

WALDORE H. PHILLIPS,

and a Jury is going

Indictment filed November 28, 1900. 1899

Indicted for Grand larceny in the second degree (Sections 528 and 531, Penal Code, common law larceny and misappropriation).

New York, February 27, et seq., 1901.

APPEARANCES:

For the People:

Assistant District Attorney James J. Walsh.

For the Defendant:

Waldorf H. Phillips, esq. (in person).

George P. Flack,  
Official Stenographer.

2172

CASE #255



The Jury was impanelled and sworn.

The Court admonished the jury in accordance with section 415 of the Code of Criminal Procedure, and took a recess until 2:30 o'clock.

AFTER RECESS:

MR. PHILLIPS: I understand there are two counts in this indictment. Which count are we going to try?

MR. WALSH: I will make an election probably at the end of my case, but not now.

THE PEOPLE'S CASE:

JOHN C. PEARSON, M. D., called as a witness in behalf of the

People, being duly sworn, testified as follows:--

D i r e c t   E x a m i n a t i o n .

BY MR. WALSH:

Q Dr. Pearson where do you live? A 127th street, 213 West 127th street.

Q Where did you live in the month of October 1896? A In Westchester.

Q Were you at that time engaged in the practice of medicine?

A I was.

Q On the 31st day of October 1896, did you see the defendant at the bar? A I did.

CASE #255

Q Where did you see the defendant? A Down Broadway and Reade street at his office.

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

Q Just state what took place between you and the defendant at that time. A I went there and I gave the defendant \$340. in cash.

Q \$340.? A \$340. in cash.

MR. PHILLIPS: I object to the District Attorney leading the witness.

(No ruling).

THE WITNESS: In cash, and he and Mr. Ellis went out to go to the sheriff's office, they said, and he said he would put that money up, \$337. up, and that would stay the sale of the property.

BY THE COURT:

Q Who said that? A Mr. Phillips, and he told me to wait in his office till they came back. So I waited there--it was of a Saturday about quarter of twelve, and he said he would have to hurry because the office closed at twelve o'clock.

They went out, and was gone a little while--I could not say just how long, and he came back and gave me \$2.27 change, and laid it on the corner of the table, and he held a paper there showing me the receipt for the money, and told me, "Now, don't worry any more; they can't sell your

CASE 77255

place."

Q Now, I ask you if at that time your property was advertised for sale? A Yes, sir, it was.

Q I ask you if that is the advertisement (indicating).

Objected to.

THE COURT: He may answer yes or no.

A That is the advertisement, yes, sir.

Q Published in what paper?

Objected to as irrelevant, immaterial and incompetent.

Objection overruled. Exception.

A That was the New York Mail and Express. I think it was in three papers.

Q Did you call that advertisement to the attention of the defendant? A Yes, sir.

MR. WALSH: I offer it in evidence.

BY THE COURT:

Q Did you show it to him, Doctor? A Yes, sir, I did.

Q Showed it to him? A I showed him the advertisement. He knew it before, too.

Q How? A I told him about it, and I showed him the advertisement.

Q Well, now, before we go any further, had you seen the defendant before this day in question that you gave him the

111

255



5  
money? A I had seen him a few days before that; not a week, though; I don't think it was a week.

Q Did you have any conversation with him then about the threatened sale of your property? A There was some conversation, yes, sir.

Q Do you remember what it was? A Well, only the fact, I told him that my place was for sale.

Q That is what I want to know. A And that I had given Mr. Hunt some money to pay off the sum, and that the thing was not being settled, and he said that he would settle it.

Q Whom do you mean when you say he? A Mr. Phillips. I said that he could settle it. He went over in one of these buildings, I don't know just which one--

Q Let us know all the conversation that took place between yourself and Mr. Phillips on the first day. A Well, I told him that my property was advertised for sale, and that I had engaged a lawyer to see about it, and he was failing to do so.

Q This Mr. Hunt that you refer to? A Yes, sir--that the advertisement still continued.

Q Yes. A And I was recommended to Mr. Phillips by Mr. Ellis.

Q Yes. A And he said he would attend to the matter for me.

Q Did Mr. Phillips say-- A Well, Phillips said he would attend to the matter for me. He went over in one--

CASE 7255

Q No; wait. / That was the first day? A I think that was the first day.

Q The first time that you met him? A Yes, sir.

Q Well? A They went over into an office, I think it was in a basement, and he opened a large book there.

Q Were you with him? A We were three together then, yes, sir.

Q You and--? A Mr. Ellis and Mr. Phillips.

Q And yourself? A Yes, sir.

Q Well, go on. A And he looked over a large book, and then he made out some figures, and they then went over to his office.

Q Did you go with him? A We went over there together, yes, sir.

Q To Mr. Phillips' office? A Mr. Phillips, Broadway and Reade street.

BY MR. WALSH:

Q What conversation took place then after you went back to the office? A Well, he told me that he would look up the matter and attend to it for me. That is so long ago, you know.

Q Well, that is the first day? A That is the first day.

BY THE COURT:

Q And was there anything said about money on the first day?

95255

BY MR. WALSH:

Q Was there anything said about money on the first day?

A I could not say. I know I had a check for \$350., and the day that I cashed that was that Saturday, but I took the money right down there and gave it to him in cash.

BY THE COURT:

Q Was there anything said between yourself and Mr. Phillips on the first day, about your going there again or about your paying any money when it was done? Was there anything said about that on the first day or any payment made?

A I really can't remember exactly, your Honor, how it was, but Mr. Ellis took me there to see Mr. Phillips, and he made the general promise that he would see to the matter for me.

Q And when was it that you showed Mr. Phillips this advertisement that you speak of? A That was the day that I gave him the money.

Q The day you gave him the money? A Yes.

MR. WALSH: I offer it in evidence.

The advertisement is admitted in evidence and marked People's exhibit No. 1, and read to the jury by Mr. Walsh.

MR. PHILLIPS: I object.

THE COURT: The objection has been made and overruled.



BY MR. WALSH:

Q Now, after that time, or after you had given Mr. Phillips the \$340., tell what he did. A He went with Mr. Ellis out saying he was going to the Sheriff's office.

Q Yes. Did he come back? A He came back.

Q How soon after? A Half an hour or so.

Q Half an hour? A Half an hour.

Q What did he say when he came back? A "There, now," he says, "it is all right; they can't sell it."

Q Did he say he had done anything with the money? A He said he had left the money in the sheriff's office.

Q "And they can't sell--" A "They can't sell the property. Now stop your worrying."

Q You gave him how much money? A \$340.

Q Did he give you any change? A Gave me \$2.27.

Q Did he state what amount would satisfy that judgment?

Objected to.

Q Did he state--withdrawn-- Did he state anything about--?

A He said the amount that was necessary.

Objected to.

Q I am talking about the 31st of October on a Saturday. A He told me that \$337.73 would satisfy the judgment.

Q You gave him \$340.? A And I gave him \$340.

Q And he brought you back \$2.27. What did he say would sat-

isfy the judgment? A \$337.73.

Q Three hundred and thirty--? A \$337.73.

Q Would satisfy the judgment. Yes, go on. He took out \$340. A That is what I gave him.

Q He brought back how much? A \$2.27 change.

Q He handed it to you, laid it on the table? A Yes, sir.

Q What did you do with it, take it? A I took it and put it in my pocket.

Q Did you go with the defendant to the place 111 Broadway on the 4th day of November, 1896? A I did.

Q That was the place where this property was advertised for sale? A Yes, sir.

Q Then state what transpired at that time.

THE COURT: Before you go any further, find out if he had seen the defendant between October 31st and this day you speak of.

BY MR. WALSH:

Q Had you seen this defendant between the 31st day of October and the 4th of November, the day of the sale, or the day advertised for the sale, between the time you gave him the money, on the 31st of October, and the 4th of November?

A I could not say.

Q. You could not say. Now, you did see him on the 4th of November? A I saw him on the 4th.

Q What time did you see him? A Saw him in the morning.

Q Just state what conversation you had with him at that time.

A We went down to the salesroom in the basement of 111 Broadway, and he went up to an auctioneer's desk, and said, "There must be a poster put up here advertising the sale if it was to take place." He says, "There is no poster there and so the sale is not going to take place today."

"Well," I says, "this is advertised for to-day, and I want to wait and see if it is going to be sold. "Oh," he says, "my time is valuable, and I will have to charge you for the time."

Says I, "Never mind," I says, "I want to know if this is going to be sold or not." So we waited around there a little while, and--let me see--then Mr. White, I think, came in.

Q Who was Mr. White? A The referee, and there came a telegram to postpone the sale.

THE COURT: No; strike that out.

BY MR. WALSH:

Q Just state what transpired between you and the defendant or between the defendant and anybody else in your presence.

A Then we went from the salesroom up to the auctioneer's office, and there we saw-- Mr. White was there.

Q Mr. White is the referee? A Yes, sir, and Mr. Phillips

255



11  
went up to him and showed him some paper and talked with him, and I was behind them, and I could not exactly hear what they said.

Q Yes. A But I know, in the course of the conversation--

Q One moment. Don't state anything that you heard said or don't state anything except the defendant stated it to White in your presence. Now, did-- A He stated to White that he had put the money in the sheriff's office.

Q He stated--? A He stated to Mr. White that he had put the money in the sheriff's office to cover the sale.

Q What did Mr. White say? A He kind of smiled. I don't think he made any remark.

Q Did not make any remark? A But he smiled.

Q Then what happened? A He made an appointment to meet Mr. White at Mount Vernon.

Q What did he say, Doctor? Better repeat what he said than say that he made an appointment; that the defendant was to meet White? A He told him he would be up there Friday, I think it was.

Q Yes. A And settle the matter up.

Q Yes. A And then we went out, and when we got outside he said he would not go; he told me he would not go and settle that up, but would let them come to him, and I told him, "Phillips, I don't want any more trouble about this

thing. I want this thing settled up. I have given you the money to settle it, and I don't want this terrible bother, that was running all the time." So he says, "Now, don't worry," just so.

Q Yes. A He says, "They can't sell your place; the money is in the sheriff's office, and stop your worrying."

Q Did the sale transpire on the 4th of November?

THE COURT: Do not you think you had better prove that by the referee?

MR. WALSH: He is here. We can prove it by him.

A Not on the 4th.

BY MR. WALSH:

Q Were you present there during the 4th until all parties had left? Had the referee left before you? A We left the referee up in Mr. Yoran's office.

Q In the auctioneer's office? A Yes, sir.

THE COURT: Never mind that. Do not go any further.

BY MR. WALSH:

Q Now, after the 4th day of November, when did you see the defendant Phillips next? A I think that was on-- must have been on the 10th, somewhere about the 10th of November, after the sale. I could not say positively whether I saw

1977 255

him between the 4th and the 9th or not.

BY MR. PHILLIPS:

Q Speak a little louder. A I don't remember whether I saw you between the 4th and the 9th or not.

BY MR. WALSH:

Q Was there anything said on the 4th about anything that would happen on the 9th? A The sale was adjourned until the 9th.

Q Who told you that? A I asked Mr. White if he would adjourn it.

Q That is, the referee? A That was the referee. And he also had received a telegram.

Q Did you ask that in the presence of Mr. Phillips? A Yes, sir.

Q Mr. Phillips was there? A Yes, sir.

Q And did you have any conversation with Mr. Phillips about the attendance on the sale on the 9th? A Not until after we had gone out of the building.

Q Well, after you had gone out of the building did you have any conversation with Mr. Phillips about the sale on the 9th? A The sale was postponed till the 9th to give Mr. Phillips a chance to come up and see Mr. White. That is what I understood.

Q Whom did you understand that from? A From the sale being



adjourned.

Q Well, whom from? Who said that? A Mr. Phillips said he would go up and see Mr. White.

Q And the sale was adjourned from the 4th to the 9th to give him a chance to do that? A Yes, sir.

Q Now, did you attend on the 9th? A I went down on the 9th to Mr. . Phillips' office, and I waited there from 10 o'clock till 1 for him to come in.

Q Did you see him? A I did not.

Q When did you next see him? A After the sale took place, and I heard the sale had taken place, I went down to his house.

Q When was that? A I think that was the next day.

Q Yes. Did you see him then? A It was within a day or so after that. I could not give the exact dates, Mr. Walsh.

Q Well, that is not required. About a day or two after did you see him then? A I saw him once. I don't know whether I called two or three times and found him out, but many times I called I could not catch him.

Q But you saw him finally? A I saw him after a while, yes.

Q When was that, as nearly as you can recollect? A It was either that next day or a day or so after.

Q When you next saw the defendant what conversation did you have with him? A I says, "Phillips, they have sold my

place. Now, what am I going to do?" He says, "They can't sell it," he says, "they can't sell it; that is illegal; the money was up and they had no right to sell it." "Well," says I, "but they have sold it."

Then he was up to the house once, and he said if they came up to tell him to just set a chair out as that would virtually make a dispossess, and to tell him that I would remove the other things myself, and on the 19th, it was, they came there while I was away, and my mother was there.

Objected to. Objection sustained.

Q Anyhow, when you came back on the 19th did you find your goods on the street? A They was all out on the street.

BY THE COURT:

Q Was this property that was for sale your residence? A That was my house and office and home.

Q House and office? A Yes, sir.

Q Where was that? A In Westchester.

Q Village of Westchester? A Village of Westchester, yes, sir.

Q In the County of New York? A Well, it is a part of the City of New York ~~now~~ now. It was then, too."

BY MR. WALSH:

Q I want to ask you, what did you pay for that land? A I

paid \$750., but I got it at a very low price.

Objected to and motion made to strike out as immaterial.

THE COURT: Objection sustained. Strike out that he got it at a low price.

BY MR. WALSH:

Q There was a building erected there on that land? A The building was erected after I bought the land .

BY THE 7TH JUROR:

Q When you say that they came up, whom do you mean by they, who was they? A Mr. Phillips.

THE COURT: Whom do you refer to Mr. Juror; what time do you refer to?

THE 7TH JUROR: When the property was sold, after the sale, he says they came up. Now, who was they?

MR. PHILLIPS: Do you mean the 19th or the 9th?

THE 7TH JUROR: The 19th.

THE WITNESS: Some deputy sheriff. They was up-- I thought you had reference to the time---

THE COURT: He mistook the question of the juror. He thought it related to the 9th. The juror's question related to the 19th, and that is when he said "they". He answers the juror that he

meant the deputy sheriffs; not you (the defendant).

C r o s s   E x a m i n a t i o n .

BY MR. PHILLIPS:

Q   Now, Doctor, you were a witness in this case at the last trial, about a week ago, were you not?   A   I was.

Q   Do you remember what you testified to then?   A   Yes.

Q   Upon that occasion did you say anything then about me going over with you to some place and looking at a large book?

THE COURT:   On what occasion?

MR. PHILLIPS:   Upon the last trial.

THE COURT:   The last trial.   Specify that in your question.

BY THE COURT:

Q   Do you remember, Doctor, saying that to the defendant?

A   I don't remember whether I said that I did or whether that statement came up at the last trial.

BY MR. PHILLIPS:

Q   Did you make any such statement?

THE COURT:   He says he does not remember whether he did or not.

THE WITNESS:   I know the fact is so.

MR. PHILLIPS:   I move to strike out the volunteered remark of the witness.

Motion denied.   Exception.

AS 77 255



BY MR. PHILLIPS:

Q Now, Doctor, when was it that you claim I went over with you and looked at some large book? A Before I gave you that money.

Q When?

THE COURT: What day?

A It was either that day or a day or so before. It is so long ago that I can't remember what happened on each day, only I remember the fact of the money there, it being Saturday, and his hurrying me so because between 12 and 1--

BY MR. PHILLIPS:

Q I object. If you can't answer my questions, Doctor, say you can't recollect. A All right; go ahead.

Q When was it that you say I went over to some office and looked at a large book? A It was previous to me giving you the money.

Q Previous to your giving me the money, that is, previous to October 31, 1896, as you claim? A Yes.

Q That was previous to that? A Yes.

Q Previous to the sale of the property? A Yes.

Q And who went with us, do you say? A You, I and Mr. Ellis.

Q Mr. Ellis? He went with us? A Yes.

Q And what did you go to look at this large book for? A To find out how much was due.

CASE #255

Q On that judgment? A Yes.

Q The property being advertised for sale for November 4th?

A Yes, sir.

Q And you did not testify to any of this on the last trial did you?

MR. WALSH: Yes, he did.

A If it was asked me, I did.

BY MR. PHILLIPS:

Q Can you answer my question? A I don't recollect.

Q Have you any recollection of testifying to anything of this kind on the last trial? A I don't remember whether I testified to that or not on the last trial.

Q All right, Doctor. Give me your answer and stop. Now, I understood you to say a minute ago that you had that \$340. the first day you saw me. A I did not say that.

Q What did you say? A I said we went to see you about the matter before I had that money because I had that in a check.

Q Didn't you-- Did you give me a check? A I did not. I gave you cash.

Q Didn't you testify a minute ago that you had that \$340. the first day you saw me? A I did not.

Q And we went over to see this large book to see how much was due? A I did not see anything of that kind.

Q You did not say that? A No.

198 77255

Q Just a minute ago? A No.

Q Now, when do you say you showed me this advertisement of the sale? A The day that I gave you the money.

Q The 31st day of October? A Yes.

Q You showed me the advertisement of the sale? A Yes.

Q For the 4th day of November? A Yes.

Q What did you ask me to do, Doctor? A I asked you to stop that sale.

Q You asked me to stop that sale. Now, when did you first meet me, Doctor? A It was a few days previous to the 31st of October.

Q It was previous to the 31st day of October?

THE COURT: Do not repeat every answer that the witness gives. Go on with the questions.

BY MR. PHILLIPS:

Q Who brought you to me? A Mr. Ellis.

Q Mr. Henry Wayne Ellis. And at that time your property was advertised for sale, was it not? A It was.

Q And did you not claim that you had paid to an attorney by the name of Hunt the sum of \$400. to satisfy that judgment? A I did.

Q And did you not claim that Mr. Hunt had not paid that judgment? A I did.

Q And did you not claim that there had been an arrangement

CASE # 255

between Mr. Hunt and Mr. Gorham, the attorney for the plaintiff on that judgment that the advertising of the property was to cease, and that no further expense for referees, auctioneers or others were to be incurred? A Yes.

Q You did? Positive of that? Now, do you remember that on the last trial of this case, a little over a week ago, you positively said you did not say anything of the kind?

A No.

Q You don't? A No.

Q Now, upon all occasions that you had interviews with me in regard to this business, or upon nearly all occasions, was not Mr. Ellis with you? A No.

Q It was he who introduced you to me? A Yes.

Q Was he with you the day you say you paid this money? A He was.

Q Was he acting as your friend and representative? A Not as my representative. He came as--

Q Wasn't he acting for you? A Not acting for me. He simply came with me.

Q Came with you? Did he go over to the sheriff's office with me by your consent? A He and you went over together.

Q You knew he was going with me? A Yes.

Q You know he had introduced you to me? A Yes, sir.

Q And he was spokesman, was he not? A Can't say he was.

CASE #255



Q Did you hear the testimony of the witness called on the last trial by the name of Mrs. Roe? A I did.

Q Did you hear her testify that you told her that you were depending on Mr. Ellis?

Objected to. Objection sustained. Exception.

Q Did you ever make a statement to Mrs. Roe that in this transaction you were depending upon Mr. Ellis?

MR. WALSH: Objected to as immaterial.

THE COURT: I will allow him to answer the question.

BY THE COURT:

Q (Question repeated). A I don't recollect making such a statement, your Honor.

BY MR. PHILLIPS:

Q You won't swear that you did not, will you, Dr. Pearson?

A Won't swear to that either way.

Q You will not? Now, Mr. Ellis knew all about your mechanic's lien case, did he not?

Objected to.

A Not all about it.

THE COURT: He has answered it.

BY MR. PHILLIPS:

Q You had conferred with him, had you not, Doctor? A To some extent.

Q Now, then, Doctor, as I understand you, it was prior to the 31st day of October, the day upon which you allege you paid me this money, that you were introduced to me by Mr. Ellis?

A Yes.

Q And between the time that you were introduced to me by Mr. Ellis and the 31st day of October did you see me at all?

A Yes, I must have.

Q Sir? A I must have.

Q Kindly talk a little louder. A I must have seen you.

BY THE COURT:

Q No; between the time, the counsel asks--between the time when Mr. Ellis introduced the defendant to you, and the 4th of November, did you see the defendant? A I don't recollect whether I did or not.

BY MR. PHILLIPS:

Q Now, isn't it a fact that between the time you first met me and the 31st day of October, 1896, you saw me every day?

A I could not say so.

Q Do you remember so testifying at the last trial of this case? A I don't remember.

Q Don't remember, and that was a week ago. Isn't it a fact that you claim that Mr. Hunt had failed to pay this \$400., and that you wanted me to see Mr. Hunt and find out what had become of that money and how that case stood? A I wanted

CASE 77255

you to attend to the case for me and settle it with me.

Q Doctor, will you answer my question, please? A I wanted you to attend to anything that was necessary to settle that case. That is what I wanted you to do.

MR. PHILLIPS: Does your Honor consider that responsive?

THE COURT: He answers, and says he did.

BY MR. PHILLIPS:

Q Well, isn't it a fact then, that you saw me every day?

A I would not say every day.

Q That you saw me in between those dates? A I must have seen you in between those dates, yes.

Q Now, isn't it a fact that I went with you several times up to Westchester village between those dates to see Mr. Hunt at his office? A Prior to the 31st of October?

Q Prior to the 31st of October, yes, sir. A I don't-- I know you went up there several times, but I do not think it was prior to that time.

Q You know I went up there several times? A I could not give you the dates of those times.

Q You don't remember any date, at all, do you? A I do remember some dates, but not all of them.

Q I will ask you about that time, Doctor. Now, isn't it a fact that you came to my apartment, No. 9 West 107th Street?

CASE #255

this city, early in the morning on several occasions, and took me up to Westchester to try to find him? A Not several occasions. There was one occasion I remember.

Q Well, how many--? A I don't remember the day, though.

Q How many times, then, Doctor? A I could not say. I think it was only one.

Q Now, isn't it a fact to your knowledge that upon other occasions I went with Mr. Ellis as your representative to Westchester to try to find out about this case, and how it stood? A I could not give you dates.

Q I am not asking you for dates. I am asking you for a fact. Isn't it a fact to your knowledge that upon other occasions I went with Mr. Ellis as your representative to Westchester to try and find out about this case and how it stood? A Yes, you went around to try and see about it at different times.

Q At different times? A I could not give you the dates, though.

Q At different times I went. Do you remember one particular occasion when you met me in Mr. Ellis's house in Westchester village prior to the 4th day of November, 1896, when Mr. Ellis and myself had been looking for Mr. Hunt the greater part of the night?

Objected to. Objection sustained. Exception.

913

255



Q Do you remember meeting me in Mr. Ellis's house in Westchester Village prior to the time you paid me this money and a conversation between us in regard to seeing Mr. Hunt?

A Could not say that was prior to the 31st.

Q Any time? A I met you at Mr. Ellis's house, yes.

Q Well, I will try and fix it in your memory. Do you remember that it was a very stormy night and that I was wet with the rain and you gave me a foot bath? A I gave you a foot bath?

Q Yes, or ordered one for me? A I ordered one, but I never gave you one.

Q You ordered one. A I told you to put your feet in hot water if you caught cold, because you said you were sick.

Q Do you know that occasion? A There was an occasion of that kind, yes.

Q Now, you say you paid Mr. Hunt \$400. or gave Mr. Hunt \$400. to pay this judgment? A I gave him a check for \$400.

Q \$400.? A \$400., yes.

BY MR. WALSH:

Q Have you that check? A Yes, sir.

Q Produce it. A (The witness complies).

BY MR. PHILLIPS:

Q Did you give Mr. Hunt no instructions as to what he should do

CASE # 255

with the \$400.?

Objected to. Question excluded. Exception.

Q You knew Mr. Gorham, the attorney for the plaintiff in the mechanics' Lien case, did you not? A I did.

