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CASE

I N D E X.

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Stewart Liddell,
Official Stenographer.

CRIMINAL SESSIONS OF THE PEACE

COURT OF NEW YORK. PART II.

.....
THE PEOPLE OF THE STATE OF NEW YORK

-against-

MAX A. **KRAMER**;

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:BEFORE:

: HON. JAMES T. MALONE,

: Justice,

: and a Jury.

.....
New York March 29, 1909.

Indicted for grand larceny, second degree.

Indictment filed June 11, 1908.

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

For People: Charles W. Appleton and Carl Roth.

For Defendant. Messrs. House, Grossman and Vorhaus.

Vorhaus and John B. Stanchfield, Messrs. House.

A Jury is duly empanelled, the jurors being
sworn and examined.

Stewart Liddell,
Official Stenographer.

MR. STANCHFIELD: Before the District Attorney opens this case, I ask your Honor to dismiss this indictment upon the grounds which I will enumerate. first, the facts alleged in the indictment do not constitute the crime of grand larceny, in the second place, second, the facts pleaded on the face of the indictment constitute an offense under Section 652 of the Penal Code relating to the presentation of a false statement to a municipal board for audit; third, the facts pleaded on the face of the indictment constitute an offense under Section 580 of the Penal Code in regard to the use of false weights and measures.

MR. APPLETON: They were all the basis of a demurrer to a motion to dismiss the indictment.

THE COURT: Motion denied, and you have no exception.

MR. STANCHFIELD: Exception to the Court's ruling.

MR. Appleton now opens to the Jury, as follows:

MR. APPLETON: If your Honor please, gentlemen, and each of you gentlemen of the Jury, this is a man here is indicted by the grand jury of this county jointly with a man by the name of Jacob Goldstein with the crime of grand larceny in the second degree that is that they stole more than \$25.---the

is \$104.86.

It is charged in this indictment that these two persons, acting together, stole this sum of money from the City by means of false pretenses and representations, in that they filed a bill with the City department alleging in that bill, holding out to the City in that bill and falsely and feloniously pretending by and in that bill that the defendant Max Kramer doing business under the name of The Metropolitan Equipment and Supply Company, a firm name---just a name and nothing more---had delivered to the City of New York, to the Department of Public Offices and Buildings, 3200 pounds of rope, bolt rope at Pier 22, or at the foot of 22nd Street---the foot of 22nd Street, Brooklyn, where as a matter of fact the people claim that there were only 3200 and some odd pounds of rope in the consignment. There were six coils of rope, each coil was weighed carefully, and we will prove to you the exact weight that was delivered to the City over there at the foot of 22nd Street, Brooklyn, where the free floating baths were at that time moored and ~~were~~ were about to be overhauled in the month of June 1905. That I will go into a little more at length later on.

Now this matter arose something like this. Two years ago the office of the Borough President of this Borough

in this City was under investigation by the Commission
of Accounts---

MR. STANCHFIELD: I object to that upon the
ground that we are not going to try, except over my ob-
jection and exception, Mr. Ahearn for the management of
his office.

MR. APPLETON: We are not trying Mr. Ahearn. Mr.
Ahearn knew nothing at all of this transaction, his
skirts are free and clear of any criminal liability
in any way shape or form.

MR. STANCHFIELD: I object to any reference or de-
scription of what took place in Mr. Ahearn's office,
in this case.

THE COURT: Counsel will outline to the jury
what he intends to prove in order to establish the
prosecution and the indictment against Max A. Kramer
and confine himself to that.

MR. STANCHFIELD: There will be no objection from
me as to that.

MR. APPLETON: (Continuing) So it was found
that the defendant Max Kramer had a number of transac-
tions with the City of New York, that the defendant Max
Kramer operating under the name of Metropolitan Equip-
ment and Supply Company, was selling goods to the various
departments in the Borough President's office and, par-

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particularly in the Department of Public Buildings
Offices; and the persons whose duty led them
caused them to do it investigated the transactions
that the defendant Kramer under this name the
mentioned had with the City, and it became necessary
find out all about these transactions, and the
attorney had it brought to his attention and issued
a subpoena to the office of the defendant at the bar
and that subpoena called for the production of the
books and the papers of the defendant, and they were
brought down here to the district attorney's office
in this building and given to Mr. Saytha and myself
and a careful search was made of the papers, and the
people found that in an envelope filed away in Mr.
Kramer's office, wherein was contained the bill that
the defendant received from the Wall Rope Works, the
place where the defendant purchased the goods that were
delivered at the foot of 22nd, Brooklyn, was a little
slip of paper in the handwriting of the defendant at
the bar, the people claim, and that little piece of
paper, the handwriting of Kramer was pinned to the bill
from the Wall Rope Works---the receipted bill. Now the
original bill from the Wall Rope Works was compared with
the bill submitted to the City and it was found upon
comparison that whereas a coil of rope that contained

1200 feet of six inch Manilla bolt rope really weighed 1225 pounds; that the defendant had paid for that coil of bolt rope for 1225 pounds; that the defendant himself in his own handwriting upon the little piece of paper I am telling you about had raised the weight of that rope from 1225 pounds to 1400 pounds; and that a coil containing 1100 feet of six inch Manilla bolt rope that weight 1020 pounds really, actually, and as a matter of fact, and the defendant had paid for 1125 pounds to the Wall Rope Works, that that coil of rope had been raised by the defendant himself upon the little piece of paper to 1302 pounds—a difference, you can see, gentlemen, of 300 pounds; and then there were 3 other coils of 1000 feet of rope in each coil, of 3 inch Manilla bolt rope; one of those coils, the real weight was, and the defendant paid for, 330 pounds, and the defendant himself raised that to 390 pounds; another one of those coils of 1000 feet of 3 inch rope really weighed, and Wall Rope Works charged the defendant for and the defendant paid the Wall Rope Works 340 pounds and then the defendant raised that to 402 pounds; and the third and last coil, making 5 coils in all---the defendant had paid for 336 pounds and he raised it to 401 pounds; and then the defendant drew a line under the total on the little piece of paper

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---the total of it, 3903 pounds--- that is the amount charged for to the City at 16 cents a pound---the defendant paid 14 cents a pound for it---the total number of pounds that the defendant paid for, the total number of pounds that were delivered to the City of New York were 3247, making a difference of between 600 and 700 pounds that the defendant charged the City for that the defendant never delivered to the City, and the defendant subsequently received money for it and it amounts to \$104.86.