Q And you knew Mr. Ceburre, the ~~xxx~~ plaintiff in that case?

A I did.

Q And did you see them at the Real Estate Exchange rooms 111 Broadway, on the 4th day of November, 1896? A I did.

Q Did you have a conversation with Mr. Gorham in the presence of Mr. Ceburre that day in regard to this judgment? A I don't recollect.

Q Did you not state to Mr. Gorham in the presence of Mr. Ceburre that you were going up to his office on the 5th or 6th to pay that judgment? A I don't recollect stating that at all.

Q Don't recollect any such statement. Did you state to Mr. Gorham that you had given any money to me to deposit with the sheriff prior to that time? A Not to Mr. Gorham, no.

Q Did you or did you not? A No; not that I recollect.

Q Had you previously stated to Mr. Gorham that you had given \$400. to Mr. Hunt? A Yes.

Q But you never stated to him that you had given anything to me? A Not at that time, no.

Q On the 4th day of November I am talking about, the day your

CASE 77255

property was advertised for sale. A I had nothing to do with him.

MR. PHILLIPS: I move to strike that out as not responsive.

THE COURT: I do not see that you have propounded the question clearly.

BY MR. PHILLIPS:

Q The sale was advertised for the 4th day of November, was it not, Doctor? A It was.

Q At the Real Estate Exchange rooms, 111 Broadway? A Yes, sir.

Q And you attended there? A I did.

Q And you saw Mr. Gorham and Mr. Coburn there, did you not?

A Why, certainly, I saw them going over there. I have told you that three or four times.

Q Did you not state to Mr. Gorham on the 14th day of November 1896 at the Real Estate Exchange rooms 111 Broadway this city that you would come up to his office on the 5th or 6th day of November, and pay that judgment? A I do not recollect such a statement.

Q Will you answer that you did not? A I don't recollect ever having said that at all.

Q Did you at that time say to Mr. Gorham the plaintiff's attorney in that mechanic's lien case that you had given any money

CASE # 255

to me to deposit with the sheriff? A I don't recollect.

Q Do you recollect that Mr. Ceburre, the plaintiff in that action, was present upon that occasion? A Ceburre was at the Exchange room, yes.

Q Doctor, will you talk a little louder? A Ceburre was at the exchange room.

Q Well, you don't recollect any such conversation? A That is a long time ago, and there is something that I might have forgotten.

BY MR. WALSH:

Q Say yes or no. Answer the question. A I don't recollect the conversation, no.

BY MR. PHILLIPS:

Q But you will not swear there was no such conversation, will you? A I won't swear yes or no, for it is a long time ago, and things might have slipped my memory which I might bring to mind later.

Q Please answer the questions. A I am answering your questions.

Q The sale was postponed on the 4th day of November, was it not? A It was.

Q Now, will you state how that sale came to be postponed?

A You will have to ask Mr. White how it came to be postponed.

Q I am asking you, Doctor, about it. You testified at the

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last trial---

BY THE COURT:

Q Do you know, Doctor, how it came to be postponed? A I asked Mr. White to postpone the sale for one thing, and then there was a telegram came from Mr. Hunt for another thing, and whether it was at my request or the telegram or the combination of the two, your Honor, I could not say; whether it might have been a combination or at my request or the telegram, I do not know.

BY MR. PHILLIPS:

Q Now, did you not testify at the last trial of this case that it was at your request and not upon the telegram?

A I might have.

Q You might have? A Yes, it might have been at my request.

Q Don't you know that you did, that you testified at the last trial, a little over a week ago--? A Well, I suppose I did. I will say yes to that.

Q And you only spoke of a telegram after I had asked you about it, didn't you?

Excluded. Exception.

Q And you say upon that occasion I told you my time was valuable and I would charge you for it? A Yes.

Q You said that was all right? A I wanted this thing attended to.

Q You said that was all right? A That was all right.

CASE # 255

Q And prior to that time, you remember now that I had made several trips to Westchester to see Mr. Hunt? A I could not say prior to that time. You made trips, but I thought they were later.

Q After the 4th? A Yes.

Q Don't you remember testifying at the last trial of this action that I had gone up with you and also with Mr. Ellis? A I am thinking of facts. I ain't thinking of what I testified to at the last trial.

Q Didn't you testify to facts at the last trial? A I did, and I am going to testify to facts this trial, too. As far as exact dates, is concerned, a person can't give exact dates and hours and minutes.

Q I am not asking you exact dates. I am asking you a question. Can't you answer it? (No answer).

Q Now, then, Doctor, prior to the time you say you paid me this money, had I not performed services for you? A No.

Q --In this case never? A Not outside of this case.

Q I am asking you about this case.

THE COURT: He says no, counsel.

A No; not that I recollect; I never had you on any other case.

Q Doctor, you don't understand me. This is the only case you have had me in. I am asking you, whether prior to the

4th day of November, 1896, in this case, I had performed services for you? A The first thing you did was when you took that money, that I recollect, to settle that claim, except this looking up the account; that you did.

Q Didn't you say a minute ago that I had been over to Westchester prior to that time?

THE COURT: No; he did not.

BY MR. PHILLIPS:

Q Didn't you testify that I had, on the last trial? A I could not say.

Q You can't say; in other words, you don't remember what you did testify to on the last trial?

THE COURT: I think, counsel, you are going to extremes about the last trial. You are limited to show that this witness has contradicted himself, and only for that purpose. Now, there is no use in wasting time continually referring to the last trial.

BY MR. PHILLIPS:

Q Doctor, prior to the 4th day of November, 1896, had you seen Mr. Gorham, the attorney for Mr. Ceburre the plaintiff in the mechanic's lien action, in regard to a settlement of this judgment?

THE COURT: Answer yes or no, Doctor.

A He says in regard to a settlement of this judgment.

95277 255

THE COURT: That is his question.

THE WITNESS: Not that I recollect, and seems to me I went up there with Mr. Ellis--

THE COURT: You have answered the question.

BY MR. PHILLIPS:

Q Isn't it a fact that Mr. Gorham had told you that if you did not pay this judgment your property would be sold and that you promised to come to his office and pay it? A I did not promise to come to his office and pay it.

Q Nothing of that kind? A I trusted my lawyer to do that.

Q Just answer the question, please, Doctor. Now, isn't it a fact that you claimed an arrangement had been made between your attorney, Mr. Hunt, and Mr. Gorham, the attorney for Mr. Ceburre, that a certain judgment of sixty dollars as held by a man named Ferguson should be deducted from Mr. Ceburre's judgment against you?

Objected to. Objection sustained. Exception.

Q Isn't it a fact that you refused to pay the judgment of Mr. Ceburre against you unless the sum of sixty dollars should be deducted therefrom to pay the judgment held by one Ferguson, and unless the referee's fees and auctioneer's fees and the advertising expenses should be deducted?

MR. WALSH: Objected to. I understand the question calls for an arrangement with Mr. Hunt, with

CASE # 255



whom we have nothing to do.

MR. PHILLIPS: No; that he made with me.

THE COURT: It is wholly immaterial to this issue and irrelevant. Are those the grounds, Mr. Walsh?

MR. WALSH: They are.

Objection sustained. Exception.

BY MR. PHILLIPS:

Q Now, isn't it a fact that you refused to pay this judgment--?

A No; I did--

Q One minute.

MR. WALSH: Wait till the question is finished, please.

BY MR. PHILLIPS:

Q (continuing)--unless the referees' fees and the auctioneer's fees and the other expenses should be deducted?

Objected to as immaterial and irrelevant.

Objection sustained. Exception.

A No, I never did tell him.

Q Isn't it a fact that you so instructed me? A Instructed you for what?

Q That you would not pay those expenses I have referred to?

A No indeed. I gave you the money to pay them and directed you to pay them.

CASE # 255

Q You know as a matter of fact that that amount was not sufficient on the 31st of October, though? A That is the amount you told me would be required.

Q Don't you know as matter of fact within your own knowledge that it was not sufficient? A No; I paid one fellow \$400.

MR. WALSH: I object to that question.

THE COURT: He has answered it.

BY MR. PHILLIPS:

Q Now, then, Doctor, you say that Mr. Ellis and myself went over to the sheriff's office to pay this money? A You started out to go there.

Q Yes, and do you know whether we went or not? A You said you went over and deposited the money.

Q Did Mr. Ellis say so, too? A Don't remember as he said so. He said so later, though.

Q Mr. Ellis went out with me? A Yes.

Q And came back with me? A Yes.

Q And to whom did we say we gave this money in the sheriff's office? A You said you put it in the sheriff's office.

Q To whom? Was any name mentioned? A You did not mention any name.

Q You are absolutely positive of that? A All you said was you put it in the sheriff's office.

Q And no name was mentioned? A No name was mentioned; not to

49 27 255

me.

Q Did you not testify at the last trial that we said we had given it to a man by the name of Ferguson? A I don't recollect saying that at the last trial, and that was found out later.

MR. PHILLIPS: I move to strike out the last part of the answer.

Motion granted.

Q Now, did you not claim that prior to that time a conspiracy had been formed between Mr. White, the referee, Mr. Gorham, the plaintiff's attorney, Mr. Hunt, your attorney, and Mr. Ceburre, to defraud you of your property, and did you not direct me to go bring a suit against them for damages after the sale should take place? A No; that was your suggestion later.

MR. PHILLIPS: I move to strike the last part out.

THE COURT: We will let it stand.

Exception.

BY MR. PHILLIPS:

Q You never did? A I never did.

Q Did you ever sign a complaint in such an action? A I never did.

Q You never did? A I never did.

CASE # 255

Q You never signed any complaint in that action? A I never signed a complaint.

Q --to recover damages for conspiracy to defraud you of your property? A I never had anything to do with the conspiracy.

Q Against Mr. White, Mr. Hunt, and the other parties I have named? A No; I never did.

Q Never signed any such complaint? A I never did.

Q Never did? A Never.

Q Is that your signature, Doctor? A That looks like my signature.

Q Don't you know whether it is or not? A But that paper there is what would be to any affidavit, and that paper is pinned on it. Then that--there is--that looks like my signature. It might be my signature.

Q Didn't you admit on the last trial that that was your signature? A I don't know as I did. That looks like my signature. I would not say it was, though. A person could copy my signature very easily, but you notice that there--

Q I am not noticing any of it. I object to your remarks, Doctor. You answer my questions. Is that your signature or is it not? A That looks like my signature.

Q That looks like your signature. You won't swear it is not? A I would not swear it was not. You can take it as my sig-

EX-100  
77 255



nature.

Q That is your signature? A It looks like my signature, that is all.

MR. PHILLIPS: I offer this paper in evidence.

MR. WALSH: I object to its going in evidence unless it is shown that the paper is in the same condition as when he signed it. It is on several loose sheets of paper pinned together. I have no objection to the last page going in evidence.

THE WITNESS: If I had signed the complaint, it would be sworn to, I should think.

MR. PHILLIPS: I did not ask you that.

THE WITNESS: Every complaint that I signed so far was sworn to.

MR. WALSH: One moment. Let the Judge pass upon these questions.

BY THE COURT:

Q Dr/ Pearson, have you any recollection whatever-- I show you this paper produced by the defendant. It consists of five pages, on the fifth of which appears a writing purporting to be your signature; that is all. Now, look through that paper and saw whether or not you have any recollection whatever of signing that bundle of papers of five pages.

A I never signed that; ~~in that~~ not that former part. That

99-27255

signature looks like mine--I would not say it was not--but this part here--

Q The preceding pages? A Yes, sir--with my signature so it would be different--

Q I know, but can you say you have signed a document containing the preceding pages? A No, sir.

THE COURT: It appears, counsel--on inspection of this paper, it appears to be fastened by a pin. There appear to be also here holes other than the ones in which the pin is now inserted. The witness swears that he never signed the paper containing these statements.

Q Do I understand that to be your answer? A That is right yes.

THE COURT: That the last sheet of this paper purports to bear his signature, but the others he never signed. I do not think, counsel, you have proven it <sup>of</sup> sufficient integrity to warrant its going in evidence. You may mark it for identification.

(The paper is marked for identification People's exhibit C).

BY MR. PHILLIPS:

Q Do you remember testifying at the last trial of this case

CASE #255

that you had signed this paper without reading it, and the Court asking you whether you were in the habit of signing papers without reading them?

MR. WALSH: I object on the ground that he has not said here he did not sign the paper.

THE COURT: Do you refer to the last sheet?

MR. PHILLIPS. This whole complaint.

THE COURT: You must so arrange your questions as to bring yourself within the rule.

BY MR. PHILLIPS:

Q Don't you remember testifying at the last trial that you had signed a paper, a complaint in an action to recover damages for conspiracy against Mr. Gorham, Mr. White, Mr. Ceburre and others at my office, and that this was your signature and the paper you signed? A No.

Q Did not testify to that? Didn't you testify that you had signed it without reading it?

MR. WALSH: I object to this line of questioning.  
Objection sustained. Exception.

MR. WALSH: I ask your Honor that in case these questions are put in the future they may be put in the regular way.

THE COURT: Yes, you must bring yourself within the rule, counsel.

AS 72 255

BY MR. PHILLIPS:

Q Do you remember employing Messrs. Miller, Decker & Miller some ten months after the sale of your property to make a motion to set that sale aside? A I remember employing them, yes.

Q And you remember them making such a motion? A I do.

Q And do you remember that an appeal was taken in that proceeding to the Appellate Division of the Supreme Court, and that you swore to an affidavit?

Objected to.

THE COURT: Except the affidavit contains matters that will tend to show that this witness has made a different statement subsequent to the statement that he has made on the witness stand, I cannot see how it is material. Objection sustained to the question as it is put. If this witness has made a statement in contradiction to those statements he has made on the witness stand, counsel can ask this question. As to legal proceedings in an action to set aside a sale, we have nothing at all to do with that.

MR. PHILLIPS: Exception.

BY MR. PHILLIPS:

Q Did you, on the 11th day of September, 1897, before Thomas

CASE 77255



H. Chatfield, Notary Public, swear to an affidavit in which this statement appears---

THE COURT: First ask him if he swore to an affidavit.

MR. PHILLIPS: This is the printed case on appeal. That is all I can offer.

THE COURT: If you want to lay the foundation for the purpose of impeaching this witness's testimony, you must do it in the proper way. If this witness has sworn to an affidavit that you want to call his attention to, you should show him the affidavit. A written instrument or statements contained in a written instrument must be shown to the witness before he can be asked concerning them.

MR. PHILLIPS: I show the witness what the prosecution admits to be the printed case on appeal.

MR. WALSH: No; the prosecution has not admitted anything.

MR. PHILLIPS: How can I get the affidavit, your Honor?

THE COURT: I have nothing to do with your getting it. I can only rule upon the question.

BY MR. PHILLIPS:

Q Did you swear to an affidavit on the 11th day of September

CASE #255

1897 in which you stated that I had drawn some papers which you signed, in a suit to recover damages for conspiracy against Messrs. Gorham, White and others?

THE COURT: That is not proper. I said before that if you want to impeach this witness's testimony from any statements contained in a written instrument, that written instrument can be produced in Court, and it is your duty to call his attention to that written instrument.

MR. PHILLIPS: All I have is this printed case on appeal.

BY MR. PHILLIPS:

Q Did you not, on the last trial of this action, testify that you had signed some such paper?

MR. WALSH: Objected to unless the witness's attention is called to the particular portion.

Objection sustained. Exception.

BY MR. PHILLIPS:

Q Now, Dr. Pearson, when did you make the first complaint against me that I had appropriated this money? (No answer).

BY MR. WALSH:

Q Was that complaint made in writing, Doctor, if any? A The time I had him arrested, you mean?

Q On the first complaint you had against him any time. Well,

CASE # 255

I won't object. A I don't recollect the dates.

Q About when? A The time that I made the complaint about any criminal action, you mean?

The first complaint you made in this case? A That was a year ago last June, I think, or July.

BY MR. PHILLIPS:

Q June 1899? A Somewhere about there.

Q In June 1899 was the first complaint you made charging me with misappropriating this money on the 31st day of October, 1896, three years later? A That is the time I had you arrested for it, yes.

Q And in the meantime, is it not a fact that ~~Mr~~ Messrs. Miller, Decker & Miller acting as your attorneys, you had been defeated in an action to set aside the sale of this property?

Objected to. Objection sustained. Exception.

Q Now, between the 9th day of November, 1896, and the time you made this complaint had you seen me at all? A I saw you a number of times.

Q A number of times. Had you ever made any claim upon me that I had misappropriated this money? A I asked you for the money.

Q When? A A number of times.

Q When? A When I met you.

Q When? A I asked you for it once there.

CASE 255

Q Where? A In Brooklyn, when you lived in Brooklyn, Garfield Place, Brooklyn.

Q Any other time? A And you said you would get that--

Q Any other time?

MR. WALSH: One moment. Let us get the answer.

A I asked you for it several times. I can't remember the dates.

BY MR. PHILLIPS:

Q Doctor, just the answer. You asked me for it-- Do you not remember testifying upon the last trial of this action that you never asked me for it except that once in Garfield Place, in March 1897?

Objected to. Objection overruled.

A I don't recollect what I--

Q Don't recollect that? Do you remember seeing me at your house, 167 East 89th street in this city on or about the 16th day of March 1897? A You saw me at my house; I can't tell you the date.

Q Whose handwriting is that, Doctor (showing paper)? A That is mine.

Q Sir? A That is mine.

Q That is yours? That is your name up in the corner? A Yes.

Q That is addressed to me at 95 Garfield Place, is it not?

A 95 Garfield Place.

Q Now, do you remember me coming up to your house about that time and your consulting with me in regard to this conspiracy action? A You were there, but nothing said about conspiracy. I asked you for that money.

Q At that time? A Yes, and you said you would give it to me, as I wanted the money to pay the rent with.

Q Did you not testify-- Doctor, I wish you would just answer the questions, please. Did you not testify on the last trial that you were sick with the grip at that apartment at that time, and I came up to see you, and that you did not ask me for the money?

MR. WALSH: Your Honor, I do not object to out counsel getting all these matters in the proper way. I do object to his asking at random what this man testified at the last trial. I suppose the jury requires him to call his attention to question and answer.

THE COURT: These questions are very improperly framed. You may answer the question.

BY MR. PHILLIPS:

Q (Question repeated). A I don't recollect. There is three or four questions in one there.

Q And do you not recollect that upon that occasion in March 1897, I asked you to give me a statement of what you claimed

CASE 22-255



47

to be your actual cash outlays on account of this alleged conspiracy for which you were--for which I was to prosecute the suit for you.

THE COURT: That is assuming that you were to prosecute, and this witness has denied that you were. In your question you incorporate an assumption.

MR. PHILLIPS: I will try to frame it differently.

BY MR. PHILLIPS:

Q Do you recollect upon that occasion having a conversation with me in regard to a suit for damages for conspiracy against Messrs. Gorham, White and others, and my asking you.

THE COURT: Stop. Do you remember having such a conversation with him.

THE WITNESS: I never had a conversation about a conspiracy, for I never engaged him for a conspiracy, your Honor, and he has asked that question over and over again.

BY MR. PHILLIPS:

Q Do you remember giving me certain figures for the actual cash outlays which you claimed you had been put to all through the loss and sale of your property? A There is a time there when he asked me about something that I lost about the house, and what it would cost me, or something like that. He asked me the direct price of the house, I believe, and the cost of the land.

Q Now, Doctor, do you remember giving me any such figures?

A I don't recollect whether I gave you the figures or not.

Q You do not? Now, what did you pay for that land?

Question excluded as immaterial.

Exception.

Q Look at these figures, which I hand you--this paper--and state whether that is not your writing? A Some of that looks like mine, and some is not mine.

THE COURT: That answers the question.

BY MR. PHILLIPS:

Q Which is yours and which is not yours? Isn't it all yours, with the exception of the last line, the date? A There is some there that looks like mine.

Q Which looks like yours and which does not? A Here are some here that look like mine, but I could not swear that they were mine, for there are others who may write like me. I do admit that there is a similarity to my figures there, but I would not swear that those are my figures.

QC Didn't you admit on the last trial of this action that those were your figures? A About the same as I am admitting now that they looked like mine, and they might have been mine, but I can't swear that they are. There is other people write like I do.

Q Point out which you claim are yours and which are not?

A I do not claim any of them are mine. I will point out those that look like mine, this here 2275, and those others, but I would not swear they were mine. Those figures at the back look like mine more than any others.

Q Those at the back look more like yours than any others?

A Those look more like mine.

Q Those look more like yours? A Yes.

Q Amongst those figures at the back is an item of \$357.73, is it not.

Question excluded.

Q Doctor, will you point out which of those are yours and which you say are not?

MR. WALSH: He has done that two or three times, your Honor.

MR. PHILLIPS: Which has he pointed out, your Honor?

(No ruling).

MR. PHILLIPS: I offer this paper in evidence.

Objected to. Objection sustained. Exception.

The Court admonished the jury in accordance with Section 415 of the Code of Criminal Procedure.

Adjourned to Thursday, February 28, 1901, at

10:30 A. M.

48-2255

New York, Thursday, February 28.

TRIAL RESUMED.

JOHN C. PEARSON, M. D., a witness for the People, his cross examination being continued, testified as follows:--

MR. PHILLIPS: Will your Honor permit me to interrupt the witness by calling the stenographer of Part III, so that he can go on and identify those minutes? Mr. McLoughlin. (No response).

THE COURT: Go on until the stenographer comes.

BY MR. PHILLIPS:

Q Now, Dr. Pearson, when you and I returned from the sheriff's office on the 31st day of October, 1896, did I show you any receipts? A You did.

Q I did. Now, will you state what that receipt was.

Objected to.

THE COURT: Where is the receipt.

MR. WALSH: Handed back to this defendant.

THE COURT: Unless you show that a receipt went into the witness's hands and was in his keeping--

A No, sir.

MR. PHILLIPS: Can I not ask the witness whether he had a receipt?

THE COURT: He said he saw a receipt. You are asking him the contents of it. The District Attorney

CASE 77255

objects. I sustain his objection.

MR. PHILLIPS: Exception.

BY MR. PHILLIPS:

Q Did you not testify on the last trial of this case that you had seen a receipt signed by a man named Ferguson?

THE COURT: He has testified now that he saw the receipt. I exclude the question and sustain the District Attorney's objection.

MR. PHILLIPS: Exception.

Q Didn't that receipt state that the money was to be returned upon demand?

Objected to. Objection sustained. Exception.

Q Now, you have stated that Mr. Ellis went with me to the sheriff's office. What did Mr. Ellis say?

MR. WALSH: Objected to. He stated no such thing.

Objection sustained. Exception.

BY MR. PHILLIPS:

Q Isn't it a fact, Dr. Pearson, that I told you that the sheriff's office had nothing whatever to do with this judgment?

A You never said any such thing to me.

Q Never said anything of the kind? A Never.

Q Isn't it a fact that the first you heard of the sheriff's office having any connection with this case was when you



asked me whether or not you should vacate those premises after the sale?

MR. WALSH: The question is objected to on the ground that it assumes that he did ask him to vacate the premises after the sale.

THE COURT: It is objectionable on that ground. Sustained.

MR. PHILLIPS: Exception.

BY MR. PHILLIPS:

Q Did you not ask me what you should do, and did I not tell you to ask the sheriff when he came to put a chair out of the house, and you would remove the rest of the things?

MR. WALSH: There are two questions, not one, there.

THE COURT: The question is involved. That is the objection. Objection sustained.

MR. PHILLIPS: Exception.

BY MR. PHILLIPS:

Q Did you not ask me what you should do when the sheriff came to take possession of those premises? A I don't remember asking you that, and you told me if the sheriff came to tell him to put a chair out and that would be sufficient to make an eviction.

Q And will you state what I told you the reasons for so doing

CASE #255

were?

Objected to.

A You gave no reason..

THE COURT: He has answered.

BY MR. PHILLIPS:

Q Did I not tell you that the object was to prove an actual eviction upon the trial of your proposed case for damages against Messrs. Gorham and others? A No.

MR. WALSH: Objected to.

THE COURT: I will allow it to stand.

BY MR. PHILLIPS:

Q Did not? Did you, on the last trial of this case, testify anything in regard to putting the chair out of the house?

A I don't recollect. I might have and I might not have.

Q Now, will you please state to the Court and the jury why you brought Mr. Ellis to my office with you on the 31st day of October 1896? A It was a case of him bringing me with him; not him with me.

Q Well, you came together, did you not? A We came together.

Q Well, now, what was the reason he came with you?

Objected to.

A For company's sake, I guess. No particular reason, only we went in company together; we went in company together.

Q What was your reason for bringing him with you?

MR. WALSH: Objected to. The witness says he did not bring him.

THE COURT: That is so. He says Mr. Ellis brought him.

BY MR. PHILLIPS:

Q Did you not testify upon the last trial of this case that Mr. Ellis came with you to introduce you to me? A At the time he introduced me he went with me.

Q I am talking of the 31st day of October 1896. A Not to introduce me then, no.

Q You did not so testify? A I would not say what I testified on the last trial. What I said there I meant, and it was the truth, and what I say now I mean, but to recollect everything that I said at the last trial, that is impossible for any man.

BY THE COURT:

Q How long were you on the witness stand, Doctor Pearson, at the last trial? A I was on over a day.

Q That was only a week ago, was it not? A Well, I can't remember some things I said yesterday.

THE COURT: You have been over that several times.

BY MR. PHILLIPS:

Q Were you not asked this question: "Why did he, Mr. Ellis,

9527255

come to the office with you that morning? A To introduce me." (No answer.)

BY THE COURT:

Q Do you remember that question and answer? A They might have been offered somewhere, your Honor. I would not say I did not say it, and I can't say I did.

BY MR. PHILLIPS:

Q You had known me prior to the 31st day of October, 1896, had you not? A A few days.

Q And had been introduced to me, as you have testified, by Mr. Ellis? A I was.

Q Now, did you see me after the 9th of October, 1896? A I did.

Q Will you state now--

THE COURT: 9th of October?

MR. WALSH: 9th of November you mean, don't you?

BY MR. PHILLIPS:

Q 9th of November, the day of the sale, (I mean? After the 9th of November, Doctor? A I did.

Q Now, will you state what conversation passed between us in regard to this transaction on that day?

MR. WALSH: When; what day?

BY MR. PHILLIPS:

Q The next time that you saw me after the 9th. Do you remember

when it was, Doctor? A I know that after the 9th that I was sick and could not go out for a while, but I know that I saw you on several occasions and on many more occasions I called at your house and I could not find you.

MR. PHILLIPS: I move to strike out the answer as not responsive.

BY THE COURT:

Q Yes. You remember one occasion after the 9th of October?

A The day of the first auction.

Q When you had a conversation after the 9th of October with Mr. Phillips? A I could not give the numerical order, but I remember several occasions when I met him.

BY MR. PHILLIPS:

Q Do you remember the first occasion you saw me after the sale of your property on the 9th day of November 1896? A It was within probably a week afterwards. I called at your house several times.

Q Where? A And could not find out. At 107th street.

Q Just answer the question, witness; answer the question. Isn't it a matter of fact that you called at my house in the afternoon of November 9th, 1896? A November 9th.

Q The day of the sale? A I don't remember that, for I went only to the sale, and then went right home.

948-7255



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57

Q Isn't it a matter of fact that you, in company with Mr. Ellis, called at my house late in the afternoon of November 9, 1896? A I don't recollect.

Q Will you swear you did not? A I don't recollect.

Q Well, what was the first day you saw me after the ninth?

A I couldn't give you the date.

Q About? A I saw you several times.

Q The first time, Doctor? A I can't recollect the date of the first time I saw you.

Q Well, about? Can't you recollect about?

THE COURT: That question has been asked a great many times, and answered a great many times.

BY MR. PHILLIPS:

Q Well, now tell me what was the conversation you had with me, in regard to the sale of your property, the first time you saw me after the ninth day of November, 1896? - A I told you that they had sold the place, and I says, "What am I going to do?" And you says, "They can't sell it; that was a bluff."

MR. PHILLIPS: I move to strike that out, that it was a bluff.

THE WITNESS: You said that, yes.

Q I said that was a bluff? A You said that was a bluff; yes.

CASE # 255

Q Go on. What was the rest, Doctor? A I says, "What am I going to do?" And you says, "Don't worry; they can't do it, and that is all there is to it." You said the money was in the sheriff's office, and I thought so until months afterwards.

MR. PHILLIPS: I object to what the witness thought, and move to strike it out.

Motion granted.

THE WITNESS: You said the money was in the sheriff's office, and they couldn't sell it, because it had been put up.

Q Now, at the time you say I stated they couldn't sell it, you knew, as a matter of fact, that it had been sold?

A Yes; and I told you, "They have sold it."

Q "They have sold it"? Now, when you were asked this question upon the last trial of this case, did you say anything in regard to my making a remark that it was a bluff?

Objected to. Objection overruled.

A I don't remember whether I said that then or not.

Q You are not willing to swear that you did, are you, Doctor?

A I say I don't recollect.

Q Don't recollect. Now, it is a fact, is it not, Doctor, that prior to the 31st day of October, 1896, I had been engaged in your service on this case, the case of Coburne

against Pearson? A I had gone to see you.

Q Sir? A I had gone to see you about the case.

Q And I had gone up to Westchester with you several times?

MR. WALSH: Before the 31st of October, with him?

BY THE COURT:

Q Did he ever go up to Westchester with you before? A I don't recollect whether it was before or afterwards, but I think it was afterwards. He might have been there before. I wouldn't say he wasn't.

Q Do you recollect testifying on the last trial of this case--

THE COURT: What is the use of eternally recalling the last case? Are we going to try this case, and at the same time try the case that has been tried before?

MR. PHILLIPS: I simply wish to show that he is testifying differently now from what he did then.

THE COURT: It is an unnecessary waste of time. It is upon the evidence on this trial that this jury must decide.

MR. PHILLIPS: Your Honor refuses to allow me to ask those questions.

THE COURT: I do not. I will pass upon each

question. I am simply warning you of what I consider a wanton waste of time.

Exception.

BY MR. PHILLIPS:

Q Now, you met Mr. White, did you not;-- the referee in this foreclosure case?

THE COURT: That was testified to yesterday.

MR. PHILLIPS: I want to ask him if he made a certain statement.

Q Did Mr. White ever make a statement to you that your case had not been half tried by Mr. Hunt?

Objected to. Objection sustained.

Exception.

Q Now, Doctor, do you remember visiting me at my residence, No. 95 Garfield Place, Brooklyn, in the spring of 1897?

A I do.

Q And whom did you see there? A I saw you.

Q Whom else? A Don't recollect seeing anybody else but you.

Q Nobody but me? A Might have seen your sister as she passed out and in. I think she did pass out and in once.

Q Did you not have a conversation with my sister, and also with my younger brother, upon that occasion? A That might be.

CASE #255

Q Sir? A That might be.

Q Is it not a fact that when you called at that house I was absent, and that you remained there and took dinner with us? A I don't remember taking dinner there.

Q Answer the other part of the question, Doctor.

THE COURT: What if he did?

MR. PHILLIPS: I want to show--

THE COURT: If you want to show anything relevant to this case, ask the direct question.

BY MR. PHILLIPS:

Q Did you not, upon that occasion, speak of me in the highest terms to my sisters and my brother?

Objected to.

MR. PHILLIPS: Wait till I finish my question.

MR. WALSH: It is objectionable so far, because it calls for a conclusion.

Objection sustained. Exception.

Q Did you not state to my sister that you were entirely satisfied with my services, and that you were going to recover large damages in this damage case? A No, I did not. I did not. I remember that--

THE COURT: Now, you have answered the question.

Q Now, have you not testified, Doctor, in the trial of this

9171

CASE 77-255



case, that the only time you can recall when you asked me for a return of this money was upon that occasion at Garfield Place? A I asked you for that money on several occasions.

Q Will you answer the question, Doctor?

BY THE COURT:

Q Have you testified that was the only time? A That was not the only time.

Q Have you testified before that it was the only time? A No, sir, I don't think I have.

BY MR. PHILLIPS:

Q Now, isn't it a fact that both at my residence, No. 9 West 107th street in this City and No. 95 Garfield Place, Brooklyn, in the months of November and December, 1896, and the spring of 1897, that to my sister you-- that with my sister you had several conversations in regard to bringing a prosecution of a damage suit for conspiracy?

Objected to. Objection sustained.

Exception.

Q Now, Doctor, do you remember an occasion in the spring of 1897 when you came to my office, and took me up to your then residence; an occasion when I spent the night at your house? A That I think was along in December.

Q After the sale, wasn't it? A I think it was in December;

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the night that you spent all night at my house.

Q You remember such an occasion, do you not? A I do; yes.

Q Did you, at that time, make any demand upon me for the return of this money, or any complaint that I had not properly treated you? A I made no demand at that time, for I thought the money was paid, and you told me that it was safe.

MR. PHILLIPS: I wish the witness would just answer the question.

BY THE COURT:

Q That it was what? A That it was safe. He told me that was all right.

BY MR. PHILLIPS:

Q You knew the property had been sold? A True, I did; but you told me it had been a false sale.

Q You had been put out, had you not? A It was pretty evident I had.

Q Do you remember upon that occasion, discussing with me the details of this conspiracy case, the amount of damages you expected to recover? A I never said anything to you about a conspiracy case.

Q You never did? A Never. That is a new thing that you brought up lately.

Q Do you remember in the month-- on the fourteenth-- on the

CASE 77255

64

eleventh day of September, 1897, signing an affidavit containing a statement by you to this effect:--

Objected to, unless he has the original affidavit here.

Objection sustained. Exception.

Q Now, Doctor, is it not a fact that you employed Messrs. Miller, Decker & Miller in 1897-- A I did; in March, I think it was, I first saw them.

Q Allow me to finish the question; --to make a motion to set aside this sale for you? A I did.

Q Did you at that time ask me to see Mr. Decker? A Yes, sir. I said you could give Decker points on how to recover the property.

Q What? A Yes, I said you could give Decker points on how to recover the property.

BY THE COURT:

Q Who is Mr. Decker; is he a lawyer? A My present counsel.

BY MR. PHILLIPS:

Q Private counsel? Have you not heretofore testified that you did not? A No.

Q Did you ever request me to make any affidavit for you in that proceeding? A I don't recollect.

Q Did you ever request anybody on your behalf to ask me to

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make such an affidavit? A I don't remember doing so.

Q Look at this letter which I show you, Doctor, and tell me whose handwriting that is?

THE COURT: Is that a letter?

MR. PHILLIPS: A letter; yes.

THE COURT: Let me see that. This is an envelope you show the witness.

MR. PHILLIPS: A letter, your Honor.

THE COURT: Then show him the letter.

BY MR. PHILLIPS:

Q Whose writing is the envelope in, Doctor? A (No answer.)

BY THE COURT:

Q Just state whose writing the envelope is in, and whose writing the letter? A Looks my writing.

Q In each case, envelope and letter? A It looks like mine.

Q In your judgment, is it your writing? Your best opinion?

A It may be mine; yes, sir.

BY MR. PHILLIPS:

Q And that is addressed, is it not-- I offer this in evidence, if your Honor please.

MR. WALSH: What is the object?

THE COURT: I can't tell what bearing it has upon this case.

77-255

MR. PHILLIPS: The witness has just testified that it is in his writing. S

THE COURT: Show the letter and envelope to the District Attorney.

MR. WALSH (After examining papers:) I have no objection to their admission.

(Letter and envelope are admitted in evidence, and marked, ~~Defendants~~ Exhibits Two and Three, respectively.)

MR. PHILLIPS: Now, I will read Defendant's Exhibit No. 2, if your Honor please:

"Jan. 5, 1898.

"Friend Ellis:"--

MR. WALSH: One moment, now. Your Honor, I call your attention to the fact, before reading, that this is a letter of Dr. Pearson, not to the defendant, but to Mr. Ellis; but of course it is admissible; I have no objection.

MR. PHILLIPS (Continuing:) "Will you kindly endeavor to get Phillips to give you an affidavit to the fact that the 337.73 left with Fromme Bros. was mine, and that he only left it there while he went to Jersey, and the reason.

"And an affidavit to the facts concerning the

CASE #255



conspiracy that he knows.

"These two items will be of some value and if as he says he desires to help, let him show it by so doing.

With best wishes and a Happy New Year to your wife and you, I am

Your friend,

J. C. Pearson,

306 W. 114.

"The sooner I get these the better."

THE WITNESS: I can explain that easy enough.

BY MR. PHILLIPS:

Q Now, Doctor, do you remember seeing me at your house in 89th street, on or about the 16th day of March, 1897; 167 East 89th street? A Yes, I remember your coming now.

Q And discussing with me--

BY MR. WALSH:

Q Do you remember that time? A I remember him coming there at that time; yes, sir.

Q And discussing with me this suit for damages for conspiracy?

A No, there was no discussion in regard to that at all.

Q Not at all. A That letter was to Ellis. I can explain that letter.

MR. WALSH: It explains itself. It is all

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91121

CASE # 255

right.

Q Have you not heretofore testified that upon the occasion to which I have referred, we did have a discussion in regard to that suit? A No.

Objected to.

THE COURT: He has answered "No."

BY MR. PHILLIPS:

Q Now, Dr., on the 31st day of October, 1896, did you not know, of your own knowledge, that the sum of \$33.73 was not sufficient to pay this judgment? A You told me that that was the full amount required.

Q I am asking you, Doctor, what you knew of your own knowledge. A I did not know; I trusted to you.

Q Did you not see Mr. Gorham, attorney for Mr. Ceburra, the plaintiff in that action, on the fourth day of November, 1896, the day upon which the sale was advertised, and ask him what amount was due? A I saw him, but I didn't ask him what amount was due.

Q Did he not tell you that to pay the judgment at that time required \$435 or more? A No.

Q You know Mr. Ceburra, the plaintiff in that action? A I do.

Q Do you remember his being present at the Real Estate Exchange salesrooms, 111 Broadway, when Mr. Gorham made such a statement to you? A I remember Mr. Ceburra being there.

CASE #255

Q Being there? A But there was no such statement as that made, to my knowledge.

Q Did you not at that time say to Mr. Gorham that you would call at his office on the fifth or sixth, and pay off that judgment? A I don't remember stating anything of the kind.

Q You swear you did not?

MR. WALSH: He can't swear. He says he don't remember.

BY MR. PHILLIPS:

Q Did you at that time-- you saw Mr. Gorham there, did you not? A I saw him there; yes.

Q The fourth of November. Did you at that time say anything to Mr. Gorham in regard to having given any money to me, to pay the judgment, or in regard to any money having been deposited ~~by~~ with the sheriff? A I didn't say anything to Gorham about that.

Q Sir? A I don't think I said anything to Gorham about it.

Q You did not? Now, Doctor, do you remember calling at my office, No. 61 Park Row, with a lady, in the year 1897?

A I do.

Q Will you state what transpired on that occasion.

Objected to as too general. Objection sustained.

Q In order to save time, I will try it this way: Did you not call at my office with a lady whom you introduced to me as Mrs. Brown, and state to me that she had had a large experience in mechanics' lien cases, and ask me if I would let you have the papers in your case, or let her have them; that she would probably make some suggestions? A You have got four or five questions in one. There was no Mrs. Brown or no Brown in the case whatever.

Q What was the name you introduced the lady to me under?

A Her own name; Mrs. Roe.

Q Did you not ask me to let you have the papers in your case, that Mrs. Roe might look over them, and offer some suggestions, she having had experience in similar cases? A I asked you for the papers.

Q And what was my reply? A You said you didn't have them there, but you had them at the house and would bring them down.

Q And do you know, of your own knowledge, that this lady afterwards called and got those papers? A I do.

BY MR. WALSH:

Q Of your own knowledge? Were you there? A No. I know she went afterwards and got the papers, but I wasn't with her then.

BY MR. PHILLIPS:

Q You know she got the papers? And were those papers, Doctor, ever returned to me? A I think not.

Q Now, Mr. Hunt had paid one hundred dollars to Mr. Gorham, the plaintiff's attorney, on account of this judgment, had he not?

THE COURT: What has all this to do with the question in issue?

MR. PHILLIPS: I am attacking, if your Honor please, the witness's credibility.

THE COURT: You can only attack his credibility on matters material to the case. There is no use in traveling so far outside of the case.

MR. WALSH: This question, your Honor, as to the one hundred dollars I have not objected to, because in one phase of the case that may be material, because there was one hundred dollars on account paid on that judgment, which reduced it just so much less. I have no objection to it.

THE COURT: Very well.

BY THE COURT:

Q Did you give Mr. Hunt one hundred dollars? A I gave him four hundred dollars.

Q Four hundred dollars? A And he paid one hundred dollars on account at that time.



Q He paid one hundred dollars on the judgment? A And then he paid two hundred dollars more; that made three hundred dollars altogether, on account of the four hundred.

BY MR. PHILLIPS:

Q When did you know that Mr. Hunt had paid two hundred dollars additional? A I didn't know it until I seen the record later.

Q You did not know it at the time? A Did not know it at the time.

Q Now, Doctor, look at this letter which I hand you, and tell me whose handwriting is that? A That is my handwriting.

Q And that letter was sent by you to me, was it not?

A Yes.

MR. PHILLIPS: I offer this evidence.

(Letter admitted in evidence, and marked Defendant's Exhibit NO. Four.)

MR. PHILLIPS: I will read it.

"Friday morning, November 6, 1896.

W. H. Phillips.

Dear Sir:

On Wednesday when I returned Mother said a man called from Mr. Hunt, and said he had a certified check for \$200.00 and a note from Hunt.

Mother thought she might be compromising the case to take them, so told the man he would have to see

CASE 7255

me, and that I had another Lawyer.

Last evening (Thursday) I received the following telegram:

Mr. Vernon, N.Y., Nov. 1896.

Have paid Gorham except the amount of Ferguson judgement of sixty dollars.

(Signed) David H. Hunt

Resp

J. C. Pearson."

MR. WALSH: I call your Honor's attention to the date of that letter, November 6, 1896; seven days after the 31st of October.

BY MR. PHILLIPS:

Q Now, Doctor, do you know the name of the purchaser at the sale on November 9, 1896?

Objected to as immaterial. Objection overruled.

A William P. Rooney was the man said to buy it.

Q Sir? A The man that I heard bought it was William P. Rooney.

Q And did not Mr. Ellis report to you that Mr. Rooney was a dummy?

Objected to. Objection sustained.

Exception.

CASE # 255

Q Did you ask Mr. Ellis to look up the purchaser, Rooney, of that property?

Objected to as immaterial. Objection sustained. Exception.

Q Did Mr. Hunt notify you on Saturday, the seventh day of November, 1896, that he had paid Two hundred dollars to Mr. Gorham?

Objected to. Objection sustained. Exception.

Q Did you notify me, Doctor, that a sum of Two hundred dollars had been paid by Mr. Hunt to Mr. Gorham, the attorney for the plaintiff, in addition to the one hundred dollars which you knew of? A I did not.

Q And I understood you to say a minute ago that you did not know it yourself until you afterwards looked at the records?

A Exactly.

Q Did you ever tell Mr. Gorham, the attorney for the plaintiff, that you had probed Mr. Hunt, and knew that you had to settle with him, Mr. Gorham, or with the Referee? A No.

Q Did you ever tell Mr. Gorham that you had employed me?

A No.

Q Now, Doctor, whose check was it you cashed to get the money which you say you paid me? A A man by the name of Clocke.

Q Clocke, of Westchester village? A West Farms.

Q Of West Farms? Now, had you received any other check from that gentleman? A No.

Q In the month of October or November, 1896? A I had received no check from him then.

Q This was the only one? A From Clocke; yes.

Q And this is the check which you cashed, and out of which you paid me this money? A I did.

Q On the 31st of October, 1896? A Yes.

Q Now, is it not a fact that you did not receive that check until after the fourth day of November, 1896? A Oh, no; I had that check a long time before.

Q Now, Doctor, you say that you requested an adjournment of the sale on the fourth day of November, 1896? A I did.

Q Is that correct? Now, did you not know, as a matter of fact, that every adjournment of that sale meant an additional expense to you, which you would have to pay? A I didn't give that a thought.

Q Didn't think of that? Did you, when you requested the adjournment of that sale, say anything about having given money to me, and my having deposited it with the Sheriff?

A To whom?

Q To the Referee on the fourth of November, or to Mr. Gorham; did you say anything to Mr. Gorham? A I told Mr. White--

Q I am asking you, Doctor,-- A I didn't say anything to

75

Mr. Gorham.

Q You did not? A No.

Q Did you see Mr. Gorham there? A He was there; yes.

Q Did you say anything to him? A I don't remember saying anything to him.

Q Do you remember receiving a letter from Mr. Gorham, dated the 31st day of October, 1896? A I did.

Q Telling you that this judgment must be paid in full to him?

MR. WALSH: I object to his asking for the contents of a letter.

THE COURT: Objection sustained.

MR. PHILLIPS: Exception.

Q Doctor, in how many places have you resided since the year 1896? A Couldn't tell you.

Q Sir? A Couldn't tell you; a good many.

Q About how many? A Oh, five or six.

Q Sir? A Five or six.

Q Five or six since 1896. Now, Doctor, I am going to ask you a general question. I ask you to listen to it, and tell me if it is not the fact. Was not the understanding between you and me that you absolutely refused to pay the referee's fees, the auctioneer's fees, and the advertising expenses, claiming that Mr. Hunt and Mr. Gorham had made such an agreement that you should not pay them, and that

PAGE 77 255



you claimed that a conspiracy had been formed against you by White, Gorham and Hunt and Ceburre; that they were engaged in that sort of business at Mount Vernon and Westchester; that they were responsible; and that you would not pay the fees referred to, and if they sold your property you wished me to bring a suit for damages against them?

A No; that would be preposterous.

Q And for no services that I had performed for you up to the ninth-- up to the thirty-first day of October, 1896, had you paid me anything? A There was Twenty dollars taken off that fraudulent check that you had.

MR. PHILLIPS: I move to strike that out.

What are you talking about?

Motion granted.

THE WITNESS: I have got the check here.

BY MR. PHILLIPS:

Q I am talking about the 31st day of October, 1896, Doctor, and you know it. A Well, there was nothing said about fees then.

Q What do you interject remarks for? You understood that you were to pay me for my services, and you did not? A I pay everybody.

Q Sir? A I pay everybody.

Q I didn't ask you that.

BY MR. WALSH:

Q Well, you understood you were to pay him in time? A Sure, I was going to pay him and I expected to pay him.

BY MR. PHILLIPS:

Q Did you ever pay me anything for expenses? A Several times I paid your carfare.

Q Carfare; that was when you were with me, was it not?

A Yes.

Q And that is all? A That is all.

Q Now, Doctor, give me the date, if you please, when you got this Three hundred and forty-dollar check from Mr. Clocke.

MR. WALSH: He didn't say a \$340 check.

A That was a long time previous. It was a \$350 check.

BY MR. PHILLIPS:

Q \$350 now, is it? A I gave you \$340.

Q Didn't you say \$340 yesterday, Doctor; first \$240 and then \$340? A I gave you \$340, but I didn't say it was a \$340 check. I cashed the check, I said, and I gave you \$340.

Q What was the amount of the check you got from Mr. Clocke?

A \$350.

Q \$350? A Yes; and I gave you \$340.

Q Didn't you state yesterday it was \$340? A No, I didn't; not the check.

Q And that I-- A Not the check. I said I gave you \$340.

CASE #255

Q Now, what was the date you got that check? I object to your looking at memoranda. A I can't remember the dates of checks without looking at a reference, can I?

Q I am asking you on your memory now. A I can't tell you on my memory.

Q Do you remember the first date you saw me? A I don't remember the exact date. It was a few days before the 31st of October.

Q Before? Did you not testify yesterday that you got that check the first day you saw me? A No.

Q You did not testify to that yesterday? Now, is it not a fact that I did not ask you for that money? A You told me that the sum of \$337.73--

Q Doctor, will you answer the question, please? A (Continuing:) Would settle the claim, and that is as much as asking me for the money.