Now then we find the bill and the piece of paper, and then we go down to the Wall Rope Works and we find at the Wall Rope Works two men---one of those men is known as the porter and the other man is known as the biller, I believe. The porter weighed this particular consignment of rope and wrote out the weight in the coil, so that his weighing of it corresponds identically to the weighing and the number of pounds that the Wall Rope Works charged to the defendant at the bar. Then there was a man down there who made out a little bill, a receipt, and in that it called for the number of feet and the number of coils, and the number of pounds that the rope really and truly weighed, the amount that corresponds to the bill given by the Wall Rope Works to the defendant at the bar corresponds to the number of pounds of rope that the defendant himself

paid for, and that rope was then delivered over to the foot of 22nd Street, in the Borough of Brooklyn, for these public baths.

Now over there there was a man by the name of Mr. Edwin Hyde, Jr.; he is a man who was the foreman of the public baths and comfort stations—I think it was the public baths that his interests were confined to—and every Spring---after the cold weather comes on in the Fall the public baths which are moored in the Summer time at the foot of the docks along the water front here where the poor people may go and bathe, those baths are all taken down to the basin in South Brooklyn and are tied up, and in the Spring time Mr. Hyde as foreman goes over those baths, he overhauls them, looks at the different hawsers and rope, you know, that are going to move them to the dock during the Summer, and those that are all right and look strong, not worn out, he uses again, and then he puts in to the Superintendent of Public Buildings and Offices---because the public baths and comfort stations are in that department of the City government---a little request for a number of feet of rope. Just recollect it, I want you to understand it clearly---Mr. Hyde ordered the rope by order from the Superintendent of Public Buildings and the defendant---and we will show you that the defendant

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has testified under his oath that he made it his business to be around the office of the Superintendent of Public Buildings and Offices when the janitors came in for the purpose of telling what they needed to the superintendent of Public Buildings and he got orders there. I don't know if he got this order---I don't say that he got it right there at the office, mind you, because I can't prove that particular thing;---I only tell you that he said he did that sort of business. Now the City ordered this rope in feet; we will have the requisition here countersigned by Mr. Dalton and Mr. Ahearn authorizing the Metropolitan Equipment and Supply Company---it has a little office up here on 14th Street---to furnish this rope to the City.

Now, the Metropolitan Equipment and Supply Company, Max Kramer has testified was himself, himself alone; that nobody else was interested in the Metropolitan Equipment and Supply Company but himself, Max Kramer. And Max Kramer or his clerk Goldstein bought the rope from the Wall Rope Works and then it was sent out, the bill sent to the defendant Max Kramer, the defendant Kramer pays the bill, signs all checks himself, he has testified, and then after the bill is rendered on the 10th day of June or thereabouts it is paid on the 10th day of June 1905. They wait a while and on the 10th day of June 1905.

day of July 1905 the voucher is filed with the comptroller, and attached to that voucher is a bill in the handwriting of Jacob Goldstein and that bill charges the City for rope by pounds---and the City has ordered by feet. Old Mr. Hyde will be here, he will tell you how scrupulously he measured the rope to see if he got the number of feet, and the feet were there; he didn't weigh it, he didn't have any scales to weight it, he took the defendant's word that the amount charged for in pounds was correct because he found he had the right number of feet there and he marked the bill "correct".

Now the bill I am telling you that Goldstein put into the city corresponds identically with the little piece of paper found in Mr. Kramer's office pinned to the bill that Kramer got from the Wall Rope Works, where Kramer in his handwriting wrote down opposite the coil of rope and the contents of 1200 feet---Kramer wrote 1400 pounds; so Goldstein copies from that little slip of paper upon the bill that was submitted to the City the exact amount that the defendant Kramer had written down.

Now, more than that, gentlemen, after Kramer had finished writing down the increased number of pounds it was then turned over to his clerk Goldstein to

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multiply, and you will find on that little piece of paper when it comes to your eyes that the 3903 pounds is multiplied by 16 in the writing of Goldstein, and it amounts to \$624.48, and that is the amount of money that the defendant Max Kramer collected from the City; and when you multiply 3247 pounds by 16 and multiply 3903 pounds by 16, and subtract the first from the latter you will find the difference is \$104.86, and that is the money that this defendant stole from the City of New York, and he stole it from the City of New York by putting in a false bill, false pretending and representing to the City that he had delivered 3900 pounds of rope whereas as a matter of fact he delivered only 3247 pounds.

Now I understand thoroughly that the burden is upon the people to show you gentlemen beyond a reasonable doubt that this transaction took place as I have outlined to you and that the defendant profited by it, and I apprehend that when the evidence is all in and I have shown you by the evidence and by proof that as soon as Kramer gets the bill he "hikes" it up, that Kramer is the beginning of the transaction, that the bill in the handwriting of his clerk and employee Jacob Goldstein is "the little black man" as you may come to hear from Mr. Stanchfield's questions---when

Goldstein makes out the bill he copies Kramer's own deduction or computation or "hiking", whatever you want to call it, and submits that bill to the City, and then at the other end of the transaction, on the 11th day of October 1905, we find Kramer receiving the warrant from the City for \$624.48 and depositing it himself in his, Kramer's bank, and Kramer's own handwriting is again found on the deposit slip. There you have him at the beginning, there you have him at the end, and the people contend that any right-minded man can see that it is Kramer all the way through.

MR. STANCHFIELD: Now, if your Honor please, I renew the motion which I made at the opening of the trial and preceeding the district attorney's address, and upon the same grounds, adding to those grounds as a basis for the relief that I ask at your hands, the opening of the district attorney. I do not care to argue that.

THE COURT: The motion will be denied and you may have an exception.

MR. STANCHFIELD: Exception; and I ask your Honor, upon the district attorney's opening, to strike from the indictment the second count thereof, which is the common law count for stealing, upon the ground that no proof can be offered under that count, and upon the district attorney's opening that count has no place upon this

record.

MR. APPLETON: The Jury might find that this was done---

THE COURT: I will deny your motion. You may renew it at the end of the People's case.

MR. STANCHFIELD: Exception. It would come up logically there; your Honor is right about that.

THE COURT: It is five minutes of four and I think it hardly beneficial to start in for a few minutes. I shall be obliged to leave very promptly after 4 o'clock, so I admonish you gentlemen of the jury not to discuss this case, or to form or express any opinion about it, or permit anybody to speak to you about it, or read about it; no impression should find lodgment with you until everything has been said here, the evidence all taken, the case summed up by the counsel and the court has charged you upon the law. Then you must deliberate. Any other impression would be too early and would not subserve the interest of either party to the case. I cannot caution you too much against discussing it among yourselves or with anybody else. ^{must} You keep your minds open and free until the evidence and the case is entirely submitted to you, and I will ask you to be in your places promptly at half past ten tomorrow morning.

MR. STANCHFIELD: Will your Honor direct the officer to remain here with Kramer ten or fifteen minutes?

THE COURT: Oh yes. All facilities must be accorded to the counsel for the defense.

(Adjourned to Tuesday March 30, 1909. at 10:30 A.M.)

New York March 30, 1909.

T R I A L R E S U M E D.

THE COURT: Gentlemen, I have had that table moved out so each counself could be in his proper place during the trial of this case. I think it will conserve the interests of both side to have counsel for the defense on one side and the counsel for the people on the other side of the table.

MR. STANCHFIELD: Do you mean by that, that you mean to rule that we are obliged, representing this defendant, to keep on the rear of this table?

THE COURT: The custom is for the counsel for the defendant to be in that situation, and eminent counsel have with great fidenity to the interests of their clients performed their duty from that side and with extreme and unfailing courtesy to the Court.

MR. STANCHFIELD: I don't make any claim to being an eminent counsel---I disclaim the use of the adjective---but what I want to say is that the acoustic properties of this room are such that it is impossible from this side of the table to hear with any accuracy what is said, and if in the desire to hear testimony one wants to go upon the other side of the table and is not permitted

to I protest and object.

THE COURT: You may make such an application at such time as you are inconvenienced, or the interest of your client be in any way affected; you may make such an application to the court, but that is the customary place for counsel and the custom must prevail in this case as in others.

MR. STANCHFIELD: And to that ruling I take an exception, it being my contention that from this side of the table one is disenabled from properly defending a man charged with crime because he cannot always hear.

MR. APPLETON: I call the County Clerk.

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EDWARD T. DALTON, called as a witness on behalf of the people, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. APPLETON:

Q What is your employment? Please speak in a loud tone of voice? A Clerk in the office of the Clerk of the City of New York.

Q And as clerk in the office of the County Clerk of the County of New York do you have custody of certificates filed pursuant to Section 362-B of the Laws of 1900, Chapter 216? A I do.

Q I show you a piece of paper and ask you if you have produced that piece of paper from the files of the County Clerk of the County of New York pursuant to a subpoena? A I have.

MR. APPLETON: I offer that piece of paper in evidence.

THE COURT: Any objection?

MR. STANCHFIELD: Well, I would like to look at it. I am not able to answer right offhand without seeing the paper whether there is any objection or not.

THE COURT: You may look at it.

MR. STANCHFIELD: I would like to ask the witness a preliminary question.

THE COURT: You may.

BY MR. STANCHFIELD:

Q Is there another paper filed by Mr. Kramer in your office of the same general import as this, with reference to another concern? A Not to my knowledge.

MR. STANCHFIELD: There is no objection to it.

THE COURT: It may be marked.

MR. APPLETON: Your Honor, under the custom and the rule these papers from the County Clerk's office are not permitted to be marked and they are taken back. If there is objection I will read the certificate and Mr. Stanchfield may look over my shoulder when I read it and it will be read into the record.

MR. STANCHFIELD: Mr. Stanchfield is not nearly so suspicious of you as you are of Mr. Stanchfield.

MR. APPLETON: I think that is very unkind and very unprofessional for you to make such a remark because I have never treated you in any but the most courteous manner.

MR. STANCHFIELD: I think when you relegated me behind this table you were discourteous.

MR. APPLETON: (Reading paper offered in evidence as Exhibit 1) " State of New York, County of _____
I, Max A. Kramer, of No. 215 East 79th Street, N.Y. City,
Borough of Manhattan, do hereby certify that I intend

to conduct _____ or the _____ business of campaign equipments and general supplies of all kinds at 124 East Fourteenth Street, New York City, in the County of New York, in the State of New York, under the name of Metropolitan Equipment & Supply Company, and that the true or the real full name of the person conducting or transacting such business, with a post office number of _____ of such person is as follows: Name Max A. Kramer, Post Office address 215 East 79th Street, N.Y. City, Boro. Manhattan; date, N. Y. City, January 7, 1904; signed, Max A. Kramer;

And at the bottom "Intend to conduct or transact-- while conducting or transacting;

On the back of the paper--"City and County of New York SS. On this 7th day of January 1904 before me personally came Max A. Kramer, to me known and known to me to be the individual described in and who executed the foregoing certificate, and he acknowledged to me that he executed the same. J.W.J. Green, Notary Public, N.Y. Co.";

And then this backing "Certificate of Max A. Kramer, conducting business under the name of Metropolitan Equipment & Supply Company, pursuant to the penal Code, Section 363-B Laws 1900, C.216, filed January 7, 1904".

That's all.

MR. STANCHFIELD: Just a moment. Haven't we any right to cross examine?

THE COURT: Go right ahead.