MR. PHILLIPS: I move to strike all that out as not responsive.

Motion denied. Exception.

Q Have you not sworn in an affidavit, Doctor, that you told Mr. Ellis you had this check, and that it was upon his suggestion that you had it cashed and brought the money to me?

A I couldn't say.

Q You don't remember ever swearing to anything of that kind?

CASE 77-255

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

Q Did you not, on the last trial of this case, admit that that was what you had sworn to?

Objected to, as calling for a conclusion.

Objection sustained. Exception.

Q Doctor, did you ever meet a gentleman by the name of A. P. Minier? A I did, yes.

Q When? A Oh, a year or two ago, I guess it was.

Q In the summer of 1893? A I don't remember the date.

Q Was it the summer you had me arrested? A I think it was before that when-- I don't remember just when it was; I remember meeting him once or twice; that is all.

Q Did you not go to him at my office, No. 40 Broadway, while I was under arrest on your complaint? A I was down to that office, yes; but I can't recollect just the date.

Q At that time; while I was under arrest? A It might have been that time.

Q Don't you know it was, Doctor? A I don't recollect just what time. I remember being there to see him.

Q And do you remember stating to Mr. Minier, when he asked you in regard to this charge, that you wanted six thousand dollars from me? A Never.

Q Never did? A I never said that.

Q And that if I didn't have it, my friends would get it for me?

A No; I never said anything like that.

Q But you went to that office, and saw him, did you not?

A I was down there, and saw him; yes.

Q Did Mr. Gorham-- did you see Mr. Gorham after the sale?

A I don't remember when I saw Mr. Gorham. I saw him a very few times.

Q Didn't you see him after the sale, and didn't he offer to assist you in recovering your property, and you refused?

A I never refused any assistance.

Q Now, then, Doctor, do you remember meeting me, in company with Mr. Ellis, in the spring of-- in the winter of 1897, on Park Row opposite the post-office? A I remember meeting you in Park Row several times.

Q Yes. Do you remember asking me at that time why I did not go to Mr. Decker and tell him what to do in your case?

A I never asked you to go and tell him what to do. I supposed he knew what to do himself.

Q Do you remember complaining to me that Mr. Decker had not taken the right proceedings for you, and making this remark, "I wouldn't stand by and see anybody give you poison"? A I never complained of Decker.

Q Did you ever make any such remark as that to me? A Not to my recollection.

Q And do you remember my telling you that I never had inter-

CASE 77255



ferred with any attorney's conduct of a case, and I would not; that it was not a question of giving you poison; Mr. Decker had his opinion and I had mine, and he might be right just as well as myself?

Objected to. Objection sustained.

Exception.

Q Now, Doctor, all during that time you were seeing me often, were you not? A No; I was trying to see you very often, but didn't see you very often.

Q Well, you saw me half a dozen times or more, did you not?

A About that; yes.

Q And our relations were friendly, were they not?

Objected to. Objection overruled.

A Well, I don't know what you call friendly.

Q Well, you visited at my house, and I visited at yours.

A They might have been more friendly.

Q We had no disputes, had we? A Had no downright fights; no.

Q Was there not one occasion, Doctor, when you lived in 89th street, that I stopped overnight at your house? A You never was in 89th street overnight.

Q Sir? A Not in 89th street you wasn't overnight.

Q What was the street? A You were there at 89th street once, I think.

Q What was the street, Doctor? A That was uptown, when I

9927  
CASE 17255

first came down from Westchester.

Q That was after the sale? A That was after the sale.

Q You remember it was a very stormy night, do you not?

A A very stormy night, and you was complaining of being sick, and I insisted on your staying, because you wasn't feeling well.

Q And I slept with you that night? A Yes, you did.

Q And you provided the dinner and the breakfast the next morning? A Yes.

BY MR. WALSH:

Q And paid his carfare, didn't you? A Well, I treated him as I would treat any friend; that is what I did.

BY MR. PHILLIPS:

Q And that was long after the sale, wasn't it, Doctor? Long after the sale? A That was in December.

Q After the sale? A Well, that was in November;-- just about a month after the sale.

Q What house was that, Doctor? A That was up in One hundred and some odd street; I have forgotten; I think it was Twenty-second street. I know mother took that house; I wasn't attending to that at the time.

MR. PHILLIPS: I move to strike out the latter part of that answer.

CASE 255

R e - D i r e c t   E x a m i n a t i o n :

BY MR. WALSH:

Q When you entertained the defendant at your house, kept him there all night, provided him with a bed and gave him his meals, did you know that he had not deposited this money with the sheriff? A I did not. I was under the impression that it was there at the time, and even until the next April I was under that impression, until Mr. Decker found it out--

Moved to strike out.

A (continuing) And then was the time I went over to Garfield Place to see him.

THE COURT: Strike out the witness's statement that he was under the impression, etc.

BY MR. WALSH:

Q The fact was that you didn't know that he had not deposited the money with the sheriff's office? A I thought the money was still there.

Q Now, Dr. Pearson, when he came back with that paper, which he has designated as a receipt, what did he do with that paper? A Well, if you will allow me to show you, he just took it this way (indicating) and showed it to me, and says, "This is the receipt from the sheriff's office. Now, I will put that right in with my papers." And I didn't get

CASE 255

it even fully in my hands. He kept his hand on it that way; and we was all in a hurry, you know, and we was going to come out, and he took it this way and folded it up and put it in his pocket, and he said, "I will put it with the other papers."

Q And you never saw it afterwards? A I never saw it afterwards.

Q Has this man ever returned one cent to you? A Not one cent.

R e - C r o s s - E x a m i n a t i o n :

BY MR. PHILLIPS:

Q Doctor, at the time referred to by Mr. Walsh, that you entertained me at your house, in New York, you did know that your property had been sold, and was out of your possession, didn't you? A I knew it only too well.

Q You knew that. Now, at the time I showed you this receipt, I-- A Held it out, that way.

Q Held it up before you, didn't I? A Yes, but you kept hold of it.

Q Now, do you remember the name signed to that receipt?

A I couldn't catch the name. You just told me that was a receipt for money.

Q Just describe what that receipt looked like. A It looked like any other receipt. I saw "Received payment" on it,

CASE #255

or something like that, or I took your word for it.

Q Describe the character of that receipt, what it looked like. What kind of paper was it on? A I couldn't tell you whether it was linen paper or common paper.

Q I am not asking you that, doctor, and you know it. A You did; you asked me what kind of paper.

Q Was it official note paper, or was it not? Was there any heading on it, or— A It was a sheriff's blank, like another one I have got in there.

Q Was it an official paper, with the sheriff's official heading on it? A I am not acquainted with—

Q I am asking you, doctor, what was on it then. Tell me.

A I couldn't tell you the wording that was on it, but it was like one that I have in my possession at present.

MR. PHILLIPS: I move to strike that out, as not responsive.

Q Where is the one you have? A Very similar.

Q Where is it? Let me look at it. A Looked to me something like that (showing).

Q Like that, with the words "Sheriff's Office" on it? A It looked to me something like that.

MR. WALSH: Now, one moment.

THE WITNESS: It was done so quick, Mr. Walsh.

BY MR. WALSH:

CASE 255



Q I am not asking you that, doctor. A It had a heading of some kind.

Q It was done so quickly you didn't see it? A It was done so quickly— he said he had been to the sheriff's office, and I took his word for it.

BY MR. PHILLIPS:

Q You remember testifying on the last trial of this case that that receipt was on the official paper of the sheriff's office?

MR. WALSH: That is what he thinks now.

A I think it was.

Objected to, and moved to strike out.

Q And did you see the name signed to that receipt?

Objected to.

THE COURT: It is opening up new matter. Objection sustained.

Exception.

BY MR. PHILLIPS:

Q Didn't you testify that you saw the name on that receipt, and it was Ferguson? A I don't remember saying that; no.

Q You don't? Did you not testify that that receipt contained the words that the money was to be returned on demand?

Objected to. Objection sustained.

Exception.

CASE 72255

THE COURT: It has not been brought out on the re-direct. I am going to limit you, Mr. Phillips.

BY MR. WALSH:

Q I want to ask you a question. You spoke about a check. Where is that check?

Objected to.

Q (continuing) Did you get that check from this defendant?

A I did.

Objected to.

MR. WALSH: I offer the check for identification just at this point.

Check marked for identification "Defendant's exhibit 2."

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

MR. WALSH: The County Clerk has been subpoenaed to produce a bill of costs in the action of Henry Geburre against John C. Pearson.

D i r e c t   E x a m i n a t i o n :

BY MR. WALSH:

Q You are from the County Clerk's office, are you? A Yes, sir.

Q Employed there? A Yes, sir.

CASE 77-255

Q And have produced these records, original records from the records of said office of this country? A Yes, sir.

MR. WALSH: I offer the records in evidence.

Objected to. Objection overruled.

Exception.

Records admitted and marked People's exhibits 3, 4, 5, 6 and 7.

THE COURT: You had better put on the record now the date of the entry of the judgment, the amount and the other details.

MR. WALSH: First, a notice of lien, filed by Henry Geburre, dated February 26, 1896, on property mentioned in the advertisement already in evidence.

MR. PHILLIPS: I object to it.

MR. WALSH: For the information of the jury, and also for the record, to show what papers are in evidence.

Objected to. Objection overruled.

Exception.

MR. WALSH: The judgment role, containing the judgment and bill of costs.

MR. PHILLIPS: I ask that he state the date of the judgment and bill of costs and the amount.

THE COURT: Yes.

CASE 17255

MR. WALSH: Certainly. The judgment is dated the 28th of September, 1896, adjudging that the plaintiff, Henry Ceburre, acquired a valid lien on the property described in the complaint herein, for the sum of \$202.73, with interest from the 26th day of February, 1896, and \$209 costs and disbursements, making, in all, \$417.53, with interest thereon from the 28th day of July, 1896; \$417, with interest-- your Honor will remember the evidence. There was \$100 paid on account.

MR. PHILLIPS: I object, as arguing.

MR. WALSH (continuing): (Reading) "It is adjudged that all right, title and interest which the defendant, John C. Pearson, had in and to the premises described in the complaint herein, and herein-after particularly described, at the time of the filing of plaintiff's lien described in the complaint herein, be sold at public auction in the City of New York by or under the direction of Milo J. White, of the City of New York, who is hereby appointed referee for that purpose; that out of the proceeds of said sale"-- this whole amount, with interest added, your Honor-- "after deducting his fees and expenses therefor, the said referee

CASE 255

pay to the plaintiff or his attorney \$209.75, and that he further pay"—

MR. PHILLIPS: Excuse me, Mr. Walsh. Why don't you read, "with the costs, taxed, as aforesaid"?

MR. WALSH: "The costs, taxed, as aforesaid, and allowance hereby adjudged said plaintiff, with interest thereon from this day; and that he further pay to the plaintiff or his attorney \$207.78, the amount of claim on the lien, and interest reported due, as aforesaid."

THE COURT: Let me have those amounts again.

MR. WALSH: The amount was \$209.75 to the plaintiff's attorney, and that he further pay to plaintiff's attorney \$207.78, the amount of claim and interest reported due, as aforesaid. \$209 are the costs, your Honor.

Now, let us have this clearly: "That out of the proceeds of said sale, after deducting his fees and expenses therefor, the said referee pay to the plaintiff or his attorney \$209.75, the costs taxed as aforesaid, etc., and allowance hereby adjudged said plaintiff, with interest thereon, from this date; and that he further pay to the plaintiff or

CASE 255



his attorney \$207.78, the amount of claim on the lien and interested reported due, as aforesaid."

MR. PHILLIPS: Read the rest of it, Mr. District Attorney.

MR. WALSH: "And interest reported due, as aforesaid, and with interest thereon from the date of interest report, or so much thereof as the purchase money of said premises may pay of the same, and take receipts thereof, and file them with his report."

THE COURT: What was done under that judgment?

MR. WALSH: The referee is here to show that.

THE COURT: Is not his report to be attached to that judgment?

MR. WALSH: It is, but he is here, too.

BY MR. PHILLIPS:

Q Mr. County Clerk, were you served with a subpoena this morning to produce here a case on appeal, as duly filed in your office, Henry Ceburre against John C. Pearson, on or about the 6th day of January, 1898? A The papers were served-- the subpoena was served on the County Clerk, and I was sent out with the papers taken from the file of the County Clerk's office.

Q In this case on appeal? A I don't know what that subpoena called for-- it called for four papers.

CASE 77255

Q Were you served with a notice to produce any other papers than these? A No, sir; those four papers.

Q But, then, you have not produced this-- A No, sir.

Q Have you searched for it in your office?

THE COURT: Question excluded.

BY THE COURT:

Q Have you any knowledge of any subpoena? A Wasn't subpoenaed.

MR. PHILLIPS: I understood the witness stated he was subpoenaed to produce this case on appeal.

THE COURT: Those four papers, he says.

BY MR. PHILLIPS:

Q Wasn't a subpoena served on you this morning? A That is the subpoena served.

Q I mean another one, a small, green one. A No, sir. Those are the only ones-- those two.

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M I L O J . W H I T E , a witness called on behalf of the People, being duly sworn, testified as follows:

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

BY MR. WALSH:

Q Mr. White, you are an attorney and counsellor at law?

A Yes, sir.

Q And appointed referee in this action of Ceburre against

CASE 77-255

Pearson? A I was.

Q Did you sell this property of Dr. Pearson's? A I did.

Q When did you sell that property? A I think it was the 9th day of November, 1896.

Q Was it advertised for sale for the 4th of November, 1896?

A Yes, sir.

Q And postponed from that date until the 9th? A Until the 9th.

Q And was finally sold by you on the 9th? A On the 9th it was sold.

MR. PHILLIPS: I object to the District Attorney leading the witness.

MR. WALSH: Well, it is a matter of record already, your Honor.

THE COURT: Yes, you can call his attention to matters of record.

BY MR. WALSH:

Q Is this the report of the sale you filed (handing original record produced by the County Clerk)?

Objected to.

A Yes, sir; that is my original report of the sale.

Q The facts stated in the said record are true, to your own knowledge? A They are correct, absolutely.

MR. WALSH: (Reading) The referee's report of

CASE 255

sale is dated November 16, 1896, signed by Milo J. White, referee:

"Statement.

"Sept. 28, 1896. Amount due on judgment, \$417.53

"Nov. 10, 1896. Interest to time of

" closing sale, 2.75

" Total, \$420.28

"Amount paid plaintiff's attorney by de-

" fendant Pearson, 300.

"Amount due plaintiff at time of closing

" sale, \$120.28"

THE WITNESS: That was right.

MR. WALSH (continuing):

"Amount of purchase money, \$540.

"Referee's fees and expenses, \$106.35

"Balance of plaintiff's costs and

" allowances, 120.28

" Total, \$226.63

"Leaving a surplus of \$313.37."

THE WITNESS: That is right.

BY MR. WALSH:

Q So that--

Objected to.

Q I have the right to ask a question. What did you do with

CASE # 255

that surplus? A I deposited that in the office of the City Chamberlain on the 17th of November.

Q This is a receipt from the City Chamberlain for the surplus (showing)? A This is the receipt given to be November 17th, 1896, for the surplus money deposited in his office.

Q That was three hundred and thirteen dollars and-- A And thirty-seven cents.

Q Now, the total amount you received was \$540? A \$540, the amount bid at the sale.

THE COURT: Does it show there, Mr. Walsh, when the sale actually took place?

MR. WALSH: The referee has testified, on the 9th. It shows, I think, here, on the 9th.

(After examining) Yes, it shows, first paragraph, that the lands and premises were sold on the 9th day of November, 1896.

THE COURT: Now, is there any question about the premises having been sold there being the premises described by Dr. Pearson and occupied by him; any question about that?

MR. WALSH: None in the world; there can't be.

BY THE COURT:

Q You know where Dr. Pearson lived, do you not? A I never

CASE 77255



saw the premises.

Q Well, these are the premises sold under the Ceburre against Pearson judgment? A Those were the premises sold under the judgment, the premises that Dr. Pearson was attending the trial before me in relation to.

Q The foreclosure of a mechanic's lien. You were the referee in that case? A I was the referee, to hear, try and determine the issues. The case was fully tried out. I rendered a judgment in favor of the complainant, Mr. Ceburre, and Dr. Pearson was at the different sessions of the trial before me, with his attorney, Mr. Hunt.

C r o s s - E x a m i n a t i o n :

BY MR. PHILLIPS:

Q You decided that case against Dr. Pearson? A Yes, sir.

Q Mr. White, do you remember when you were informed that the sum of \$200 had been paid to Mr. Hunt, Dr. Pearson's attorney, on this judgment? A I don't remember the date.

Q Was it not on the very morning of the sale that you received that information? A I think, prior to the time of the sale.

Q So, it was on a Monday, was it not? A I couldn't tell you the day of the week. I could tell you the day from the report.

Q Who gave you that information-- Mr. Gorham? A I think,

CASE # 255

Mr. Gorham.

Q Mr. White, did you ever state to Dr. Pearson that he had been shamefully treated by Mr. Hunt, and his case not half tried? A I don't think I ever made that statement in relation to Mr. Hunt. The lien was reduced from \$700, you know. I think his case was pretty well tried.

Q Have you any recollection of my ever stating to you that I had deposited money with the sheriff to pay this judgment?

THE COURT: Oh, no; this is not right.

BY MR. PHILLIPS:

Q Did I ever state to you—

THE COURT: This is not right. You cannot make testimony in this way.

BY MR. PHILLIPS:

Q Were you present at the last trial of this case, Mr. White?

A I was present two or three days, I think, while waiting for the case to come on, and part of the time during the trial.

Q Did you hear Dr. Pearson state that I had stated to you, at the office of Mr. Yoran, that I had deposited money with the sheriff to pay this judgment?

THE COURT: What do you mean by Dr. Pearson's stating to him that "I had said"—on the trial? Do you mean, to this witness, Mr. White, or Dr.

CASE 77255

Pearson said that on the trial, as a witness?

MR. PHILLIPS: Yes, sir; on the trial.

Question excluded. Exception.

BY MR. PHILLIPS:

Q Did I ever state to you, in the presence of Dr. Pearson, that I had deposited \$337 with the sheriff to pay this judgment?

Objected to. Objection sustained.

Exception.

THE COURT: I do not remember that you asked Dr. Pearson that question, if you had ever made a statement in Mr. White's presence.

MR. WALSH: Well, if the Court please, I will withdraw my objection.

THE COURT: Then, the witness may answer.

A The only way that I can answer that question, your Honor, is this: There was some conversation at the time the adjournment of the sale was requested, on the 4th of November, 1896, in the auctioneer's office, and someone remarked, as I recall it, that this amount of money had been deposited in the sheriff's office to stay this sale. Now, my best recollection is, that Mr. Phillips made the statement, because he assumed to do the talking for Dr. Pearson.

BY THE COURT:

CASE #255

Q The defendant in this action? A The defedand in this action. That is my best recollection. I may be in error about that, but that is my recollection of the transaction.

BY MR. PHILLIPS:

Q Don't you remember that the first you ever heard of that was when the affidavit in this case on appeal was served upon you as a party? A There have never been any papers in this case served upon me.

Q Well, when you first saw this case on appeal of Ceburre against Pearson?

THE COURT: Is this another matter?

MR. PHILLIPS: This same mechanic's lien case.

THE WITNESS: None of them has ever come to my knowledge.

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

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

BY MR. WALSH:

Q Mr. Ferguson, where do you live? A 161 West 63d street.

Q And what is your business, Mr. Ferguson? A I am connected with the sheriff's office.

Q In what capacity? A As an assistant, sometimes, to a deputy. At the present time I am not connected officially

100-72255

there.

Q You are not connected officially there, but you aid the deputy sometimes? A I aid the deputy sometimes.

Q In 1896, did you bear the same relation to the sheriff's office that you do now? A Yes, sir; at that time, I did.

Q Did you see the defendant, in the month of October, the latter part of October, 1896? A Yes, sir.

Q Come into the sheriff's office? A Yes, sir.

Q Did he hand you any money? A Yes, sir.

Q State the amount, please. A ~~Three hundred and thirty-~~  
~~six~~ dollars and some cents.

Q Three hundred and what? A Thirty-six dollars and some cents, I think.

Q Are you sure of the amount? A I think that is about the amount.

Q Could it have been \$337? A Well, it might have been \$337.

Q And some cents? A Yes, and some cents.

Q What did he say he wanted you to do with the money? A He wanted me to hold it a few days, and then he would call and get it.

Q Did he afterwards come and get it? A Yes, sir.

Q Took it away? A Yes, sir.

Q You never saw it afterwards? A No, sir.

Q You didn't take that money officially, did you? A No,

CASE # 255



sir.

Q He didn't ask you to take it to prevent the sale of any property, did he? A No, sir.

BY THE COURT:

Q Did you know the defendant before that, Mr. Ferguson?

A This gentleman?

Q Mr. Phillips. A Yes, sir.

Q Can you tell us whether or not he knew what your relation with the sheriff's office was? A He did, at that time.

Q Did he know that you were not deputy sheriff? A He knew that I was not a deputy sheriff.

Q Or that you were not officially connected with the sheriff's office? A Yes, sir; he knew that.

BY MR. WALSH:

Q You gave him a receipt, didn't you? A Yes, sir.

Q He brought back that receipt, did he? A Yes, sir.

Q Have you got that receipt? A I have not.

Q It is lost, eh? Well, I left it with the clerk at that time.

Q You don't know what became of it? A No, I do not.

BY THE COURT:

Q One more question. How long did you have possession of that \$337, Mr. Ferguson? A It might have been a week.

Q Now, did you keep it in your personal possession? A I

CASE #255

kept it in my personal possession.

Q So that the sheriff had no possession of it, and nothing to do with it? A Yes, sir; the sheriff had nothing to do with it.

Q Did you ever call to the sheriff's attention the fact that you had this money? A I did not.

Q Or anyone officially connected with his office? A I did not.

Cross-Examination:

BY MR. PHILLIPS:

Q Mr. Ferguson, when I called on you, was there not a gentleman by the name of Mr. Ellis with me? A I believe there was.

Q And did he overhear the entire conversation between us, and take part in it?

Objected to.

Q Well, did Mr. Ellis take part in this conversation that I had with you?

MR. WALSH: No objection to that.

A I don't remember that he said much. I don't think he did say very much.

BY MR. PHILLIPS:

Q He was present, standing by us? A He was present, yes.

Q Now, is this not the fact; that you asked me whether this

9211  
CASE 77255

money was to be deposited with the sheriff? A I did.

Q And that I said no, the sheriff had nothing to do with this judgment; it was a mechanic's lien judgment, and not in the sheriff's office? A I think you did.

Q And that you then asked me whether this money was to pay a judgment, and I said, "No; that is exactly what we do not want"? A Yes; I think you did.

Q And that I stated that I wished to have you, if you would, act as a witness in a damage suit I was going to bring for Dr. Pearson, that upon this day I had so much money in my possession? A Well, I hardly think—I don't remember about the damage suit particularly. I think you said something about a damage suit, but for my being a witness, I doubt my saying that I would be a witness in any case like that.

Q Didn't I say to you, Mr. Ferguson— A (continuing) because I don't—

Q Didn't I say to you, Mr. Ferguson, that that was the only object; that it was not officially for the sheriff, and not to pay a judgment? A Well, you told me it was not to pay a judgment. That is settled.

Q Now— A I asked you particularly if there was any execution against these men at the time.

Q And I told you no, not in the sheriff's office, did I not?

CASE 77255

BY THE COURT:

Q (interposing) What did the defendant say to that? A I asked him particularly if there was any execution on that, because I wouldn't touch the money if there was.

Q And what did he say? A He says, no, there was not.

BY MR. PHILLIPS:

Q Now, Mr. Ferguson, you gave me a receipt for that money, did you not? A I did.

Q Was that on official paper of the sheriff, or any official insignia about it?

Objected to. Objection sustained.

Exception.

Q Did not that receipt contain a statement that the money was to be returned to me upon demand? A Yes.