MR. STANCHFIELD: I ask the right to go in front of the desk to cross examine this witness.

THE COURT: No, I think you may conduct your examination from there.

MR. STANCHFIELD: And I state that it is impossible from here to conduct the cross examination.

THE COURT: You have already stated it.

MR. STANCHFIELD: I take an exception on the ground that I cannot from here properly cross examine the witness, and an exception to your Honor's ruling.

THE COURT: Any further questions?

MR. APPLETON: I have no questions.

THE COURT: (Addressing witness) You may stand down.

MR. APPLETON: Mr. Larney.

JAMES F. LARNEY, called as a witness on behalf of the people, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. APPLETON:

Q What is your position? A Clerk in the Comptroller's office, Finance Department; record room.

Q Please speak in a loud tone of voice? A Clerk in the

Finance Department, record room of the Comptroller's office.

Q And in such position do you have charge and custody of vouchers and bills that have been paid by the City of New York?

A Yes sir, I do.

Q Now did you some time ago produce this package of papers that I now hand you from the records of the comptroller's office of the City of New York? A Yes sir, I did.

MR. APPLETON: Now I ask that each one of these pieces of paper be marked for identification.

THE COURT: They may be.

MR. STANCHFIELD: How are those being marked?

MR. APPLETON: For identification.

MR. STANCHFIELD: It is impossible to hear from here.

MR. APPLETON: (Addressing 12th Juror) Mr. Lane, do you hear?

THE 12th JUROR: I do.

The papers are marked respectively for identification Peoples' Exhibits 2 to 10, both inclusive.

Q Pursuant to your employment as just described do you also have custody of warrants or checks that the city has paid out the money upon and which have been returned to the comptroller's office by way of the bank through which the warrant was paid?

Yes sir

A/ I do .

Q I show you this piece of paper and ask you if you produced that piece of paper from the records of the comptroller's office? A Yes sir I did.

MR. APPLETON: I ask that that be marked Peoples' Exhibit 11 for identification.

THE COURT: It may be.

MR. STANCHFIELD: Will you let me look at that, Mr. Appleton?

The paper is now marked for identification Peoples' Exhibit 11.

(Peoples' Exhibit for identification No. 11 is now handed to Mr. Stanchfield.)

MR. STANCHFIELD: Do you intend to send the witness away before you offer those?

MR. APPLETON: I did, yes.

MR. STANCHFIELD: Well, I want him to remain in the room.

MR. APPLETON: No objection at all. Now, Mr. Robinson, from the comptroller's office.

J O H N H . R O B I N S O N , called as a witness on behalf of the people, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. APPLETON:

Q Please speak in a loud tone of voice so that the twelfth juror, Mr. Lane, will hear you and then everybody should hear you.

Q What is your business or employment, sir? A Clerk in the Finance Department, Bureau of Audit.

Q In the Audit Bureau? A Yes sir.

Q Do you have charge of any book there? A I am in temporary charge during the illness of the gentleman who is in charge.

Q Have you examined the book containing the record of vouchers filed in the Finance Department of the Auditing Bureau for the 29th day of June 1905? A No sir. I examined the record on the book.

Q You examined the record on the book? A Yes sir. I have a copy of that record.

Q Just answer my questions if you please and we will get on faster --- A I beg your pardon.

Q Did you record for vouchers filed by the Metropolitan Equipment and Supply Company for the 29th day of June 1905?

A Yes sir.

Q How many vouchers did you find had been filed by the Metropolitan Equipment & Supply Company on the 29th day of June 1905?

A I found one.

MR. STANCHFIELD: I object to that upon the ground that the records themselves, or the vouchers are the best evidence; the testimony itself is irrelevant, immaterial, incompetent and no foundation has been laid for its introduction.

MR. APPLETON: As to that----

THE COURT: Objection overruled.

MR. STANCHFIELD: Exception.

Q How many were filed? A I found only one.

Q And that was for what? A For rope.

MR. STANCHFIELD: I ask to strike that out, if your Honor please, that answer, until I can make an objection and then when your Honor rules of course I have nothing more to say.

THE COURT: Yes.

MR. STANCHFIELD: I ask temporarily to strike out that answer.

THE COURT: Motion denied.

MR. STANCHFIELD: Exception. Now I ask your Honor for the privilege, before the witness's answer, before I had a chance, to take an objection ahead of the answer.

THE COURT: Yes, you may.

MR. STANCHFIELD: It is objected to as hearsay, incompetent, the record itself is the best evidence and it is irrelevant and immaterial.

THE COURT: Objection overruled.

MR. STANCHFIELD: And in no way binding on this defendant; and an exception to your Honor's ruling.

MR. APPLETON: Do you wish to cross examine?

MR. STANCHFIELD: No.

MR. APPLETON: Mr. William H. Walker.

W I L L I A M H . W A L K E R , called as a witness on behalf
of the people, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. APPLETON:

Q In the month of June, in the year 1905, did you hold an
official position in the City of New York? A Yes sir.

THE COURT: Speak out so the last juror there can
hear you.

THE WITNESS: Yes sir.

Q And what was that position? A Superintendent of Public
Buildings and Offices.

Q Now, Mr. Walker, did you have any charge as Superintendent
of Public Buildings and Offices for the Borough of Manhattan ---
A Yes sir.

Q (Continuing) The comfort stations and free floating
baths? A Yes sir.

Q Did you have charge of the equipment necessary for the
free floating baths of the Borough of Manhattan? A Yes sir.

Q Did you have charge of the orders for supplies for the
free floating baths?

MR. STANCHFIELD: I object to that upon the ground
that whatever authority he had or whatever powers were
vested in him, are a matter of law and of statute regu-
lation, and that the rule, regulations and statutes are

the best evidence, and that it is not susceptible of explanation.

MR. APPLETON: I withdraw the question.

Q Did you during the month of June report to the Borough President's office of the Borough of Manhattan supplies necessary for the free floating baths of the Borough of Manhattan; just yes or no?

MR. STANCHFIELD: I object to that upon the ground that the report itself is the best evidence; the testimony is incompetent.

THE COURT: This question does not call for the contents of the report but it is appealing to his memory as to whether he filed a report with the office of the President of the Borough. I will take an answer. You did or you did not?

MR. STANCHFIELD: Exception.

Q (Question repeated by Stenographer as follows:) Did you during the month of June report to the Borough President's office of the Borough of Manhattan supplies necessary for the free floating baths of the Borough of Manhattan?

MR. STANCHFIELD: Same objection, and I except.

A yes.

Q I show you peoples' Exhibit 4 for identification and ask you if that paper was prepared in your office? A Yes sir.

Q Now I call your attention to the words---

MR. STANCHFIELD: I object to his reading from the contents of the paper until it is offered in evidence or until it is in evidence.

THE COURT: Yes, the objection is a sound one.

Q Now, Mr. Walker, will you please outline to the jury the method that was used in the months of May and June of the year 1905 when you as Superintendent of Public Buildings and Offices, having in charge the free public baths of the Borough of Manhattan -- outline to the jury the method that you pursued in ordering supplies and making that fact known to the Borough President's office?

MR. STANCHFIELD: Objected to upon the ground that this defendant is in no way chargeable with knowledge nor bound by custom that prevailed in that office; the only material and relevant inquiry is what was done with this particular order for rope, and I object.

THE COURT: He may testify to the routine, if he knows, and you may have an exception.

MR. STANCHFIELD: And the evidence is incompetent and improper and I except to your ruling.

A The routine in the Department of Public Buildings is that the head of any department ---- one of the judges -- make a requisition to the President of the Borough of Manhattan for whatever

articles they may require. I was then directed by the Borough President to make an investigation, and if I found that the article was necessary for the public business, to so report. About the time specified there was a requisition made on me for a certain number of feet of rope and I reported the same to the President of the Borough, and he directed me if it was necessary for the use of the baths to prepare the necessary papers for it. In accordance I prepared a requisition, forwarded it to the President of the Borough ---

Q I show you this piece of paper and ask you if that is the paper you refer to as a requisition that you forwarded to the President of the Borough for the rope necessary for the free floating baths?

MR. STANCHFIELD: I object to that upon the ground that the requisition is the best evidence and speaks for itself.

THE COURT: Objection overruled.

MR. STANCHFIELD: And that the testimony is incompetent, immaterial and irrelevant and not binding upon this defendant.

Objection overruled. Exception.

A That is not the paper that I prepared.

Q From the paper that you prepared was an order for the rope made?

MR. STANCHFIELD: Objected to; the order is the best evidence; the testimony is incompetent and improper.

Objection overruled. Exception.

THE COURT: If you know?

A Usually is.

BY THE COURT:

Q Was an order made?

MR. STANCHFIELD: Same objection and exception.

A I know, yes.

MR. STANCHFIELD: How does that record read?

THE COURT: Just a minute. Answer the Court's question. Read it, Mr. Stenographer.

Q (Question repeated by stenographer as follows) Was an order made?

Same objection; same ruling.

Exception.

A I made the request but I don't know anything further as to what paper was issued.

MR. STANCHFIELD: Now I ask to strike out the answer on the same ground-- incompetent, irrelevant, immaterial, not the best evidence and not binding upon this defendant.

Motion denied. Exception.

BY MR. APPLETON:

Q You have already stated, I believe, that Peoples' Exhibit

4 for identification was prepared in your office and sent to the Borough President's office; is that correct, yes or no?

MR. STANCHFIELD: Objected to on the ground that it was not prepared by the witness, and the testimony is hearsay incompetent, irrelevant and immaterial.

THE COURT: Ask him if it is the fact.

Q Is that the fact? I did ask you that.

Same objection. Objection overruled. Exception.

MR. APPLETON: Repeat the question, please, Mr. Stenographer.

Q (Question repeated as follows by Stenographer:) You have already stated I believe, that Peoples' Exhibit 4 for identification was prepared in your office and sent to the Borough President's office; is that correct?

Same objection, same ruling. Exception.

A Not prepared myself, I don't think.

Q I said in your office? A I believe it was.

Q In your department? A In my department.

THE COURT: Any questions?

MR. STANCHFIELD: No sir.

MR. APPLETON: Mr. William Dalton.

W I L L I A M D A L T O N, called as a witness on behalf of the people, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. APPLETON:

Q In the months of May and June of the year 1905 did you hold an official position in the City of New York? A yes sir.

Q What was that official position? A Commissioner of Public Works.

THE COURT: Speak out so the last juror can hear you and the counsel for the defendant and the defendant, too.

Q And as Commissioner of Public Works was it part of your duty to countersign orders for supplies to be furnished to the Department of Public Buildings and Offices which included the floating free baths? A It was.

Q I show you Peoples' Exhibit 4 for identification and ask you if you signed that piece of paper? A yes sir.

Q And the signature there "William Dalton" is in your handwriting? A That is my handwriting.

Q when you signed that piece of paper Peoples' Exhibit 4 for identification, what did you do with it? In the routine of business where was it next sent? A Well I can't tell from that paper whether I signed that first or whether the Borough President signed first. If I signed it first then I sent it to his office; if he signed it and it came back to me then it went in the regular routine to the clerk who sent it to the office to be sent out.

Q Who sent it to the office of the person or the concern named in the paper, is that correct? A Yes sir.

MR. APPLETON: You may cross examine.

MR. STANCHFIELD: No questions at present but do not go away, Mr. Dalton.

B E R N A R D D O W N I N G , called as a witness on behalf of the people, being first duly sworn, testifies as follows:
DIRECT EXAMINATION BY MR. APPLETON:

Q Do you hold an official position in the City of New York at the present time? A I do.

Q And what is that position? A Secretary of the Borough of Manhattan, and private secretary to the President, John F. Ahearn .

Q How long have you held that position? A Since January first, 1904.

Q Do you know the handwriting of John F. Ahearn, the President of the Borough of Manhattan? A I do.