Q Did you not— were you not, on the last trial of this case, asked this question: "Q Did I not say this to you; that we anticipated bringing a damage suit, and I wanted, if necessary to have you as a witness that I had that amount of money in my possession that day? A I guess you did.

Q I said that? A Yes, sir." Is that correct?

MR. WALSH: Isn't this an improper way to get testimony before the jury?

THE COURT: Of course, it is improper.

CASE #255

BY MR. PHILLIPS:

Q Well, Mr. Ferguson, answer that question. Do you remember testifying that way? A Perhaps I may. I can't remember exactly. I may have done so.

Q That was a fact, was it not? A It may have been, but I couldn't say positively. I can't remember just what I testified on the last trial.

Q But you understood distinctly that this money was not for the sheriff, and not to pay a judgment?

THE COURT: That has been testified to already.

BY THE COURT:

Q You say you had the money about a week in your possession?

A I think so.

Q Now, who received that money from you? A Mr. Phillips.

Q Do you remember what he said when he called upon you for that money? A Simply called in and asked me for the money, and I handed it over to him, and he handed me back a receipt.

Q Did he say anything at all? A No; I don't remember that he did.

BY MR. PHILLIPS:

Q Mr. Ferguson, you have known me for a number of years, have you not? A Yes, sir.

Q As a member of the bar? A Yes, sir.

CASE 77255



Q Do you know my general reputation?

THE COURT: Well, that is not laying a proper foundation.

MR. WALSH: I don't object.

BY THE COURT:

Q Do you know other people who know Mr. Phillips? A No, I do not. I know some, but very few.

MR. WALSH: I hope your Honor will permit this.

BY THE COURT:

Q Well, do you know his general reputation for honesty, in the profession, for fair dealing? A All the dealings he ever had with me were honest.

Q Do you know the general reputation which he bears?

A Well, if your Honor please, I have not been acquainted with the man for the last ten years; haven't seen him. He has been out of the city. But before that he was always a reputable man.

BY MR. PHILLIPS:

Q So far as you know, my reputation was always good?

Question excluded. Exception.

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

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

CASE # 255

BY MR. WALSH:

Q Mrs. Roe, where do you live? A 437 West 22d-street.

Q You know the defendant at the bar, Waldorf H. Phillips?

A Yes, sir.

Q When did you first see him? A In the fall of 87.

Q 97, you mean? A 97, yes.

Q Now, Mrs. Roe, you called at his office on Dr. Pearson's business, did you? A Yes, I called there, with Dr. Pearson, first.

Q With Dr. Pearson first? A Dr. Pearson first.

Q Did you have any conversation with the defendant? A Yes, sir.

Q Well, tell what you said to him, and what he said to you.

A I went over to get some papers. I went with the doctor, and he said he didn't have the papers.

Q Who said that? The defendant? A The defendant.

Q Just mention the defendant when you mean him. A The defendant said he didn't have the papers, but requested me to come over alone. He said that he wanted to see me, and then he would have the papers. And when I went over, he started right in about the doctor. He said that he never intended to do the doctor any wrong, but when the doctor gave him this money to cancel this judgment, and to settle up this litigation, it was on Saturday, and that the next

CASE #255

day being Sunday, he was afraid to keep it in his possession, as he was in the habit of going off on a little recreation. He said he would confess to going off on a little racket once in a while, and he said, to guard against that, he went over and deposited the money in the sheriff's office until such times as he could make arrangements to pay-- to cancel this judgment-- meet the other parties, Mr. White and some of the other people-- and he said, a few days after he wanted to take the money out for that purpose, but something occurred that he had to go out of town, and that he didn't want to take the money with him. He said he wouldn't trust it with himself, so he put it in the hands of a Mr. Fromme. He said, after he came back, that he had made arrangements, or was going to make arrangements, to cancel this judgment, and went up to the doctor's office, and when he asked Mr. Fromme for the money, he refused to give it to him. He said that the defendant here owed him, and he kept the money, and he said that he had started suit for the recovery of this money, and that when he got it he would pay it back to Dr. Pearson.

I said to him then, "Well," I says, "if that was so, why didn't you go to the referee and ask him to adjourn the sale?" I think I said "Mr. White," because the name "White" had been mentioned, and he said that White was as bad as the

CASE #255

rest of them, and that he couldn't expect any favor there. And I said, "Well, if you had gone before any court and laid those facts before it, surely the court would have given you some relief;" and I said, "If it didn't, why didn't you go to the doctor and give the doctor a chance to save his place," I said, "before he was turned out on the street?" "Well," he says, "there is no use talking on those things now," he says. "It is done, and I am sorry for it," he says. "I am sorry for the doctor," he says. "I am willing to do anything I can to help the doctor. If he will consent not to commence any proceedings against me," he says, "I will commence suit," he says. "I can get the doctor's property back, or double the value of it, and," he said, "<sup>an</sup> financially, the doctor would be better off than before."

Cross - Examination:

BY MR. PHILLIPS:

Q Mrs. Roe, you were brought to my office by Dr. Pearson, were you not? A Yes.

Q Do you remember under what name he introduced you to me?

A Roe.

Q Roe. Are you engaged in any business, Mrs. Roe? A No.

Q Are you in any way related to Dr. Pearson? A In no way at all.

CASE #255

Q Can you tell me the reason you take so much interest, or took so much interest, in Dr. Pearson's case? A Yes; because the doctor's mother was an old friend of mine, and she had been in the habit of always talking her troubles over to me, and I have been a patient of the doctor's.

Q Now, is it not a fact that you stated, when you and the doctor called at my office, that you had had large experience in mechanic's lien cases— A No; I didn't say anything of the kind.

Q Will you kindly allow me to finish the question?— and asked me if I would let you have the papers in the doctor's case to look over; that you would give me some suggestions?

A No; I never said anything of the kind. I wanted to get the doctor's papers; not your papers; the doctor's papers.

Q Just answer my questions, please, Mrs. Roe. Did I not say to you that I would let you have the papers, and that I was willing to take suggestions from anyone? A No.

Q Didn't? A You said you was willing to help the doctor all you could, if he wouldn't prosecute you.

Q Did I ask you to have the doctor come over and sign a declaration in a suit for damages against— A Yes.

Q (continuing) Mr. White and others? A You wanted me to persuade the doctor to have the doctor consent for you to

CASE 77255



commence a suit.

Q Did I ask you to have the doctor come over and sign a declaration? A Yes.

Q In such a suit? A You said you would prepare such a paper.

Q This was in the fall of 1897? A Yes.

Q Do you know Dr. Pearson's signature when you see it?

A Well—

THE COURT: What is the use of asking this question? Dr. Pearson was on the stand.

BY MR. PHILLIPS:

Q Did you not state, at the last trial of this case, that I said Mr. Gorham, Mr. White and Mr. Hunt were all as guilty as myself? A Yes; you did say so.

Q And that I had— A (continuing) And that they ought all to offer to help you out of a scrape, if you got in one.

Q And that I had influence at the District Attorney's office; did you state that? A Yes, I said that.

BY THE COURT:

Q Is that the fact, madam? A Yes, that is what he said. He said he had sufficient influence to keep him from ever going to jail, if the doctor did proceed against him criminally.

BY MR. PHILLIPS:

CASE 77255

Q And you are sure of the words I used— I asked you to have the doctor come over to sign a declaration? A Yes; you said that.

Q Now, Mrs. Roe, I never had seen you before that, had I?

A With the doctor, once before.

Q Had I ever seen you, save on the occasion when you came with the doctor, and then when you came and I gave you those papers? A Twice; yes.

Q Those were the only times I ever had seen you? A That I know of.

Q And yet, you ask this Court and jury to believe that, you being a perfect stranger to me, I made the statement you have repeated to me? A And you even asked me to intercede for you.

Q How is that? A And you even asked me to intercede for you.

Q Did you testify to that upon the last trial— that I asked you to intercede for me? A Well, I might not, but that is what you did. Your conversation was in the way of a plea. You said you didn't want the doctor to prosecute you. Those were the words you used. You said you were willing to do anything you could.

Q I ask you if <sup>you</sup> said anything of that kind at the last trial of this case, about my asking you to intercede for me.

CASE 2255

BY THE COURT:

Q Did you make that statement at the last trial? A Yes, he did say that. I didn't state that, but he did say so.

BY MR. PHILLIPS:

Q Mrs. Roe, didn't you state to me that you had lost ~~this~~ your own property in a mechanic's lien case? A I didn't say anything of the kind about my property.

Q Never did? Did you state to me that you wanted these papers to give them to another lawyer for Mr. Pearson?

A He wanted to get the papers to give to Mr. Decker. That is what the doctor went there to get those papers for, to give to Mr. Decker, and I went there to get them for the Doctor to take to Mr. Decker. Decker was his lawyer at that time.

Q Did you state to me that you wanted me to give you those papers so that you could give them to another lawyer for Dr. Pearson? A No; I never made no statement at all.

Q Never made any such statement? A I went there to get them. You knew I was coming to get them, and you gave them to me.

MR. PHILLIPS: I will move to strike out the answer, as not responsive.

Motion denied. Exception.

BY MR. PHILLIPS:

CASE 77-255

Q Did you not testify, upon the last trial of this case, that you did make ~~that~~ that statement? A That I came there to give them to another lawyer?

Q Yes. A That is what I went there for, to get them for Dr. Pearson, to give them to his lawyer. I went there to get those for Mr. Pearson, to give them to his lawyer. That was the object.

BY THE COURT:

Q The question is, did you, in words, state, at the last trial of this case, that you went there, and that you stated to the defendant you wanted him to give you the papers to give to another lawyer. Did you so state at the last trial? A I don't think I said it in that way.

Q In those words? A Not in that way.

BY MR. PHILLIPS:

Q What did you state?

Question excluded. Exception.

Q Did you make any statement of that character?

THE COURT: No; that will not do.

Exception.

BY MR. PHILLIPS:

Q Did you state to me that Dr. Pearson had another attorney, and you wanted these papers to take to him? A The doctor told you that the day we were there.

CASE # 255

Q I am asking you--- A Well, there was something said to that effect the first time I was there. I don't recollect the second time; but I know that I wanted them---

Q You said something to that effect to me? A No; I don't think I did. I say, there may have been something of that kind said. What the papers was needed for was explained. You knew the doctor wanted those papers for another lawyer. You knew that.

Q I am asking you a question.

THE COURT: She has answered it.

BY MR. PHILLIPS:

Q Those papers were never returned to me by you, were they?

A They were not yours. We didn't get them to return. We got them to keep them, to give to another lawyer, to his own lawyer.

Q And they were never returned to me? A No.

BY THE COURT:

Q Do you know anything about them, whether or not they were returned? A Not to my knowledge, they were not returned.

BY MR. PHILLIPS:

Q Do you know on what day the doctor claims to have given me this \$337?

THE COURT: What does she know about that?

Question excluded.

11/6 255



Exception.

BY MR. PHILLIPS:

Q Did not the doctor inform you that he had given me this money on the 31st day of October, 1896, and that Mr. Ellis and myself went right over to the sheriff's office with it that day?

MR. WALSH: That is all in evidence.

THE COURT: That is all in evidence. Excluded.

Exception.

BY MR. PHILLIPS:

Q Now, Mrs. Roe, did Dr. Pearson ever say to you that he was depending upon Mr. Ellis' acting for him in this entire transaction? A Well, I don't know as he said it that way. I don't know.

Q How did he say it? A I think he said something, that Mr. Ellis went with him because he had been so terribly mixed up in this thing, so that he had altogether lost confidence in himself, and Mr. Ellis went over. But whether he went at the doctor's request or his own, I don't know, only what Ellis said. Ellis said he went because he wanted to see the money was there in the sheriff's office, because he said you would go off and drink it.

MR. PHILLIPS: I move to strike out the latter part of the answer.

CASE #255

Motion granted.

BY MR. PHILLIPS:

Q I want to know whether Dr. Pearson said to you that he was dependent upon Mr. Ellis in this transaction.

Objected to. Objection sustained.

Exception.

Q Did you testify, in the last trial of this case, that Dr. Pearson stated to you he was depending upon Mr. Ellis in this transaction, and in going to the sheriff's office.

Objected to. Objection sustained.

Exception.

Q You knew that I had been Dr. Pearson's attorney, did you not, and that I had these papers in my possession as his attorney? A I knew that he had employed you to pay that judgment. I did not know anything further.

MR. PHILLIPS: I ask the witness to answer the question.

THE COURT: She has answered.

BY MR. PHILLIPS:

Q Did you know that I had those papers in my possession as his attorney? A I didn't know until you gave them to me. He said you had some papers of his'n.

Q Did you say that you would look those papers over, and there might be something in them useful that you could learn?

92255

A No; I don't remember making any such remark in that way. I don't recollect making any such remark in that way. I didn't get them to look them over.

Q Mrs. Roe, on the last trial of this case, you were very much excited, were you not? A Excited? No, I wasn't very much excited.

Q Was it you who advised the doctor to get another attorney?

Objected to. Objection sustained.

Exception.

Q Do you know anything about this transaction, except what the doctor has told you?

Objected to.

A And what you said.

Q Now, is this not a statement of the facts? A Sir?

THE COURT: Put your question.

MR. PHILLIPS: I am going to.

Q Did you not promise to return those papers to me?

THE COURT: Well, suppose she did. What of it? The transaction occurred months after. We are not inquiring into your relations with Dr. Pearson at all, outside of this one transaction.

BY MR. PHILLIPS:

Q Have you spoken with the doctor of what your testimony should be here to-day? A No, sir, I have not. I talked with

CAS 77 255

him about general affairs, but not what I was going to testify.

Q Have you talked with his attorney, Mr. Decker? A About what I was going to say here to-day? No, I have not.

Q Have you had any conversation with Mr. Decker, the attorney of Dr. Pearson, or with Dr. Pearson, in regard to the testimony you gave on the last trial of this case?

Objected to. Overruled.

A I had several conversations with Mr. Decker, but not regarding your—

Q Regarding your testimony? A But after I got those papers, then I had some conversation with you.

BY THE COURT:

Q Regarding your testimony on the last trial? A No. I didn't mention anything regarding testimony. I had no conversation with Mr. Decker; that is, in regard to what I was testifying. I may have spoken something about the doctor's affairs, but not what I was to say here in court.

BY MR. PHILLIPS:

Q Have you spoken with Mr. Decker about Dr. Pearson since you were a witness at the last trial of this case, in regard to the testimony you then gave and what you would give now? A I don't think I spoke to Mr. Decker at all. I may have said "How do you do," or something, but I had no

CASE #255

conversation, and I have seen the doctor only here in court, and outside of it, since the trial. I didn't really know what his address was.

Q And have you had any conversation either with Mr. Decker or Dr. Pearson? A No, not since the last trial.

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

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

BY MR. WALSH:

Q Mr. Gorham, you are an attorney and counsellor at law, practicing in this State? A I am; yes, sir.

Q Whereabouts? Mount Vernon? A I am in New York at the present time.

Q Where is your office? A 21 Park Row.

Q You were attorney for the plaintiff in this action in the New York Supreme Court, Henry Geburre against John C. Pearson, to foreclose the mechanic's lien on Dr. Pearson's house, were you? A I was.

Q Did you ever receive a cent in payment on that judgment from the defendant at the bar? A I did not.

C r o s s - E x a m i n a t i o n :

BY MR. PHILLIPS:

Q Mr. Gorham, did Dr. Pearson and Mr. Ellis ever call at your

CASE 77255



office in regard to this Geburre judgment? A Yes, sir; they did.

Q Will you state what transpired, what Dr. Pearson said in regard to it?

Objected to. Objection sustained.

Exception.

Q Do you remember seeing Dr. Pearson at the Real Estate Exchange sales room on the 4th of November, 1896? A I did.

Q Did you, at that time, have any conversation with him in regard to this judgment and its payment? A Yes, sir; I did.

Q Will you kindly state? A I came into the sales room at just about twelve o'clock, as the sale was about to be announced, and I met Mr. White, the referee, and the plaintiff, together with Dr. Pearson, just coming out of the room.

BY THE COURT:

Q Dr. Pearson being the defendant in the action? A Yes, sir; and I asked them what was the trouble, and they said the sale had been adjourned.

BY MR. WALSH:

Q Who said that? A Mr. White said first that it had been adjourned. I then inquired how it happened to be adjourned, and what the purpose of it was, and, we four

talking together, it was said by either Dr. Pearson or the referee that the request for an adjournment had been made, and the judgment was to be settled. I then said that there were additional disbursements that would be incurred by reason of continuing the advertising, and asked how that was provided for. Dr. Pearson then said that he would come up to the office in Mount Vernon on the following Friday, which was the 6th of November, 1896, and that the whole thing would be settled up at that time.

BY MR. PHILLIPS:

Q Now, did you state to Dr. Pearson how much money would be necessary to settle up that claim and judgment? A Not on that occasion, no, sir.

Q Did you— had you seen the doctor shortly before that?

A I had.

Q At your office? A Yes, sir.

Q Did you state to him then—

MR. WALSH: Wait. Fix the time.

BY MR. WALSH:

Q When you saw him just before the 4th of November at his office, do you remember the date? A I remember within two days of it.

Q Well, within two days? A It was about the 26th of October.

CASE #255

BY MR. PHILLIPS:-

Q The 26th of October? A Yes, sir.

Q Now, then, did you state to the doctor on the 26th of October how much money would be required to pay this judgment and the accrued expenses? A Yes, sir; I did.

Q And how much did you tell him? A I told him the judgment was \$417, and the accrued expenses of the referee, for advertising, etc., was about \$100 more; that the entire judgment was about \$517, and that I had received from Mr. Hunt, the attorney, three or four days before \$100, and that the balance then due was \$417, or, in other words, the original judgment was due, in its entirety, then.

Q Now, Mr. Gorham, when did you receive the other payment of \$200 from Mr. Hunt? A On Saturday, November 7th.

Q And the sale was on Monday morning, the 9th? A The following Monday, yes, sir.

Q Do you remember about what time of the day on Saturday?

A It was in the afternoon; I don't remember the exact time; it was in the afternoon.

BY THE COURT:

Q What date, Mr. Gorham? A November 7th.

Q It was after the first adjournment? A Yes, sir.

MR. WALSH: And before the sale?

Q (continuing) And before the sale? The sale, I understand,

was on the 9th? A The sale was Monday, the 9th, and this was the previous Saturday.

BY MR. PHILLIPS:

Q Did you notify either Dr. Pearson or myself that this \$200 had been paid? A I never saw Dr. Pearson nor yourself for a year after that, and did not notify either one.

Q Now, when you saw Dr. Pearson at the Real Estate Exchange sales room on the 4th day of November, 1896, and he promised to come up to your office and pay that judgment, did he say anything in regard to having given me money to pay this judgment, or to deposit with the sheriff? A No, sir, he did not.

Q And was Mr. Oeburre present at the time of this conversation between you and Dr. Pearson on the 4th of November?

A He was, and Mr. White-- us four.

Q Now, you know Mr. Henry Wayne Ellis? You have met him?

A I have seen him on two or three occasions.

Q In company with Dr. Pearson? A Once in company with Dr. Pearson.

Q He came to your office with Dr. Pearson in regard to this case, did he not? A He came to my office. He was with him on the 26th of October, when this conversation about the amount due took place.

Q Now, did you have a conversation with Dr. Pearson in which

CASE #255

he told you that he had dropped Mr. Hunt, and he knew he would have to settle that judgment with you or the referee?

A Something to that effect was said on the 26th of October; yes, sir.

THE PEOPLE REST.

THE COURT: There is no question but what the money alleged to have been paid to the defendant was paid in the County of New York?

MR. WALSH: Paid at Reade street and Broadway.

THE COURT: City and County of New York? No question about that? That is understood?

MR. WALSH: Yes.

The Court admonished the jury, in accordance with Section 415 of the Code of Criminal Procedure.

Recess until 2.15 P.M.

AFTER RECESS

THE COURT (To Defendant:) Have you not a motion to make?

MR. PHILLIPS: Yes, sir.

THE COURT: Then make your motion. You want the District Attorney to elect which count in the

CASE 77255



indictment he will proceed on?

MR. PHILLIPS: Yes, sir.

THE COURT: Do you make that motion?

MR. PHILLIPS: Yes, sir.

THE COURT: I grant your motion.

MR. WALSH: I will proceed on the count charging misappropriation. That is the second count.

MR. PHILLIPS: I understand, then, they abandon the common law count.

THE COURT: Except in so far as concerns matters of description and dates, or any matter as contained in the first count which may be referred to in the second count. These are retained in the indictment for that purpose.

MR. WALSH: Yes, sir.

THE COURT: And for all other purposes, the District Attorney abandons the charge of grand larceny, as set forth in the first count of the indictment, known as the common law larceny charge, and relies upon the second count of the indictment, charging misappropriation.

MR. PHILLIPS: I make a formal motion to your Honor, which I presume your Honor will deny as a matter of course, to dismiss the indictment upon

CASE 77-255

the ground that the People have failed to prove a case.

Motion denied. Exception.

THE DEFENSE:

PETER P. McLAUGHLIN, a witness called in behalf of the defense, being duly sworn, testified as follows:

THE COURT: You move that the Court advise the jury to acquit, on the ground that the People have failed to make out a case? Do you make that motion?

MR. PHILLIPS: Yes, sir.

Motion denied. Exception.

MR. PHILLIPS: Is there any other motion I ought to make?

THE COURT: No; nothing else. I think that the motions I have suggested to you, Mr. Defendant, will protect your rights in every way.

MR. PHILLIPS: Thank you.

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

BY MR. PHILLIPS:

Q Mr. McLaughlin, what is your occupation, please? A Official stenographer of Part Three, Court of General Ses-

CASE #255

sions.

Q Of this Court? A Yes, sir.

Q Were you the stenographer who took the testimony upon the last trial of this case, and before his Honor, Judge Foster? A Yes, sir.

Q Will you look, please, at this (handing paper to witness) I hand you, and say whether that is a correct transcript from your minutes of the testimony given by the different witnesses upon that trial? A (after examining) Yes, sir; it is, except so far as any—

Q Except what, sir? A Any pencil interlineations there may be.

BY THE COURT:

Q Did you dictate all that, Mr. Stenographer, yourself?

A I did; yes, sir.

BY MR. PHILLIPS:

Q You took those notes in short-hand? A Yes, sir.

THE COURT: No, not those notes, but he took the testimony in stenographic notes, and from those stenographic notes he transcribed the typewritten statement which he has now in his hand.

BY THE COURT:

Q Is that not so? A Yes, sir.

BY MR. PHILLIPS:

95677 955

Q Is that the correct testimony given on that trial?

THE COURT: Well, it is a correct transcript of the testimony.

THE WITNESS: Yes; it is a correct transcript of the testimony.

MR. PHILLIPS: Yes, exactly. Then, I will offer this in evidence.

Objected to. Objection sustained.

Exception.

(No cross-examination.)

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J O H N F . G E R B R A C H , a witness for the People,  
being recalled by the defense, testified as follows:

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

BY MR. PHILLIPS:

Q You are the same gentleman who was here this morning, are you not? A Yes, sir.

Q You have been subpoenaed to produce the case on appeal of Ceburre against Pearson and others, as filed in the County Clerk's office? A Yes, sir.

Q Have you it with you, sir? A Yes, sir.

Q Is this it (handing paper to witness)? A That is the paper; yes, sir.

MR. PHILLIPS: I offer this in evidence.

7-255

MR. WALSH: Objected to, as a different matter entirely, and having no relation to the question at issue.

THE COURT: What is that paper?

MR. PHILLIPS: The part that I wish to offer in evidence is an affidavit of Dr. Pearson, pages 2 to 11, inclusive, contained in appeal, in a case in the Supreme Court of the County of New York, between Henry Geburre, plaintiff, against John C. Pearson (petitioner-appellant) and George Leier, defendants, and Matthew Smith (impleaded by petition respondent).

Paper admitted in evidence and marked,

"Defendant's exhibit A."

MR. PHILLIPS: Will your Honor allow me to read such parts as I wish to, and then the District Attorney can read such parts as he wishes to?