Q I show you Peoples' Exhibit 4 for identification and ask you if the name John F. Ahearn signed to that piece of paper is in the handwriting of John F. Ahearn, the President of the Borough of Manhattan? A It is.

MR. APPLETON: Now I offer in evidence Peoples' Exhibit 4 for identification.

MR. STANCHFIELD: The exhibit, if your Honor please, is addressed to the Metropolitan Equipment & Supply

Company and it is objected to upon the ground that there is no proof in the case from any source that this exhibit ever came into the hands or to the knowledge of the defendant Kramer, and as to him it is hearsay; and upon the further ground that there is no proof in the case that the contents of the paper in reference to the order for rope were made out or authorized by the party in charge of the Bureau having jurisdiction over these floating baths, and the testimony is incompetent irrelevant and immaterial and there is no foundation for its introduction.

THE COURT: Let me see it.

(Peoples' Exhibit 4 for identification is handed to the Court.)

MR. APPLETON: Before passing upon it I would like to state ----

THE COURT: Just one second. Mark it in evidence.

MR. STANCHFIELD: Exception.

Received and marked in evidence Peoples' Exhibit 4.

MR. APPLETON: Peoples' Exhibit 4 reads as follows:

"President of the Borough of Manhattan, Offices of
Commissioner of Public Works, 13 to 21 Park Row, New
York, May 24, 1905. Metropolitan Equipment & Supply
Company:" written in ink over some lead pencil marks--

"Please furnish and deliver to the free floating baths, ~~xxx~~ chargeable to the Bureau of Public Buildings and Offices, Supplies and Repairs, including public baths and comfort stations, 1904," and stamped over it in red letters are "Supplies and repairs, including public baths and public comfort stations, 1905:"

" 2300 feet of 6 inch bolt rope; 3,000 feet of 3 inch bolt rope; to be furnished to the satisfaction of the President of the Borough, for and on account of the President of the Borough of Manhattan;" and "Send bill with triplicate and this order and the receipt attached to room No.1802 Offices of Commissioner of Public Works.

"I certify to the necessity of the above work or supplies and that the expenditure therefor has been fully authorized and appropriated; I certify a certificate of the ~~above~~ necessity of the above expenditure was placed on file in this department before the expenditure was incurred. John F. Ahearn, President of the Borough of Manhattan; William Dalton, Commissioner of Public Works. Request 570, May 23, 1905, William H. Walker, Superintendent"; stamped.

Q Now, Mr. Downing, when the bill is furnished to the City, Peoples' Exhibit 4 is attached to the bill, is that not correct?

A I couldn't answer that.

MR. APPLETON: Question withdrawn.

THE COURT: Anything further?

MR. APPLETON: Nothing sir.

THE COURT: Cross examine?

MR. STANCHFIELD: Nothing at the present stage of the proof, if your Honor please.

THE COURT: Stand down.

MR. APPLETON: Mr. Horatio O. Nelson.

H O R A T I O O . N E I S O N, called as a witness on behalf of the people, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. APPLETON:

Q In the month of June 1905 where were you employed? A 56 South Street.

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

Q And by whom? A Wall Rope Works.

Q In the month of June 1905 did you receive an order from the Metropolitan Equipment & Supply Company for some rope?

MR. STANCHFIELD: I object to that upon the ground that it is hearsay as to Kramer; incompetent and immaterial, and the order is the best evidence.

Objection overruled. Exception.

Q (Question repeated by stenographer as follows:) In the month of June 1905 did you receive an order from the Metropolitan Equipment & Supply Company for some rope?

MR. STANCHFIELD: Same objection.

THE COURT: Yes, objection overruled.

MR. STANCHFIELD: Exception.

Q Does that mean that I personally received the order?

MR. APPLETON: Question withdrawn.

Q I show you that piece of paper which I ask to be marked Peoples' Exhibit 12 for identification (the paper being now so marked), and ask you if that was received by the Wall Rope Works at 56 South Street?

MR. STANCHFIELD: That calls for your knowledge,

Mr. Witness.

Q If you know it was? A I know that was received.

Q After you received the piece of paper Peoples' Exhibit 12 for identification did you send out this piece of paper which I ask to be marked Peoples' Exhibit 13 for identification?

Marked for identification Peoples' Exhibit 13.

MR. STANCHFIELD: You understand when those questions are asked they are addressed to ~~not~~ whether you did this, that or the other thing or not; that is what I want to call your attention to.

A Yes.

Q (Question repeated) A I had it sent out.

Q Did you receive a check for the sum of \$431.76?

MR. STANCHFIELD: Don't answer this, and I ask a ruling.

Q (Continuing) Signed Max Kramer?

MR. STANCHFIELD: I object to that on the ground that it is incompetent, immaterial and irrelevant, not the best evidence, there is no foundation laid for its introduction, and no conceivable proof in the case that the defendant was in any way personally connected with that transaction.

MR. APPLETON: This will all be connected.

BY THE COURT:

Q Did you receive that check, signed ---

MR. STANCHFIELD: Same objection.

THE COURT: Yes, take an exception.

A I received a check for this amount.

BY MR. APPLETON:

Q Did you then sign your name to Peoples' Exhibit 13 for identification? A Is this Exhibit 13?

Q Yes? A I most certainly did.

Q Do you know the day that you received the pay for that amount?

MR. STANCHFIELD: I object to that upon the ground -

MR. APPLETON: I have not finished.

THE COURT: Counsel will give Mr. Appleton an opportunity to complete his questions.

MR. STANCHFIELD: I certainly will do that. I

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thought he had finished •

Q Do you know the year and the day of the month that you received \$431.76, when you put your name O.H. Nelson on Peoples' Exhibit 13 for identification, yes or no? A Yes.

MR. STANCHFIELD: I ask your Honor to instruct the witness ----

THE COURT: Yes, you must not answer until counsel has an opportunity of objecting to the question when he feels that he should.