THE COURT: I think, when an instrument is to be read to the jury, it ought to be read in full, because it is not fair to the jury, and they cannot get a fair idea of the contents of a written instrument where one attorney reads one section and another attorney reads another section, because one part may be dependent upon another, and, in order

255



to understand the whole instrument, it should all be read.

MR. PHILLIPS (reading Defendant's exhibit A to the jury):

"Supreme Court,

"City and County of New York,

"Henry Ceburre, Plaintiff,

against

John C. Pearson and George Leier,  
Defendants.

:  
: Petition for or-  
: der to show cause.  
:  
: Read in support  
: of motion.  
:

"The petition of John C. Pearson respectfully shows to this Court:

"That your petitioner is, and has been for twelve years last past, a practicing physician in the City of New York, having been graduated at University of Vermont, Medical Dept., and during all the said period he has been, and is still, actively engaged in the practice of his profession.

"On or about the eleventh day of March, 1895, your petitioner purchased a plot of land in the Twenty-fourth Ward of the City of New York, in consideration of the sum of Seven hundred and fifty dollars, which price was under the fair and reasonable value thereof. Said plot of ground is situate

CASE #255

at the south-west corner of Washington avenue and West Farms Road, in the Said City of New York, and the lot is a gore two hundred and forty-seven and eight-tenths feet front by two hundred fifty-three and nineteen-hundredths feet in the rear, and fifty-three and four-tenths feet at the base, which said property is known on a map entitled "Map in Partition of the Real Estate of William Adeo, deceased, situate in the town of Westchester, N. Y. Surveyed and drawn by Rudolph Rosa, dated August 31st, 1877, and now on file in the office of the Register of Westchester County as and by the numbers 61, 62 and 63.

"In or about the year 1895, your petitioner contracted with the above-named Henry Ceburre to build a house and barn for the sum of Two thousand two hundred and seventy-five dollars. Thereafter the said Ceburre built said house and ~~bar~~ barn, and your petitioner expended in and about the building of the said house and barn, and for extra work and ~~for~~ extras connected therewith, the sum of One hundred dollars and over.

"On or about the 26th day of February, 1896, the said Ceburre filed a mechanic's lien against

CASE #255

said property for the sum of Nine hundred and twenty dollars, and thereafter and on or about the 28th day of February, 1896, the said Ceburre commenced an action to foreclose said lien, alleging in the complaint therein that there was due from your petitioner to the said Ceburre the sum of Nine hundred and twenty dollars, for and on account of the completion of said building contract and extra work.

"That thereafter your petitioner employed one David H. Hunt, an attorney-at-law, of 87 White Plains avenue, Williamsbridge, New York, to defend the said action, and said Hunt drew an answer for your petitioner in said action, alleging in detail that with the consent of the plaintiff the defendant had assumed debts for materials and labor which he had to pay out of the moneys which might be due under the contract to the said plaintiff; that he accepted orders for the payment of labor and material put into said buildings under said contract; that liens were filed against the said property for work done on account of the said plaintiff; and that there were other claims then due and owing, amounting in all to more than the amount claimed by the plaintiff. That all of said allegations are true.

CASE #255

"That thereafter and on April 11th, 1896, an order was made by the Hon. Frederick Smyth, referring the issue by consent of the attorneys who appeared in the action to one Milo J. White, Esq., Mount Vernon, N. Y.

"That on or about September 28th, 1896, the said Referee filed his report bearing date July 28th, 1896, by which he found that the sum of Two hundred two and 73/100 dollars, with interest from February 26th, 1896, was due to the plaintiff, and on the same day judgment of foreclosure and sale was made and entered in and by which it was adjudged that there was due the plaintiff, for principal and interest, as above stated, and for costs, the sum of Two hundred and nine and 75/100 dollars, making in all the sum of Four hundred seventeen and 53/100 dollars, and the said Milo J. White, Esq., was appointed referee to sell, all of which more fully appears by said papers on file in the office of the Clerk of this Court.

"By, at or about this time, your petitioner had paid to said Hunt, his attorney, the sum of Fifty dollars, and had received therefor a receipt in full of charges of said attorney to this

77255

deponent for professional services in said action rendered or to be rendered, which receipt is in the hands of one Waldorf H. Phillips, an attorney of this State whose connection with the matter is hereinafter set forth.

"On or about the 12th day of October, 1896, at the request of said Hunt, your petitioner gave to him a check for Four hundred dollars, of which the following is a copy:

'No.

New York, October 12, 1896.

The Bank of Westchester pay to the order of David H. Hunt, atty., Four hundred 00/100 Dollars. \$400.00/100.

J. C. Pearson, M.D.'

"On the back of which was the following endorsement: 'David H. Hunt, atty., For deposit David H. Hunt.'

"This check was endorsed by said Hunt, and the proceeds thereof received by him. Said Hunt told your petitioner that, for the said sum of Four hundred dollars, he could settle the judgment aforesaid, and it was for this purpose that your petitioner gave to said Hunt the said sum of Four

100-255



hundred dollars.

"Thereafter reports having come to the ears of your petitioner derogatory to said Hunt, he was fearful that his interests had not been properly represented, and having been informed that others had questioned the integrity and ability of said Hunt, and having had no previous experience in law, he consulted one Wayne Ellis, of Pelham Road, Westchester Vill/age, in the said City of New York, and thereafter and in or about the month of October, 1896, said Ellis went with your petitioner to see John M. Gorham at 14 East First street, in the Village of Mount Vernon, who was the attorney for the plaintiff in the above-entitled action, concerning the condition of said action, and to learn whether or not the said Hunt had settled the judgment in full. Said Gorham said he had a check of Hunt's for One hundred dollars on account of judgment, but that he had not yet used it, as he wanted the whole amount or nothing. Said Ellis told Gorham that your petitioner had given Hunt a check for Four hundred dollars, and Gorham said he wanted the whole of it. Gorham said Hunt was keeping back Sixty dollars for a judgment which one of his

CASE 77255

(Hunt's) clients by the name of Ferguson had against the plaintiff herein, and that was the cause of the hitch between them.

"Within a very short time after this interview your petitioner, with said Ellis, saw Hunt at his office; Ellis asked what was the matter between Hunt and petitioner in the settlement of the litigation. Hunt said he was keeping back the settlement because he wanted the plaintiff herein to pay a judgment which one of his clients, Ferguson by name, had against the plaintiff herein, and that Gorham, Ceburre's attorney, would not let their client pay anything thereon. Ellis then asked Hunt what this had to do with your petitioner's suit, and Hunt gave no satisfactory answer; but became angry and told us to mind our own business. Ellis asked Hunt for the building contract between your petitioner and the said Ceburre, and Hunt said he couldn't find it, though he made a pretense of looking for it. Hunt then told your petitioner and Ellis he knew how to look after the matter; that it was his business to do this, and not ours, and told your petitioner and Ellis to go off. Said Ellis then told your petitioner that he was in bad hands, and

9524  
PAGE 72555

introduced petitioner to one Waldorf H. Phillips, who had an office with Fromme Bros., corner of Broadway and Reade street. Said Phillips was at the time the attorney of said Ellis in some litigations which Ellis had in hand. Your petitioner stated his case to said Phillips, who informed petitioner that he thoroughly understood the matter, and that he would give it his immediate and successful attention, and told petitioner to give himself no more concern about it.

"Thereafter and on or about the 31st day of October, 1896, the said Ellis met your petitioner, and in the course of a conversation then had about this suit, petitioner told Ellis that he had a check for Three hundred and fifty dollars. Ellis reported to petitioner that Phillips was investigating the position of the litigation, the judgment and proposed sale thereunder, etc., and he, Ellis, advised your petitioner to cash the said check and hand the money to said Phillips to use to prevent a sale of the property, because with the One hundred dollars which the plaintiff's attorney admitted he had from your petitioner's attorney, the sum in question would be more than sufficient to pay the

CASE #255

judgment. Your petitioner and Ellis went to the Lincoln National Bank, where said check was made payable by the drawee, one G. B. W. Clocke, and drew the money from the bank, and went to the office of said Phillips with the cash. Petitioner and Ellis told Phillips of the money in Pearson's hands and the idea in drawing it, and Phillips said, "Good idea; I'll put this money in the Sheriff's hands at once," and said Phillips also told petitioner that by the payment of Three hundred thirty-seven and 73/100 dollars to the Sheriff of the City and County of New York, he would prevent the sale of the property and practically end the trouble. Your petitioner then handed the said Phillips the sum of Three hundred and forty dollars in cash, and said Phillips and Ellis left the office of said Phillips to go to the office of the Sheriff. Said Phillips and Ellis returned shortly thereafter, and Phillips showed Phillips a receipt purporting to be made by the Sheriff of the City and County of New York, or his deputy, for the sum of Three hundred thirty-seven and 73/100 dollars, and handed petitioner the sum of two and 27/100 dollars in cash, being the balance between the sum handed Phillips and the al-

CASE #255

141

leged deposit made by him. Said Phillips then told your petitioner not to worry any more about the matter, and to let it rest.

"Meanwhile an advertisement of the sale of the property under the judgment aforesaid was being published, in which November 4th, 1896, was named as the day when said property would be sold at the Exchange Salesroom, No. 111 Broadway, in the City of New York. The day named in said advertisement for the sale of said property came, and your petitioner, with said Ellis and Phillips, went to said salesroom to attend the sale, with an understanding with Phillips, and by his advice that said sale would be stopped. When petitioner, with the others, arrived at the stand of the auctioneer, said Phillips told petitioner that there was no use waiting, because it was necessary to have the sale posted on the desk of the auctioneer, and notice of sale was not so posted. Your petitioner insisted on Phillips waiting, and presently the plaintiff herein came into the room. Said Ceburre told petitioner and Ellis that he had gotten about Thirty dollars out of the whole matter, and, after some desultory talk, said Ellis, Phillips and petitioner

CASE # 255



went into the auctioneer's office near by, and there met the Referee. The Referee said to petitioner, "Doctor, your case was not half tried. You have been shamefully treated." While we were waiting, a telegram was received by said referee from said Hunt, the attorney of record for petitioner, which said, substantially, "Postpone sale. I have missed the train." At this same time, said Phillips told said Referee that he had deposited money in the Sheriff's to cover everything, and the Referee laughed at said statement. To this laughter said Phillips made no response, but an adjournment was agreed upon to November 9th, 1896, and Phillips made an appointment to meet the Referee at his office in Mount Vernon before the adjourned day to settle the matter. When the referee went away, said Phillips remarked, "I shan't keep that appointment; let them come to me." Petitioner replied, "I want this thing settled up, and no further bother." Phillips retorted, "Never mind that; I will attend to the matter. Don't worry."

"On the 8th day of November, 1896, your petitioner and his mother went to the house of said Phillips, and asked about the chances of the sale."

100-255  
CASE 77255

Phillips said, 'They can't sell it; don't worry. Let them sell it.' Petitioner said, 'If they do sell it, what then?' Phillips answered, 'Let them sell it; let them sell it.' On

"On the day of sale-- November 9th, 1896-- your petitioner went to the office of Phillips and waited for said Phillips from eleven to 12:15 o'clock, but Phillips did not come to his office. When petitioner went home in the afternoon, he was told by his mother that two men had been there and said the place had been sold. Petitioner went immediately to the house of said Ellis and reported to him what he had been told by his mother, and together they went to the house of Phillips. Phillips was not at home, and petitioner left a note informing his said attorney that his place had been sold, and asked what was to be done.

"On the next day said Phillips went to petitioner's house, and together they went to Ellis' house, and Phillips said, 'Stop worrying; I will make them pay more for it than you could have sold it for under any other circumstances. I will be responsible to you for the value of your property.' The said Phillips is financially worthless, as your

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petitioner has since discovered.

"During the times above mentioned petitioner received from said Sheriff's office a letter stating that the above-named Ferguson had a judgment against said Ceburre for sixty dollars, and that petitioner must hold out of any moneys due Ceburre under the above judgment the said sum, and pay the same to said Sheriff. Your petitioner showed this letter to his attorney, Hunt, who informed petitioner that he must not pay the sixty dollars to Ceburre, that said letter was an injunction restraining petitioner from paying it over, and that if he did pay the money under the judgment to said Ceburre without deducting the said sixty dollars, he would have to pay the last-mentioned sum over again.

"Your petitioner told Hunt he wanted to go direct to the plaintiff's attorney and settle the matter, and said Hunt told the petitioner not to do it, and if he did he, Hunt, would send petitioner a bill which would make him 'sweat.'

"On or about the 19th day of November, 1896, your petitioner was dispossessed from his property. From this time up to about two or three months ago he saw said Phillips, his attorney, repeatedly con-

ASE 72 255

cerning the whole matter, and said Phillips told petitioner at each interview that he was giving the matter proper and prompt attention, and told petitioner not to worry. This went on till about two or three months ago, petitioner consulted the firm of Miller, Decker & Miller, and stated his case to Jacob F. Miller, Esq., of said firm.

"Your petitioner has been informed by his said last-mentioned attorneys that after the statement of the case made by him to said last-named attorneys, and each of the members of said firm, that no one of the said firm believed he could be telling the whole truth concerning the whole matter, and that because thereof they made a full, careful and extended investigation of the matter in question, and the details connected therewith.

"Said Phillips at one time drew up some papers, which he informed petitioner was to start a suit for conspiracy against said Ceburre, Hunt and White and Gorham, and petitioner signed and swore to such papers, but nothing further was or has been done in said suit, to the best of your petitioner's knowledge, information and belief.

"When your petitioner went with his said coun-

555

sel, Charles A. Decker, and one Wayne Ellis, whose affidavit is made a part of the moving papers herein to the office of the Sheriff of the City and County of New York, to the desk of one A. E. Lux, a deputy in said Sheriff's office, and there heard said Ellis ask the man in charge of said desk concerning a deposit of Three hundred and thirty-seven dollars, or thereabouts, made by one Waldorf Phillips, an attorney at law of this State, in the action above-entitled. The man in charge of said desk replied that he knew that such deposit had been made by said Phillips with one Ferguson, who had no official connection with said office, but who was a 'hanger-on' of said deputy. That said Ferguson received the said sum from said Phillips. That on the following business day the said Phillips came back and received back the said money, handed over as aforesaid. The said man in charge of said deputy's desk further said to said Decker, Ellis and petitioner that he knew there was something crooked about the matter. That the money was never deposited officially in the Sheriff's office, but that the pretended deposit was merely a subterfuge. He referred us to said Ferguson at his office in the

CASE # 255



Gerken Building, 99 West Broadway, in said city.

"Your petitioner further states that there was no encumbrance upon his property, except the aforesaid lien filed by the plaintiff herein.

"Your petitioner further states that he has just learned that the above-described property was purchased from the above-named William P. Rooney by one Matthew Smith, of the City of New York, who lives at Tremont, and that the deed thereof was recorded on or about the 27th day of July, 1897.

Several months ago the said Smith was informed by your petitioner of his claim upon said property and the reasons therefor, and that on or about the last-mentioned time, as your petitioner is informed, and believes, one Michael M. Foster, an attorney at law, who has an office at No. 34 Park Row, advised the said Smith that he could not get a good title to the property in question without a quit-claim deed from your petitioner.

"Your petitioner further states that he is ready and willing, should a re-sale of the property be ordered by this Honorable Court, to bid upon said property a sum sufficient to pay the judgment of the plaintiff herein, with interest and costs ac-

77 255

crued to date, and will repay to said Rooney, as your petitioner is informed and believes is the owner and holder of said property, the amount bidden by the said Rooney, with interest thereon to the date of such order or re-sale, or such other relief to said Rooney or his said grantee as may be just and equitable. —

"Wherefore your petitioner prays that this Honorable Court shall make an order directing a re-sale of said premises and the whole thereof under the judgment aforesaid according to law, and for such other and further relief as may be just in the premises.

"J. C. Pearson,

"Petitioner."

"City and County of New York, ss.:"

THE COURT: The usual verification?

MR. PHILLIPS: The usual.

THE COURT: Then, it is not necessary to read it.

MR. PHILLIPS: Would your Honor allow me to offer one part of another affidavit?

THE COURT: No; no more. Is that all you want of this witness?

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149

MR. PHILLIPS: Yes, sir.

(No cross-examination.)

655

HENRY CEBURRE, called as a witness in behalf of the Defendant,  
being duly sworn, testified as follows:-

D i r e c t   E x a m i n a t i o n .

BY MR. PHILLIPS:

Q   Mr. Ceburre, please speak slowly and loudly enough for this  
last juror to hear you.   You were the complainant in the  
mechanic's lien action of Ceburre against Dr. Pearson?

A   Yes, sir.

Q   Were you not?   Did you see Dr. Pearson at the Real Estate  
Exchange Rooms, 111 Broadway, this city, on the 4th day of  
November, 1896?   A   Yes, sir.

Q   And your attorney was Mr. John H. Gorham, was he not?

A   Yes, sir.

Q   Did you hear a conversation between Dr. Pearson and Mr.  
Gorham at that time in regard to the payment of your judg-  
ment?   A   No, sir.

Q   Do you understand the question?   A   Yes, sir; I understand  
exactly, what he told me.

Q   Did you hear Dr. Pearson say to Mr. Gorham---

MR. WALSH:   Objected to.

THE COURT:   Finish the question.

BY MR. PHILLIPS:

Q   (continuing)--that he would come to Mr. Gorham's office on  
the 4 5th or 6th of November, and pay that judgment?

CASE # 255

Objected to. Objection overruled.

A Yes, sir; it was on a Friday.

Q Did Dr. Pearson at that time make any statement that he had given me any money to pay that judgment or to deposit in the sheriff's office?

MR. WALSH: Isn't that immaterial, your Honor?

THE COURT: It is immaterial.

BY MR. PHILLIPS:

Q Were you-- Did you ever heard Dr. Pearson state in your presence that he would not pay the referee's, auctioneer's or advertising fees and expenses? A No, sir.

Q Did you ever state that all you had received on account of your judgment was the sum of thirty dollars? A No, sir.

C r o s s E x a m i n a t i o n .

BY MR. WALSH:

Q Did you ever receive a dollar from Mr. Phillips? A No, sir.

BY THE COURT:

Q Or from anyone representing Mr. Phillips? Did you ever receive that money? A No, sir.

RENIE E. PHILLIPS, called as a witness in behalf of the Defendant being duly sworn, testified as follows:-

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

BY MR. PHILLIPS:

Q Please talk loud enough for the last juror to hear you.



You are my sister, are you not? A I am.

Q Where did we live in the month of November 1896? A 9 West 107th street.

Q This city? A This city, New York City.

Q Do you know Dr. John C. Pearson? A Very well.

Q Do you know Henry Wayne Ellis? A Very well.

Q In the month of November 1896 did you see Dr. Pearson at our apartment in 107th street? A I did.

Q On how many occasions about? A I could not begin to tell you how many occasions. He seemed actually to live at the house, and was there before breakfast, stayed to dinner.

Q Well, was it mostly every day during the latter part of October and early part of November? A Principally.

Q Do you mean from early in the morning, do I understand you? A Before breakfast some times.

BY THE COURT:

Q What year was this?

BY THE COURT:

Q 1896. Was it in 1896? A '96, yes, sir.

BY MR. PHILLIPS:

Q And did you hear him make any statements in regard to his trouble about his property in Westchester Village?

THE COURT: Answer yes or no.

A Yes, sir.

Now, Miss Phillips, will you kindly state to the jury in your own way what was the general substance, as far as you can remember?

MR. WALSH: I object, unless he fixes the time.

BY MR. PHILLIPS:

Q I will try and fix the time. We lived in 107th street during the fall of 1896-7, was it not? A We did.

Q And in the spring of 1897 we moved to 95 Garfield Place?

A We did.

Q Brooklyn. And did Dr. Pearson call at the 107th street apartment during the latter part of October 1896? A He did.

Q And during November? 1896, before and after the 9th of November? A He did.

Q And was he there almost every day during that time? A He was there every evening.

Q What time did he use to come? A Before breakfast and dinner time, and some times he would stop in the middle of the day.

THE COURT: Come down to the date. There is no use in wasting time in all these preliminaries. What day do you want to introduce the conversation?

BY MR. PHILLIPS:

Q Was Dr. Pearson there between the 31st day of October 1896 and the 4th day of November 1896? A He was.

CASE 77255

Q Now, state to the jury what you heard him say, if anything, in regard to his Westchester property?

THE COURT: Oh, no; that will not do. If you want to impeach the testimony of Dr. Pearson, you must direct the witness's attention to a particular declaration based on questions you have already asked Dr. Pearson.

BY MR. PHILLIPS:

Q Did Dr. Pearson at any time at No. 9 West 107th street make any statement complaining of my treatment of him?

THE COURT: That is not in contradiction.

BY MR. PHILLIPS:

Q State what Dr. Pearson said.

Question excluded. Exception.

Q State what Dr. Pearson said in regard to myself as his attorney and the sale of his property.

Question excluded. Exception.

Q Did Dr. Pearson at any time at No. 7 West 109th street make any statement in regard to a conspiracy having been formed against him to get his property, in regard to instructing me to bring a suit for damages? A Yes, sir, he did.

Q Now, what did he say? A He used to speak of his troubles very often at the house.

BY THE COURT:

Q You must confine yourself to the question presented.

Did he say anything about an action of conspiracy in which he authorized Mr. Phillips to appear as his attorney?

A He did speak of it often and often.

Q No; strike out the often and often. What did he say?

A He said there was a conspiracy formed against his property, and that they were financially good and he would make them pay for it. He talked of it continually.

THE COURT: Strike out all that the witness said. The jury will disregard it.

Q Now, madam, you are an intelligent lady. You say that you heard Dr. Pearson say something about a conspiracy formed against his property and authorizing or telling Mr. Phillips the defendant to bring an action for conspiracy. A—Yes, sir.

Q Just state what he said in relation to that subject.

A He said there was a conspiracy formed against his property, that they were financially good and he could make them pay for it, and he would let brother bring a suit against them.

THE COURT: The next question, Mr. Phillips.

BY MR. PHILLIPS:

Q Did he state he would not pay the sums then demanded but would let them sell the property and then sue them?

CASE #255

MR. WALSH: I object to that question as leading the witness and suggesting to her what she should say. Also, there is no foundation laid for it, at all.

Objection sustained. Exception.

BY MR. PHILLIPS:

Q Do you remember Dr. Pearson calling at our apartment No.

9 West 107th street--what was the number? A 9.

Q What was the number, 7, wasn't it? A No; 9.

Q --prior to the 31st day of October, 1896? A Yes.

Q Do you remember his taking me out of the house on several occasions prior to that date? A He did.

Q What did he say <sup>to</sup> you, where he was taking me, and for what purpose? A He said he was taking you up to Westchester and that he would take the best care of you, not to worry, because he knew we worried about you, being delicate, and that he would look after you, and that he was taking you up to look after you.

Q Prior to the 31st day of October upon any occasion when he called at the 107th street house, did he say anything about me bringing a suit for him against Mr. Gorham and other parties for a conspiracy? A He did.

Q Now, state to the jury and to the Court, as concisely as you can, as much in his words as you can, what words he said.



A He said there was a conspiracy formed against his property and that they were financially good, and he would make them pay for it, and that he would have you bring a damage suit against them.

Q Now, where did we live in the spring of 1897? A 95 Garfield Place, Brooklyn.

Q Do you remember Dr. Pearson calling there? A I do.

Q Have you heard Dr. Pearson testify on this stand? A I did.

Q When Dr. Pearson called at that house on the occasion referred to, was I or was I not at home? A You were not at home. You came in late and he stayed to dinner.

Q He stayed to dinner? A He stayed to dinner, and he asked my younger brother that he would like to locate near us, and if he could get a good--

THE COURT: Wait, wait; that will not do.

BY MR. PHILLIPS:

Q Did Dr. Pearson at that time make any remarks in regard to myself as his attorney? A Always spoke in the highest terms of you.

Q This particular time in Garfield Place?

THE COURT: This will not do. You must not pursue that line of examination.

BY MR. PHILLIPS:

Q Did Dr. Pearson at that time make any claim that I had mis-

appropriated money of his?

Objected to. Sustained. Exception.

Q Did Dr. Pearson at that time make any remark in regard to myself?

THE COURT: That will not do at all. Excluded.

BY MR. PHILLIPS:

Q Did-- Were you there during the whole time that Dr. Pearson was at the house? A I was.

Q Do you remember my coming in, my coming home? A Yes.

Q Was there any time while Dr. Pearson was at the house upon that occasion that I was alone with him? A No, sir.

Q You were present during the whole time? A I was present.

Q And your sisters and brothers? A My sisters and brothers.

Q And did you hear Dr. Pearson make any demand upon me for the return of any money whatever? A Never.

Q Did he upon that occasion make any statements in regard to a conspiracy having been formed against him?

Objected to. Objection sustained. Exception.

Q Did Dr. Pearson at that time, in the spring of 1897, at the Garfield Place house, say that he was entirely satisfied with everything I had done? A He did.

Q And he made--you being present at that entire interview, he made no demand or claim against me whatever?

THE COURT: She has already stated that.

BY MR. PHILLIPS:

Q Dr. Pearson has stated here he did not discover it until 1898. Where were we gathered in that house during the time Dr. Pearson was there, what part?

THE COURT: It is immaterial.

BY MR. PHILLIPS:

Q Well, you have seen Dr. Pearson on numerous occasions, have you not, at our residence? A I have.

Q Have you heard him say one single word against me? A Never.  
C r o s s E x a m i n a t i o n.

BY MR. WALSH:

Q You are the sister of the defendant? A I am.

Q You are very much interested in this case, are you not?  
A I most certainly am.

Q Are you married or single? A Single.

DAVID H. HUNT, called as a witness in behalf of the Defendant,  
being duly sworn, testified as follows:-

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

BY MR. PHILLIPS:

Q Mr. Hunt, what is your profession? A I am a lawyer.

Q Were you the attorney for Dr. Pearson in the case of Coburn against Pearson? A I was until you were substituted in my place.

Q Did you send a certified check for \$200. to Dr. Pearson on or

about the 5th of November, 1896?

THE COURT: That is admitted. There is no use going into it.

BY MR. OPHILLIPS:

Q And was that check returned to you? A All I know is the messenger brought it back. I was not there.

Q Refused to take it? Did you on that 7th of November 1896 pay that \$200. to Mr. Gorham? A I did to the plaintiff's attorney.

Q That was a Saturday? A I don't remember what day of the week it was.

Q A sale was advertised for Monday, the 9th, was it not, for the 9th? A I paid the money before the sale. I was no longer his attorney, and I had two hundred dollars of his money.

Q On a Saturday? Did you notify him that you had paid that money? A I did not.

C r o s s   E x a m i n a t i o n .

Q You paid \$100. before that time, didn't you, Mr. Hunt?

A I did, sir, yes, sir.

Q About what time? A I can't tell you now. You have the date there.

Q Well, was it before? A It was some time before that, however.

955

Q In October, wasn't it? A I think so, yes, Sir.

WALDORF H. PHILLIPS, the defendant, called as a witness in his own behalf, being duly sworn, testified as follows:

THE WITNESS: Shall I ask myself questions and answers?

THE COURT: Put your questions, as the District Attorney desires that method.

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

BY MR. PHILLIPS:

Q What is your profession? A I am an attorney and counsellor at law of the State of New York.

Q How long have you been a practicing attorney in this city?

A Since the year 1874. I was admitted by the Columbia College Law School in that year, and I also studied at the office of Luther R. Marsh of Marsh, Cole & Wallace, in this city.

Q Have you been continuously engaged in the practice of your profession since that time in the city of New York? A Yes, until I moved to Chicago in the winter of 1899, since which I have devoted myself to literature.

Q Do you know John C. Pearson and Henry Wayne Ellis? A I do.

Q When did you first meet Dr. John C. Pearson? A In the month of October, 1896, at my then office No. 281 Broadway, corner of Reade street. He was introduced to me by Mr.



Henry Wayne Ellis.

Q Had Mr. Ellis prior to that time been a client of yours?

A I had acted as his attorney and also as counsel for other attorneys employed by him.

Q What did Dr. Pearson state to you upon the occasion of his

introduction to you by Mr. Ellis? A He stated to me that he had been or was the owner of certain property at Westchester Village in the City of New York, and that that property was advertised for sale under a judgment of a mechanic's lien foreclosure suit brought against him by one Ceburre; that he had paid to an attorney named David H. Hunt of Williamsbridge four hundred dollars to satisfy that judgment, but that it had been agreed between Mr. Hunt and Mr. Gorham, the attorney for Ceburre, that there should be deducted from the amount of that judgment the sum of sixty dollars which a party by the name of Ferguson, who was a client of Hunt's, had against Ceburre.

That Mr. Gorham had consented that that deduction should be made and that it had been agreed that the advertising of the property should cease and that no further expenses should be incurred for referees, Auctioneers or any other fees.

That his property was advertised for sale, and he was surprised to find the advertising continued, and he want-

ed me to find out what was the matter and what Mr. Hunt had done with the money and how the case stood.

That Mr. Ellis was his personal friend and knew all about the business, and that Mr. Ellis would act with me and anything that Mr. Ellis did would be proper and just as he did it.

From that time almost--oh, and that he would pay me for my services. I told him that I would look into the matter, but that I was not a cheap lawyer. From that time almost every day either he or Mr. Ellis came to my house and took my whole time travelling between New York City and Westchester Village trying to find Mr. Hunt, and on several occasions I was obliged to stop at Mr. Ellis's house over night.

Finally, on one very stormy night Mr. Ellis and myself waited at the station at Williamsbridge from the last train to come up from New York, saw Mr. Hunt get off that train, and followed him up to his house, and Mr. Hunt denied Dr. Pearson's statements.

We returned--Mr. Ellis and myself--to Dr. Pearson's--to Mr. Ellis's house at Westchester Village, and the doctor gave me a foot bath, saying that as I was subject to rheumatism I might get an attack from being out in the storm.

The Doctor said that he would not pay under any cir-

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72255

cumstances the fees of the referee, fees of the auctioneer, or the additional expenses which they insisted he should pay in addition to the judgment from the time that this agreement had been made, and that he had abundant evidence that Mr. Hunt, Mr. Gorham, Mr. White and Mr. Ceburre were combining in a conspiracy which operated at Mt. Vernon and that vicinity, Mr. Ceburre being used as a tool to get possession of the property under a mechanic's lien for less than its value.

That they were perfectly responsible, that is, that Mr. White and Mr. Gorham were, and that if they insisted upon the payment of these additional fees he would let them sell his house, as he had had enough litigation and trouble up there and wanted to get away, and he would get more out of them by a damage suit than the property was worth.

I am not certain whether it was the 31st day of October that Dr. Pearson handed me, Mr. Ellis being with him, \$340. I had repeatedly asked Dr. Pearson for payment on account of my services, and he had promised to make the payment from day to day, but always said on account of the trouble he had had up there, and Mr. Hunt's having his money, he was short, but I did not get--

A couple of days or so prior to the time that he

CASE 22255

paid me this money, he said to me, "I am going to have a check within a day or two, and I will give it to you."

I had gone down to the Real Estate Exchange sales-rooms, at No. 111 Broadway on the 4th day of November, 1896, to make a protest against the sale of his property on the theory that whoever purchased the property on that day would have a notice that they were buying at their own risk; but not for any purpose of paying the judgment against him.

He came to my office with Mr. Ellis--I am not sure whether it was the 31st of October or not--and he said to me, "Here is this money; I have got it now. You do with it whatever you think best." He had said to me on--if it was the 31st, he said, "You take this money." I said, --and he said, "As soon as this sale takes place, I want you to bring a suit for damages against these people, Mr. Gorham and Mr. White, Mr. Ceburre and Mr. Hunt. Mr. Hunt and his father will be nominal defendants and will testify for us, but the judgment will not be enforced against them. I will give you a retainer of \$250. in that suit. You must pay all of the expenses, whatever they may be, in the litigation, applying the balance to our account as it stands, and the payment of the expenses, whatever they may be, which you have incurred, and when this litigation is finally fin-

CASE 2255

ished, I will adjust our accounts. "

I said, "Very well, Doctor, I am very glad you have got this money; I will do what I can for you. I will bring this suit if they sell this property, and if what you say is true and you will prove it, we will certainly recover heavy damages, more than the house is worth."

He then said to me, "Well, now, is there anything that may be--any question they may raise on this damage suit which will go against me?" I said to him, "Doctor, I was taught by professor Dwight and by Mr. Marsh always to look at the other man's side of the case first, to put myself in his position, and see what possible or probably arguments or objections he could raise; then to turn around and see what answer I could make to them, and then to put myself in my own client's place and look at his side of the case last."

"Now," I said, "Doctor, you refuse to pay these fees; that is a matter for yourself. If what you say is true and you can prove it, you will certainly get large damages. But they may claim that your statement that you would pay except for these fees is, to use a slang expression a mere bluff, and it would be just as well if we had some independent witness not connected with you or me or anybody interested in this case who would testify that I have this



amount of money. I am willing to use it in that way, Doctor, temporarily, and I will get it back within a few days as we have agreed."

"Well," he says, "whom could you get?" I says, "I know a gentleman by the name of Ferguson right across the street, who is a reputable man. I have known him for a good many years, and I think he would be willing to act as a witness if necessary for me. There are very few people who would like to go into any transaction which might involve them as appearing as a witness in a court afterwards."

"Well," he said, "you know best. If you can trust him why, do what you see fit." I said, "Doctor, it will be my risk and not yours, because if Mr. Ferguson keeps this money I will be a loser and not you."

"Well," he said, "do whatever you think proper," he said, "Mr. Ellis will go across with you so that you have a witness as to what the arrangement is. Mr. Ellis, as you know, is entirely familiar with the case and has been acting for me." I said, "Very well, I will take that risk and see if I can get Mr. Ferguson to act in this capacity."

Mr. Ellis and I went across to the sheriff's office, Dr. Pearson remaining in my office, and we saw Mr. Ferguson there. Mr. Ferguson said to me, "Is this money to be deposited with the sheriff." I said, "No, this is a mechan-

CASE #255

ic's lien foreclosure case, with which the sheriff has nothing whatever to do. Such cases never go into the sheriff's office."

He said, "Is this to pay a judgment?" I said, "No, that is just what it is not to do. All I want you to do is this--" Mr. Ellis was present and heard the whole conversation, acting for Dr. Pearson as well as myself, and took part in it-- "I want to put this money in your hands. I want you to give me a receipt to return it to me upon demand, and I want you to be able to testify in case I should call you hereafter in this damage case that you had that much money in your possession today, so that if it is claimed that we were simply making a bluff in our office, that you were there as an independent witness to say you had that much money; and then I want you to give it back to me."

He said, "Very well; I will do it to oblige you." And he gave me a receipt on a plain sheet of paper, without any printing upon it whatever, or anything whatever to indicate that it was a sheriff's receipt or of any official capacity, simply saying, "Received"-- I would state that when he returned the money I returned the receipt to him--he had received from me so much money to hold subject to being repaid to me upon demand, and signed by his own individual name, and not as sheriff or otherwise, he not being officially con-

nected with the sheriff's office.

I went back with Mr. Ellis to my office at 281 Broadway and Dr. Pearson was waiting there. I remember the day distinctly because there was a large parade going down Broadway, or, rather, coming up Broadway, I should say. Mr. Strong was running for Mayor. It was shortly before election, and it was the last large Republican parade that came up Broadway that Saturday.

BY MR. WALSH:

Q Mr. Strong the Mayor? A The late Mayor Strong, a very large parade. We had difficulty in getting across the street Dr. Pearson was there. He said, "Well, what have you done?" I said, "Doctor, Mr. Ferguson has consented to hold this money a few days for me. I have his receipt." He said, "Well, can you trust him?" I said, "Certainly; if I could not trust him I would not take the risk of giving him this money, which is my loss if I don't get it back, and not yours, because you won't have to pay me again."

"Well," he says, "you know best. Do just whatever you please. I don't expect you to call upon me for anything else. You must pay all of the expenses, whatever they may be and push this suit through and make these people sweat. They are good, and I am going to make them pay."

I said, "Very well Doctor." "Now," he said, "the

CASE 77255

sale is advertised for the 9th," and he said, "Shall I go there?" I said, "Doctor, if you refused to pay what they claim, there is no use of your going there. They will still sell your property. There is no use of any of us going there on the 9th. All you can do is if you have made up your mind to do this, to let them go ahead and after they have gone ahead we will bring this suit." He said, "Very  
"Very  
"Well, now let them do it, and I will show them." He is a very obstinate man when he gets his mind fixed."

CASE 77255

K-1

171

BY MR. WALSH:

Q Wait a moment, Mr. Phillips. Please don't characterize. You haven't asked yourself a question for the last fifteen minutes, but go ahead; make your statement. A It is difficult for me to do it, Mr. Walsh. I am stating the conversation.

Q Go ahead. A On the fourth of November, 1896, we attended at the Real Estate Exchange, 111 Broadway,-- Mr. Ellis, and Dr. Pearson and myself. While we were there, a telegram came from Mr. Hunt asking to have the sale postponed, as he had missed the train; and the sale was then adjourned to the ninth.

On the evening of the sixth, or morning of the seventh, I received this letter from Dr. Pearson;--

MR. WALSH: That is in evidence.

THE WITNESS: I am entirely familiar with Dr. Pearson's handwriting.

MR. WALSH: That is in evidence; it is admitted already, isn't it?

THE WITNESS: After the property was sold on the afternoon of the ninth, Dr. Pearson called at my then residence in 107th street, and said, "Now, the property is sold, we will go ahead with our suit, and we will make them sweat."

Mr. Ellis and myself looked up all the Rooneys there

CASE 255



were in the New York City Directory, a man by the name of Rooney having been the supposed purchaser at the sale. I went after some of them, and Mr. Ellis went after others; and Mr. Ellis came back to me, and reported that Rooney was a dummy, an irresponsible person not worth a dollar, who was used as a tool in purchasing the property in pursuance of this conspiracy.

BY MR. WALSH:

Q Now, one moment, right there. I move to strike out the evidence-- anything Mr. Ellis stated to this defendant.

THE COURT: Strike it out. The jury will disregard it.

MR. PHILLIPS: I stated, your Honor, that Dr. Pearson told me to go to him. Exception.

THE COURT: Go on.

THE WITNESS: On numerous occasions after that, both on the street and at my house, first in 107th street and later in the spring of 1897, at Garfield Place, Brooklyn, and at his own house, or rather apartments where he resided, I saw Dr. Pearson. Upon no occasion whatever did Dr. Pearson make any demand upon me for the return of one single dollar, or any claim whatever that I had misappropriated any of his money, or done anything whatever that was wrong. On the contrary, he always praised me for the way I had worked for

CASE #255

him, and he was always talking of our recovering damages in this conspiracy case. Never once--

THE COURT: Now, you have gone over that several times. Reiteration does not make it any stronger.

THE WITNESS: After the receipt by me of this letter from Dr. Pearson, dated November 6, 1896, he called upon me and repeated the contents, and wanted to know whether or not he should take this two hundred dollars back from Mr. Hunt; and I told him, "Certainly take it back. It won't hurt your case at all. If it is your money you have a right to it, and it won't hurt your damage case at all. You take it;" and so far as I ever knew, he had taken that money back. I never was informed to the contrary.

Dr. Pearson met me one day-- I was in company with Mr. Ellis--

BY THE COURT:

Q What time was this? A In the Spring of 1897, sir.; some four or five months after the sale; I think it was the fall of 1897; it was after he had commenced this proceeding through Mr. Decker.

Dr. Pearson had sent to me, and asked me to meet Mr. Decker; that he had engaged Mr. Decker, of the firm of Miller, Decker & Miller, to bring proceedings to set aside

CASE # 255

the sale of his property, and he asked me to meet Mr. Decker. He sent me on the eleventh of December, 1897, this letter-- I can't make out whether that was admitted in the last trial or this-- this letter which I identify as in his handwriting, and offer in evidence.

(The said paper is admitted in evidence, and marked, "Defendant's Exhibit No. 7.")

MR. PHILLIPS (Reading Defendant's Exhibit No. 7:)

"Saturday, December 11, 1897.

W. H. Phillips.

Mr. Decker would like to see you Monday next at four P.M. or later.

Respectfully,

J. C. Pearson."

THE WITNESS: I met Dr. Pearson on Park Row, opposite the post-office, by a hardware store, I think Patterson's it is called,--

THE COURT: You may omit that. Tell us what happened.

THE WITNESS: Dr. Pearson said that he didn't think Mr. Decker was conducting his matter properly, and asked me, wouldn't I interfere, and I said to him, "Doctor, I never interfere with any other attorney, and I am not going to."

He said, "I would not stand by and see another man give

CASE 72255

you poison." I said, "I don't see anybody giving you poison. Mr. Decker has his ideas, and I have mine. If when Mr. Decker is through and drops your case, you are not satisfied, you can come to me and I will do what I can for you."

Dr. Pearson sent for me to come to his house on the evening of the 22nd of March, 1897. He was sick in bed with the grip. He spoke to me, said he had been unwell, and spoke about the suit for damages for conspiracy against Messrs. Gornham, White and others; and I said to him, "Doctor, will you give me a memorandum of just what your actual cash outlays were in this mechanics' lien suit,; what you claim actually to have lost in cash. We have brought, or intend to bring, under our complaint, a suit for \$25,000, damages, but we always bring a damage suit for two or three times as much as we expect a jury to give us. Now, what was your actual cash outlay?"

He took a pencil and this slip of paper (indicating), all of which I identify as in his handwriting except the date at the bottom on this side, which is mine.

Q Well, go on. A And if you look over it carefully, you will see certain-- over a faded mark--

MR. WALSH: The date is yours; yes?

BY THE COURT:

Q When was this?

CASE #255

MR. WALSH: March 22, 1897, he says, according to his own dating.

BY MR. WALSH:

Q The date is yours, isn't it? A I marked it over the faded date. He put down on this-- these are all his figures-- and gave it to me, as representing his actual cash outlay or loss. I offer this in evidence.

(Paper admitted in evidence, and marked Defendant's Exhibit No. 8".)

THE WITNESS: These figures, as explained to me, are:

Cost of house, \$ 2275.

MR. WALSH: That is all in the evidence, and the affidavit has been read.

THE COURT: It is in the affidavit.

THE WITNESS: On or about the fifth day of January, 1898, Mr. Ellis handed to me this letter marked "Defendant's Exhibit E", and I declined to make the affidavit asked for in it.

Dr. Pearson, in the month of December, 1896, about one month after the sale, came to my office, and I had drawn up the complaint in the suit he had directed me to bring for damages for conspiracy. This paper which I hold in my hand is the original or one of the originals, they having been made in duplicate; and the signature attached to it is the



signature of Dr. Pearson, signed in my presence. He took the other copy out of the office a Notary not being in the office at the time, to have it sworn to and return it to me. I never have seen the other one since.

This complaint, as it stands and as it bears his signature, is exactly and identically, without the slightest alteration, the complaint as typewritten by myself at that time, and as he read it and signed it.

BY MR. WALSH:

Q I want to examine you on that point. Were those pinholes in it when he signed it? A Those pinholes?

Q Those top pinholes through which the pin is not now placed?

A That is not a pinhole.

Q What is that? A That is a place where there were fasteners. That pinhole comes there by my attaching it to an affidavit sent to the District Attorney.

Q Then it was fastened in another way, was it? A Yes; brass fasteners.

Q It is not now fastened as it was then? A It is exactly the same paper.

Q (Question repeated.) A That looks to me as if that must have been a brass fastener.

Q It was not pinned together as it is now? A I don't think that was a pin.

955

- Q So that, since he signed these papers, they have been separated and pinned together again, have they? A No, sir.
- Q Do you know whether they have or not? A Never been out of my possession.
- Q Then you didn't have to take these apart, if you didn't send this copy-- A I attached that to the original, as you find it, when I--
- Q Were these pinholes in it when this man signed it? A There wasn't any pinholes in it when he signed.
- Q Fasteners? A No, sir; it was put together afterwards.
- Q When did you put the pin in there? A I put that pin in there when I took that statement from it which I sent to the District Attorney. If you will look at the statement, you will see it is taken from that. I offer the affidavit in evidence.

(Admitted in evidence, and marked,

Defendant's Exhibit No. 10.)

MR. PHILLIPS: I will read this to the jury.

THE COURT: Give the title of the action and name of the the parties. Don't read the whole paper.

MR. PHILLIPS: It is an action brought in the Supreme Court of New York County, by John C. Pearson, as plaintiff, against ~~Mr~~ Henry Geburre, John H.

100-72255

Gorham, Milo M. White, David H. Hunt and Blank Rooney, in which action it is claimed that a conspiracy was entered into by the defendants, under a Mechanics' lien foreclosure suit, to defraud Dr. Pearson of his property.

MR. WALSH: And claiming damages in how much?

MR. PHILLIPS: The sum of Twenty-five thousand dollars against the defendant.

THE COURT: Is that verified?

MR. PHILLIPS: He took the other copy out, to have it verified, and never returned it. This copy is not verified; it is signed.

BY THE COURT:

Q Go on. A Dr. Pearson and I, prior to that time, had had frequent conversations in regard to the case, and our relations were entirely friendly. I never heard-- the first time that I heard that Dr. Pearson made any complaint against me was--

MR. WALSH: State the fact.

THE WITNESS: I can tell it by looking at the letter there.

THE COURT: Never mind. It is immaterial.

BY MR. WALSH:

ASE #255

Q About when? A In 1898, when I received a letter from the District Attorney's office, that Messrs. Miller, Decker & Miller, as his attorneys, had made a complaint--

THE COURT: Never mind about that.

THE WITNESS: I sent to the District Attorney's office certain letters--

THE COURT: This will not do. You cannot state that. It is not material.

MR. PHILLIPS: Exception.

(Continuing testimony:) I have heard the testimony of Mrs. Roe upon the stand. Mrs. Roe was brought to my office, No. 61 Park Row, the Pulitzer Building, by Dr. Pearson, and introduced to me as Mrs. Brown of Jersey City.

He stated, and she did, that she had had a large experience in Mechanics' lien foreclosure cases, and asked me if I would like her to take the papers in his case to look over, as she might be able to give me some suggestions.

I said, "Certainly; I have no objection." I said, "I will be glad to receive any suggestions." I had not all the papers, I think, at the office at that time. I think she is correct in stating that she came a second time. She came the second time, and I gave her the papers. She wasn't at the office over two minutes. She took the papers and went out, promising to return them.

CASE # 255

There never was any such conversation between Mrs. Roe and myself as she testified to on this stand; not one word of it. They got the papers and went away, and I never got any of those papers back; and there I stopped.

BY THE COURT:

Q When was that? A That was in 1897. It was just shortly after Dr. Pearson had taken this complaint out to swear to it.

Q What time? About what time? A She says in the Fall of 1897, but that is not correct. It was some time in the spring or the summer of 1897, to the best of my recollection.

Q Anything further? A Mr. Minier, with whom I was associated in business at 40 Broadway, is in Alaska, and cannot be here to testify in my behalf.

Cross Examination:

BY MR. WALSH:

Q Mr. Fromme, with whom you occupied offices at that time, is not in Alaska, is he? A Mr. Fromme? No, sir; not that I know of.

Q I want to ask you a very few questions, but I want direct answers. How much money did you get from this man Pearson?

A I really don't exactly recollect. I think it was \$340. I never gave him any change.

CASE # 255



Q How much money did you give to Ferguson? A I gave to Ferguson whatever it was I got. I think he is mistaken about that.

Q He says he received \$336 or \$337. A He says he thinks it was about that.

Q And you think he is mistaken about that? A I think so.

Q How much of a mistake? A Well, if I got \$340,--

Q I don't know what you got. How much of a mistake has he made? A I think it was \$340.

Q You think you got \$340? A I think so, although my impression is it was only \$300.

Q For what purpose did you get \$340? A Dr. Pearson, as I have stated, gave it to me to do as I saw fit with, and apply to my account and the disbursements of the suit I was to bring-- the disbursements which had been incurred previously and my services.