MR. STANCHFIELD: I object to the testimony on the ground that it is incompetent, not the best evidence, and hearsay as to Kramer ; irrelevant and immaterial.

Objection overruled. Exception.

A Yes.

Q What day of the month and the year was it?

Same objection. Objection overruled. Exception.

A June 12th, 1905. O.H. Nelson is not correct; H.O. Nelson is my name.

Q H.O. Nelson. That is Peoples' Exhibit 13 for identification. Now after you received the money and signed your name to Peoples' Exhibit 13 for identification did you order some of the rope to be sent out, yes or no?

MR. STANCHFIELD: Objected to on the ground that the order is the best evidence; incompetent, immaterial and irrelevant.

MR. APPLETON: Question withdrawn, for the moment.

Q What did you do with Peoples' Exhibit 13 for identification after you signed your name H.O. Nelson to it? A Can I say now what I did?

Q Yes. A I am chief clerk of the Wall Rope Works ----

Q What did you do with it? A I ordered the rope ~~handed~~ shipped.

MR. STANCHFIELD: I move to strike that out on the ground it is not the best evidence.

MR. APPLETON: Consented to.

THE COURT: Strike it out.

Q What did you do with this piece of paper Peoples' Exhibit 13 for identification after you signed the name H.O. Nelson to it on the 12th day of June 1905? A What did I do with that?

Q Yes. A After the rope was shipped I returned that to the party who paid the money.

MR. STANCHFIELD: I move to strike out the words "after the rope was shipped".

MR. APPLETON: Consented to.

THE COURT: Strike it out.

Q Did you send Peoples' Exhibit 13 for identification to the Metropolitan Equipment & Supply Company, 142 East 14th Street, in the City of New York; just yes or no?

MR. STANCHFIELD: Objected to as incompetent.

levant, hearsay and immaterial.

THE COURT: It is leading. Objection sustained.

Q Please tell us what you did with the paper Peoples' Exhibit 13 for identification; that is, this piece of paper?

MR. STANCHFIELD: I object to that again on the same grounds.

Q Just say what you did with it?

THE COURT: If he knows what he did with it he may answer.

A I sent it to the Metropolitan Equipment & Supply Company.

MR. STANCHFIELD: I move to strike that out as calling for a conclusion, hearsay, and incompetent, irrelevant and immaterial and not the best evidence.

Motion denied. Exception.

Q Now after the bill or Peoples' Exhibit 13, was paid and you receipted it, did you order some rope sent out from the Wall Rope Works?

MR. STANCHFIELD: Objected to on the ground that it is not the best evidence; it is incompetent, hearsay, irrelevant and immaterial.

THE COURT: It is leading. Objection sustained.

Q What did you do after you received the \$431.76 and signed Peoples' Exhibit 13 for identification? A I gave instructions to our shipping department to have that rope shipped out.

Q You gave instructions to the shipping department to have that rope sent out. Now then, Mr. Nelson, on the 29th day of February, 1908, did you deliver to me Peoples' Exhibit 12 for identification and this piece of paper that I ask be marked Peoples' Exhibit 14 for identification?

(Marked for identification Peoples' Exhibit 14.)

A I did.

Q Did you find in the file at the Wall Rope Works those two pieces of paper filed away together, yes or no? A Yes.

MR. APPLETON: You may cross examine.

CROSS EXAMINATION BY MR. STANCHFIELD:

Q Mr. Nelson, what relation do you bear to the Wall Rope Company? A What relation?

Q Yes; what connection with it --- is it a corporation?

A It is.

Q Well what connection do you have with it? A I am employed.

Q In what capacity? A Cashier and chief clerk.

Q Cashier and chief clerk. Now do you know Mr. Kramer, the defendant? A I do not.

Q You never saw him in your life? A Not that I know of.

Q You never had any personal communication with him in your life? A I may have spoken to him on the telephone.

Q Well, have you? Do you want to swear that you have?

MR. APPLETON: I object to that. He has not said

he did. He said he may have.

MR. STANCHFIELD: If he said he might have I want to know if he is willing to swear that you ever spoke to him in your life?

THE WITNESS: I am not.

Q Do you know where his place of business is? or was in 1905, four years ago? A I know about where it is or was.

Q Were you ever in it? A Never.

Q Do you know how many clerks were employed there? A In his place?

Q Yes? A I have not the remotest idea.

Q Do you know whether he had outside business in addition to the business of the Metropolitan Equipment & Supply Company? A I do not .

Q Do you know anything about how much time, if any, he has been in the offices of the Metropolitan Equipment & Supply Company? A I haven't the remotest idea.

Q The only thing on earth you know about this transaction is that you got a check, you say, signed by Max A. Kramer?

MR. APPLETON: I object to that. He has told what he knows. There may be more he knows.

MR. STANCHFIELD: That is, as far as Kramer is concerned.

Objection sustained. Exception.

MR. STANCHFIELD: Let me take those exhibits?

MR. APPLETON: They are not in evidence.

MR. STANCHFIELD: It doesn't make any difference. Haven't I the right to see these exhibits over which you have spent so much time?

MR. NOTT: We spent so much time because you would object to them.

THE COURT: Anything that is in evidence you may examine, of course, and you should be accorded the widest latitude in examination.

Q This exhibit 13 for identification to which your attention was called, Mr. Nelson, you personally had nothing to do with the sending? A Explain that. What do you mean by that?

Q Your attention has been called to a paper marked Exhibit 13. Do you realize or no from there what it is? A I certainly do.

Q Did you personally send that paper out? Do you understand what I mean by the word personally? A I certainly do.

Q Did you send it out personally? A ~~Wike~~ Did my own hand drop it in the mail box do you mean?

Q Yes? A Well I couldn't be sure about that now. It might have been one way and might have been the other --- either sent it or it was sent.

Q That paper relates to a transaction back in June 1905,

doesn't it? A Yes.

Q Several years ago? A Yes.

Q And personally you haven't any recollection about it, have you? A Yes.

Q Well you say you have. Now don't you know then whether you had anything/personally with sending it out? A Yes, I know.