Q Against whom were you to bring that suit? A Gorham, Hunt, White, Ceburre and Rooney.

Q Did you ever serve either one of these men with a single paper? A No.

THE COURT: A summons or complaint?

BY MR. WALSH:

Q ~~Summons or complaint?~~ A No.

Q Now, I ask you, is that your signature? (handing paper to

93-73255

witness:) A I object to anything not connected--

Q Is that your signature?

THE COURT: You can answer the question.

A That is my signature, but I object to anything not connected with the issues in this case.

BY THE COURT:

Q Is that your signature. A That is my signature. I object to the introduction of matters not connected with this case.

BY MR. WALSH:

Q Did you draw this check bearing your signature, upon a bank which, at the time you drew it, you knew you had no account in? A I object, as not in any way connected with this case. It is dated much later.

Objection sustained.

MR. WALSH: Does your Honor hold I have no right to ask that question?

THE COURT: I do not hold that.

BY MR. WALSH:

Q Do you know a man named Jacob Cohen? A I don't know whether his name is Jacob or not.

Q Did you draw two checks to the order of Jacob Cohen upon a bank which does not exist? A I object on the ground that it has no connection whatever with this case.

CASE # 255

Question withdrawn.

THE WITNESS: If he has a charge to make, let him make it.

Q What did you do with this money? A This money?

Q Yes. A Why, I used it as my own. It was given me for that purpose.

Q Spent it? A Well, I haven't kept it.

Q Did you devote any part of it to Dr. Pearson's purposes?

A I had incurred expenses on Dr. Pearson's account.

Q How much? A I couldn't tell you exactly, sir.

Q Can you say within Twenty-five dollars? A The expenses I had to incur on the Ceburre case was somewhere near Fifty dollars.

Q Within Twenty-five dollars can you give us an idea? A I couldn't tell you exactly what I had to pay, because--

Q That is all.

BY THE COURT:

Q Have you anything further to say? Not as far as I can think, unless your Honor thinks of anything to ask me;-- unless any member of the jury would like to ask me any question.

BY THE COURT:

Q When you received the \$340 from Dr. Pearson, what did you receive it for? Just tell us briefly what that was for.

CASE 7255

A For the service I had already rendered to him, and for a retainer of \$250 in a suit I was to bring; and to cover all the disbursements in that suit or other proceedings which I was to pay, and not ask him for anything more.

Q Then you regard that money as your own? A Certainly; it was so understood.

Q Now, if that money was your own, and you regarded it as your property, why did you put it in the keeping of this Ferguson in the Sheriff's office? A Because he asked me the question--

Q Who asked you the question? A Dr. Pearson.

Q Yes. A "What can they say against this suit?" and I said, "They may claim, Doctor, that your offer"--

Q They may claim what? A "That your offer, that your saying that if they would waive these auctioneer's, referee's and other fees, you would pay--"

BY SEVENTH JUROR:

Q Repeat that, please. A "They may say that your saying that you would pay this judgment, if they would waive the referee's, auctioneer's and advertising expenses, which you claim you should not pay-- knowing your circumstances, they may say that that, to use a slang expression, is a mere bluff; and, in order to protect yourself against any claim of that kind, I, having been taught to always look at the

5527255

other side of the case, will protect it by having somebody who is entirely independent, not connected with me or you, who will say that I had this much money on this day, and who will be willing to get as a witness in this case for us, which not very many people are willing to do;" and he said, "You do what you wish. Can you trust Mr. Ferguson?"

THE COURT: That answers my question.

BY THE FIRST JUROR:

Q Might I ask, your Honor, what the amount of that check is?

MR. WALSH: No. The Court has ruled it out.

BY THE COURT:

Q I repeat my question. You regarded this \$340 as your money? A Yes, sir.

Q Paid to you for disbursements and services to be rendered?

A Yes, sir.

Q Regarded that as your retainer, and in payment of disbursements. Now, is that so? A As my retainer and on account of disbursements.

Q So that you regarded no part of that \$340 as belonging to Dr. Pearson after it was delivered to you for these purposes?

A No, sir; no part of it.

Q Then if it was your property, and you regarded it as such, and regarded Dr. Pearson as having no claim at all upon it, why did you put it into the hands of this Ferguson in the

CASE 2255



Sheriff's office? A Because, as I said, I was going to get it right back within a few days, and I said I would protect against a claim of that kind being made against Dr. Pearson on this conspiracy case, by having an independent witness who, if they set up that it was a bluff, will be able to say, I had that money and I was willing to use it for him for that purpose. That is all. I was to get it back.

Q But this money was your property? A Yes, sir.

Q If it was your property, how could you use it for Dr. Pearson, to offset any claim against him? A It was not to offset any claim. It was simply to guard against--

Q Where did you guard against any claim by depositing this money with Mr. Ferguson? A It was not to be paid. I was to get it back.

Q If it was your property, why did you put it into the keeping of this Mr. Ferguson in the Sheriff's office? A Simply temporarily, to be given back to me, your Honor; so that, on this suit, Mr. Ferguson would be able to say I had that much money that was due, which they have refused to take.

Q Do I understand you, then, to say-- A I had asked the Referee--

Q (Continuing:) That you put this money in Mr. Ferguson's

CASE 77 255

hands, for the purpose of enabling you to support whatever claim Dr. Pearson might make of your having so much money up? A Not to support his claim, but to answer, if they made such a charge against him that he couldn't pay it anyhow. I would have paid it if they would have taken it.

Q So that, if they had made such a charge against Dr. Pearson, that he hadn't so much money,-- A Yes.

Q (Continuing:) To pay this judgment, would you have used that money to pay it? A If they would have accepted this amount, without their fees, the Doctor would have had his his house, and I would have felt perfectly secure for my fees.

Q But did you intend to pay this money out on such a contingency, if they would take it from you? A Oh, yes; I would have done it. They wouldn't take it.

Q So now we have it that you regarded that money there as for that special purpose, did you? A No; I regarded it as my own.

Q Then, if you regarded it as your own, why did you put it there for the purpose of paying any claim against Dr. Pearson? A I don't think your Honor quite understands me. I didn't put it there for the purpose of paying any claim against Dr. Pearson. I had asked the referee and Mr. Yoran whether they would waive their fees, as Dr. Pearson

CASE #255

thought they should do, or he would sue them for this conspiracy. They had declined to do anything of the kind. Then Dr. Pearson gave me this money as I have stated, to be applied as I saw fit. I knew they wouldn't take it, and I said, "We will guard against such a claim being made on this suit by having a witness who will say, if they claim that I, as attorney, didn't have that money or he didn't have it, that I did have it, and that my asking them whether they would take it was not a mere bluff; but knowing I was to get it back on my own account, and they would not take it."

Q Now, if it was your property, and you wanted to benefit Mr. Pearson, why didn't you say, as an attorney, "Here, I have this money that I got to pay for Dr. Pearson?" I was his attorney. I wanted somebody entirely unconnected with him.

Q Did you think that the word of a man, a sort of an assistant to the deputy sheriff, around the sheriff's office-- that he had better standing and his word was of more value than your word? A He was an independent witness and I wouldn't be; that was the only trouble. I was interested in the case.

Q But if you had the money, the money spoke for itself.

A But who was to say that I had that money.

77255

Q But couldn't you show it? A To whom?

Q To any one that wanted to see it. A But we were to bring this suit, if your Honor please. I thought they would bring this claim afterwards.

Q I want you to tell this jury just exactly what relation you bore to this \$340? A This \$340--

Q No, no; stop. How soon after you received this \$340 was this complaint, that you say was signed by Mr. Pearson-- how soon after was it signed? A A little over a month after the sale of the premises, sir.

Q What was the delay? A The day?

Q What was the delay-- the cause of the delay? A Dr. Pearson was sick, and I hadn't been to the office.

Q Now, when he signed the complaint, was there any other obstacle to your commencing the action against these defendants on the conspiracy claim; once he signed the complaint?

A Yes, sir.

Q What was the obstacle? A He took the duplicate original of this one out to swear to it and bring it back to me. This was signed in duplicate but not sworn to. He never brought it back to me, so I couldn't serve it.

Q Do you mean to say that here was an original signature in your possession, and that this man who had paid you \$340 to bring this action, took a paper out and you never saw him

CASE 255

again? A He took all the papers; came with this lady and got the whole lot.

Q I mean at that time. A He never brought me the paper back.

Q I know; but the month after, you say, when he was sick, and then he came and signed this paper a month after you received the money from him;-- I want to know why it is that you did not commence the action that you were retained for.

A Because there was no Notary in the office to swear him at the time he called, and he took the complaint out, the duplicate of this, to swear to and bring back to me; and then I could have served it; but as he never brought it back I couldn't serve it.

Q Did you ever see him afterwards? A Ever see him afterwards?

Q Yes. A I met him, as I have stated, on Park Row. He had gone then to Decker, Miller & Decker, and brought this other proceeding.

Q Why did you have two complaints signed in duplicate? Wouldn't one have been sufficient for him to swear to?

A He wasn't expected to swear to this one.

Q Why did you have him sign it then, if it was merely to use as a copy? A He signed the two. There was no particular object in it. I had it there and he signed it.

Q Did you ever do anything in regard to commencing the action

CASE #255



192

that you say you were employed to commence and conduct?

A Yes, sir, I did.

Q What did you do in the action? A I had hunted up, with Mr. Ellis, this Rooney. Mr. Ellis had hunted up other evidence, and I drew this complaint.

Q Did you ever, after this complaint was drawn-- did you ever do anything towards the commencement of the action? A Yes, sir; I drew this complaint.

Q Well, after that? A I couldn't after that, because he didn't return the paper. I couldn't until it was sworn to. How could I?

Q Don't you know, as a lawyer, you could have served a summons without any complaint at all, and begun your action?

A I know it is possible to do it. I never have done it. I put the summons and complaints always together.

Q You know an action can be begun in that way? A Possible to do it.

Q You know that you can serve an unverified complaint with a summons, don't you? A Possible to do it. I never did it. Very few lawyers ever do such a thing. If I serve an unverified complaint they can serve an unverified answer, and we want them to swear to their answer. I never did it in all my practice.

BY THE SIXTH JUROR:

CASE 77-255

Q Mr. Phillips, did you ever give Dr. Pearson a bill rendered for services? A Yes, sir; sent him several bills. He has admitted that.

BY MR. WALSH:

Q When did you sent him a bill? A In October, and up to the time that he paid me this money, which he says was the 31st; I think it was later.

Q You sent him a bill in October, 1896? A Yes, sir. He had promised me, when he came to the office first-- that was about the fifteenth or sixteenth of October, as I recollect it.

Q Yes; the 16th of October he first came to the office.

A And promised to pay me.

Q And you sent him a bill? A Afterwards I sent him a bill; yes, sir.

Q On the sixteenth of October? A I wouldn't say it was the 16th, 17th, 18th or 19th.

Q For what amount was that billed? A For the services he expected me to render.

Q How much? A More than I can tell you.

Q Can't you come within one hundred dollars? A I never would take less than \$150 to \$200 on a case.

Q Then your bill to him on the 16th of October was \$200?

A I don't say it was the 16th; some time along there

he had promised to pay me; yes, sir.

Q It was at least \$200, was it? A As I never earned less than \$100, I can tell you that.

Q You sent him a bill for \$100 about the 17th or 18th of October? A Mr. Walsh, I can't guess the exact amount. I haven't got the bill. I sent him a bill. That is all I know.

Q You say you never took less than \$150? A Unless it was a District Court case that was the lowest price I ever took. This was a Supreme Court case.

Q Did you send him a bill for \$150, or did you not?

A I think the chances are it was more.

Q How much more? A That is a mere guess. I couldn't tell you now.

Q That was before he retained you in this action, was it, or after? A He had retained me when he first came with Mr. Ellis, before the 31st, to look up how the situation stood and what had been done with his property. I had been working every day for him, going up to Westchester.

Q The whole result of your employment was that he retained you to bring an action against these several gentlemen who have been called here upon the stand-- Gorham, White the referee and others-- Mr. Ceburre-- didn't he, according to your claim? A No, sir.

Q What is that? A Your question says that is the whole result, and I say, no, it is not. I had performed services in hunting up--

Q I ask you if he retained you for that purpose; to bring an action against these gentlemen who have been here upon the stand? A The ultimate effect of my retainer was to bring this action if they sold this property.

Q Against those gentlemen? A If they sold this property.

Q If they sold this property, he was going to bring the action? A Yes, if they refused to waive those fees.

Q You were to bring the action? A Yes, sir.

Q On that, you charged him, without knowing what was going to be done, at least \$150? A No, sir. I haven't said that.

Q Did you know that they were? A Will you allow me to answer the question?

Q Yes. A I have told you that on this conspiracy he was to pay a retainer of \$250.

Q You were retained on the 18th of October, or during the week following the 18th of October? A Somewheres that week; yes, sir.

Q Are you sure of that? A Positive.

Q To bring an action for conspiracy against ~~John~~ these gentlemen, were you? A No, sir.

Q When were you retained to bring that action? A If they

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sold--

Q When were you retained to bring that action? A I was retained the week of the 18th of October; the 16th or 17th, as close as I can recollect.

Q To bring that action? A To investigate what had been done by Mr. Hunt, and how his property stood.

Q Yes. And to see whether these expenses were paid up or not, and whether the auctioneer and referee would waive their fees; and they refused. I performed those services occupying a great many days-- that is, when I say a great many, I mean eight to ten or twelve; going up to Westchester every day and in the night. And then, when they wouldn't waive their fees, he charged that it was a conspiracy and he could prove it; and then he said, "We will let them sell and then we will bring an action. Then he was to pay \$250.

Q Now, this man was a medical doctor? A Yes, sir.

Q Depending on his location for his practice, to some extent?

A I don't know about that.

Q He was a doctor, wasn't he? A He was a doctor, and he got himself in plenty of litigation.

Q And he wanted you to let him be sold out of that house, and then bring an action for damages? A Dr. Pearson told me that he wanted to go away from there.

Q Did you get \$340 from Dr. Pearson, or \$337? A Well, I am

9397

CASE 77255



not sure. It wasn't anything odd, as I have told you, and I never gave him any change.

Q He said that he gave you \$340, and you brought him back \$2.27 change. That is untrue? A No, sir; never did; absolutely untrue.

Q Mr. Ferguson says he received \$336 or \$337. A No, sir; Mr. Ferguson said he thought it was \$336 or \$337. He has got those figures from this charge.

Q Are you aware that the bill of costs with the judgment figured up exactly \$437.73? A I am not aware of that, sir, no, sir.

Q And that \$100 off makes \$337.73? A One hundred off of that would make that, but I am not aware that it does. Mr. Gorham stated to me that it made \$435 at that time.

Q Will you please write these figures for me? A After that bill of costs, there were referee's costs and auctioneer's fees to be paid, after that. That is only up to the time of the judgment, Mr. Walsh. The fees were to be paid after that, on top of these. That was the trouble with those fees; he didn't want to pay them.

Q Please write out "229.95." A (Witness complies.)

BY THE COURT:

Q The figures are the costs?

MR. WALSH: These are the costs as shown on

72255

the original bill of costs.

BY MR. WALSH:

Q Judgment 207.78. Please add that up. A (Witness complies.) \$229.95; 207.78; is that correct, sir? 437.73.

Q Take \$100 paid by Mr. Hunt off that. Now what is the result?

A Will you read that please, and see whether interest is not added onto that, and there aren't fees additional.

Q I am asking you to do that. A I don't think it is fair.

Q I know; but it is for the jury to pass upon. Take 100 off that, please. A Yes, sir; that is the amount of the judgment, less, the auctioneer's fees, referee's fees and the other expenses to be placed on top of that, which he refused to pay; and would have paid without those fees.

Q Were there any other expenses already incurred, or already paid on the 31st of October? A Sir?

Q Were there any other expenses beyond that already paid on the 31st of October? A Oh, I don't know what was paid, I didn't pay any.

Q So that all that of record was due on the 31st of October was \$437.73, less \$100? A No, sir; the property was advertised for ~~the~~ sale on the--

Q Let me see your figures, please. A What is the date on that?

Q Let me see your figures, please. A Those are correct;

certainly.

Q Now, young man, I ask you if these are not your figures, your handwriting. A That is my handwriting; certainly.

Q How did you figure out what was due? A I didn't figure that as what was due; I figured that as his amount.

Q Those are your figures, in your handwriting, and those are the original judgment bill of costs. A I figured that out as what was due, less referee's fees, auctioneer's fees, and advertising expenses, which he refused to pay. That was the amount less those others he wouldn't pay.

BY THE COURT:

Q Let me have the complaint in the conspiracy case that you say Dr. Pearson signed. Proceed Mr. Walsh.

BY MR. WALSH:

Q When did you have that paper in your possession last?

A This paper.

Q Yes. A I have no recollection of it, sir.

Q Well, you see your handwriting is on it? A This paper is Mr. Gornham's. I have no recollection of it.

Q Well, how did your handwriting come on it? You must have had it in your possession; you say it is in your handwriting? A Those figures are my handwriting undoubtedly, sir.

Q When did you put them there? A August, 1896, this is.

CASE 72255

Q Yes, when did you put them there? A On October--

Q When did you put those figures there? A I couldn't tell you exactly.

Q You didn't put them there before the judgment was rendered, did you? A Couldn't have done so. How could I?

Q You put them there in October, 1896, after you were retained by this man, didn't you? A To the best of my recollection as far as probabilities go, without being able to swear to it because I do not recollect it,-- it is possible-- probable-- that those are the figures representing the judgment of costs, to which was to be added the increased expenses for advertising and sale subsequent to the date of August, which this bears.

Q Yes? A Which other expenses he refused to pay.

Q Yes? A That is this paper.

Q Now, will you look at the figures and say if you ever had that paper in your possession in the month of August, 1896?

A It is very possible that this is one of the papers, sir, that was taken out of my possession.

Q Did you have that paper in your possession in August, 1896?

A I don't remember that paper. I couldn't have had it in August, 1896, because I didn't know the doctor.

Q You had nothing to do with it in August, 1896? A Certainly not.

201

Q You had nothing to do with it in September, 1896; not until the middle of October? A Certainly not.

Q So that you must have made those figures in October? A I couldn't tell you that. Those figures are taken from this August paper, Mr. Walsh.

Q I understand where they are taken from, but when did you make them? A Whenever I made them, they are taken from these figures appearing in this August paper, I take it. Can't be anything else.

Q When did you make them? A I couldn't tell you that. It was certainly after I met the Doctor. I must have had these figures here.

Q You met the Doctor and then put these figures down? A Sir?

Q (Question repeated.) A I must have calculated those figures from the paper.

Q Didn't you show the Doctor those figures, and tell him that was what was due, and take \$337.73 from him? A No, sir, I did not. The Doctor knows that there was other expenses to be paid.

MR. WALSH: That is all.

CASE 2255



202

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BY THE COURT:

Q I wish to ask you one question. When you received this \$340 from Dr. Pearson, were you aware at that time that Dr. Pearson had paid to his attorney, Mr. Hunt, enough money to satisfy the judgment on which his property was going to be sold? A. No, sir.

Q Were you aware that he had paid any money? A. He claimed that ----

Q Well, I know; did he tell you that he had? A. He told me that he had paid \$400 to Mr. Hunt, which Mr. Hunt had appropriated.

Q Precisely, I know, but was that enough money to pay this judgment against him on the mechanics' lien? A. That would have paid the judgment before he came to me if Mr. Hunt had paid it; I got that back from Mr. Hunt.

Q Now, will you not tell this jury, Dr. Pearson came to you and consulted with you as his counsel; is that so? A. Yes, sir.

Q And you acted as his counsel? A. Yes, sir.

Q And you advised him to the best of your judgment for his interests? A. Yes, sir, I certainly did.

Q Now, I notice a clause in this complaint here where you allege that Mr. Hunt and Mr. Gorham and the other parties conspired together to defraud Dr. Pearson out of the money that he paid

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1203

and sold this house of his by means of this fraudulent conspiracy; you drew that up? A. On his statement, yes.

Q On his statement? A. Yes, sir.

Q And you knew that when you received this money, \$340, as he told you ---- A. I knew I was to do this if they went ahead and sold the property.

Q I understand. Now, I want you to tell this jury why it was that if you believed that your client Dr. Pearson had been the victim of a conspiracy by which he was defrauded, and he being the defendant in the action and the sale of the property not having been consummated, why did you not as his counsel go into court and set up those claims those charges of fraud against these people and prevent that sale of his property from taking place? A. I went down to the Real Estate Exchange with Dr. Pearson and Mr. Ellis on the 4th day of November, 1896, over there ----

Q I would like you to answer my question? A. I am trying to; -- of entering a protest and then making a motion, yes, sir, I was going to make a motion.

Q Why did you not go into court while that action was pending, while Dr. Pearson had a standing in court as a defendant in that action, and on the strength of his affidavit charging fraud against these people and conspiracy, why did you not go in and save your client's property? A. I see what your

CASE 77255

204

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Honor means. Because Dr. Pearson instructed me that he was going to sue them for damages and he could get a larger amount of damages than the property was worth, if they sold it, and he preferred that should be done. I obeyed his directions.

Q You mean to say that Dr. Pearson, so far as you could judge from his information and his statement to you, believing that he had been cheated and defrauded, he was willing to allow the home in which he and his family were then living to be sold over his head and depend upon an action to be brought thereafter? Now, is that the condition? A. He was so absolutely sure of his facts and that he could recover heavy damages, and he had become so unpopular up in Westchester Village that he was willing to do that, if they would not take what he offered.

Q Did you as his counsel advise him that that was the wisest course to pursue? A. I certainly did not.

Q What did you advise him? A. I told him it would be best to pay it and then see me again if Mr. Hunt had not properly dealt with him. Mr. Hunt had made that arrangement; that was the best thing for him to do.

Q Why did you not, if you believed your client, go into court and ask the Court to reopen that judgment and stay the sale? A. Because, if your Honor please, that is just what he did

CASE #255

not want me to do.

Q Did not want you to save his home? A. No, that is not the idea, your Honor; he would not pay those fees.

The Defense rests.

REBUTTAL.

J. C. PEARSON, M.D., recalled:

Direct Examination.

BY MR. WALSH:

Q I ask you if this defendant ever sent you a bill for services? A. Never.

Q I ask you to look at these figures and say whether the defendant ever showed you those figures before? A. Those are the figures that he showed me after looking over those figures in the building over here.

Q And told you what? A. And he says, "There is the amount, \$337.73, for, with the \$100 that Hunt has paid, that will just finish up the judgment," and he showed me those figures there.

BY THE COURT:

Q What building was that in? A. In one of the public buildings. I don't know what place. It was down near Chatham Square.

Q Was that when you and Ellis accompanied him? A. Yes, sir.

Q Was that the time that you gave him the \$340 on the same day?

A. I could not say it was the same day or not, but it was the

CASE 77255

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the same day we were in the building after he looked over  
that large book there and looked up the amount that was due.

(Paper containing figures offered in evidence.

Objected to; objection overruled; exception.

(Paper admitted in evidence and marked People's

Exhibit G.)

MR. WALSH: The figures are: 229.95

207.78; then on this

side: 437.73

100. off

337.73. The defendant admits his hand  
writing.

BY MR. WALSH:

Q Where did you get that paper? A. It is one of the papers  
that I handed back.

C r o s s E x a m i n a t i o n .

BY MR. PHILLIPS:

Q Dr. Pearson, did you testify to anything of that kind in the  
last trial of this case? A. That paper was not in evi-  
dence on the last trial.

Q You did not offer that or testify to any of those figures?

A. That was not shown me in the last trial; that is the  
reason.

Q Have you looked at this paper? A. I have.

CASE 2255



Q Do you know the date that paper bears? A. I do not.

Q Look at it and state.

THE COURT: Now, the only subject upon which this witness was examined was in relation to the figures on the paper. We do not want to go into anything else.

THE WITNESS: I never refused to pay any fees, for the whole amount was included in this, you told me.

Testimony Closed.

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The jury found the defendant guilty of Grand Larceny in the second degree, with a recommendation to mercy.

CASE #255