Q Did you or didn't you? A Well I either sent it out or ordered it sent out. I am not sure whether I dropped it in the box, because I am the head of a big office down there.

Q That is the reason why I am trying to find out whether you have any independent recollection of what you had to do with that paper at that date? A I certainly have.

Q What did you do with it? A I put my name on it, received the money and had it sent out.

Q You say you had it sent out? A Yes.

Q That does not mean that you sent it out, does it, by that answer? A I couldn't testify that I actually addressed that and mailed it and put it in the box.

Q Have you stenographers there? A Yes.

Q Under you? A Oh, lots of them.

Q So that your now recollection is that you had nothing personally to do with sending that paper from your establishment?

MR. APPLETON: I object to that. He has told what he did, and his recollection is different from the way

Mr. Stanchfield states it in that question.

THE COURT: You may answer the question.

A Well it is so long ago I cannot tell which way it was. I either saw it sent out or sent it out myself. I didn't take it every time that it went through.

Q You can't remember what you had to do with it? A Not personally mailing it. That is not my business.

RE-DIRECT EXAMINATION: BY MR. APPLETON:

Q Did the Wall Rope Works ever sell the Metropolitan Equipment & Supply Company any rope prior to that particular assignment?

MR. STANCHFIELD: Objected to as immaterial and irrelevant.

Objection overruled: Exception.

THE NINTH JUROR: May I ask a question?

THE COURT: Yes.

BY THE NINTH JUROR:

Q Is it customary for your firm to mail such receipts as I presume that is, in an envelope bearing the business name of your firm? A It certainly is.

MR. APPLETON: Is that all?

THE NINTH JUROR: That's all.

MR. APPLETON: I have not offered this piece of paper in evidence, as your Honor knows. I will connect it with the defendant before I offer it in

evidence.

BY MR. APPLETON:

Q (Question repeated by stenographer as follows:) Did the Wall Rope Works ever sell the Metropolitan Equipment & Supply Company any rope prior to that particular assignment? A Consignment?

Q Prior to that particular sale of rope?

MR. STANCHFIELD: Same objection, irrelevant; it is immaterial as to what business relations they had before.

Objection overruled. Exception.

A To the best of my knowledge and believe this was the first shipment made.

Q Did you examine the books to ascertain that fact?

MR. STANCHFIELD: Objected to as hearsay, incompetent and irrelevant.

Q Did you examine the books of the Wall Rope Works to ascertain that fact down there, and examine the records down there?

Same objection; objection overruled.

Exception.

A No, I did not.

Q Didn't I ask you to do that on Saturday, sir?

Objected to. Objection sustained.

Q Will you please now go to the Wall Rope Works and examine the books and see if there was any other sale of rope to the de-

fendant?

MR. APPLETON: Question withdrawn.

Q Have you examined the books to ascertain whether or not there was any other sale of rope to the Metropolitan Equipment & Supply Company during the month of June 1905? A I have.

MR. STANCHFIELD: Same objection, immaterial and irrelevant.

Objection overruled. Exception.

Q Will you now state to the Court and Jury whether or not the Wall Rope Works sold any other rope to the Metropolitan Equipment & Supply Company other than that particular consignment for the bill you have in your hand?

MR. STANCHFIELD: Same objection to that.

THE COURT: If you know you may answer.

MR. STANCHFIELD: Exception.

A They certainly did.

Q Did they sell any other rope to the Metropolitan Equipment & Supply Company to be delivered at the foot of 22nd Street, Brooklyn, in the month of June 1905?

MR. STANCHFIELD: Same objection; it is hearsay, irrelevant, incompetent, immaterial.

Objection overruled. Exception.

A Nothing in the month of June 1905 to be delivered to the foot of 22nd Street Brooklyn.

Q That is a fact, isn't it?

Same objection; same ruling; exception.

A Yes sir.

MR. STANCHFIELD: Let me take that exhibit for a moment.

MR. APPLETON: It is not an exhibit. It is merely marked for identification.

MR. STANCHFIELD: Why, it is an exhibit for identification.

RE-CROSS EXAMINATION BY MR. STANCHFIELD:

Q With reference to the testimony that you have given as to what your concern did with the Metropolitan Equipment and Supply Company, or with reference to where it sold rope and delivered it, you are testifying entirely from what you found, or omitted to find, upon the books of your concern, aren't you?

A What I found or omitted to find?

Q Yes? A What I know to be the record.

Q Yes, of your office, of your concern? A Yes.

Q You have no recollection independent of ~~the~~ what the books show or omit to show what rope you sold in June 1905 to the Metropolitan Equipment & Supply Company, or where it was delivered by you? A I certainly have a recollection.

Q Outside of the books? A Yes.

Q Well now have you looked at the books to see whether you

sold rope in June 1905 aside from the one order in question?

A No.

Q Can you say under your oath that you did not sell to the Metropolitan Equipment & Supply Company rope in June 1905, aside from this order? A To the best of my knowledge and belief.

Q Did you sell them rope in July 1905? A I don't recall now what month it was. It was subsequent.

Q Haven't you been looking at the books to see? A Well, I testified to that.

Q Well you will testify again too. I ask you if you have not been looking at the books to see? A No.

Q What is your disinclination to answer my question?

MR. APPLETON: I object to that.

BY THE COURT:

Q Have you any disinclination to answer the question? A None whatsoever.

THE COURT: Then just answer.

BY MR. STANCHFIELD:

Q Then why don't you answer me? I ask you now whether you have been looking at the books to ascertain whether you sold any rope to the Metropolitan Equipment & Supply Company outside of the order in question? A I have not been looking at any books, no.

Q Can you remember without looking at the books whether you did in July or June 1905 -- aside from the order in question?

A I can remember that that was the first transaction, in June

1905, without any books at all.

Q Well I don't ask you that. Do you understand?

A Not any more than that.

Q (Question repeated by stenographer as follows) Can you remember without looking at the books whether you did in June or July, 1905, aside from the order in question? A I don't recall anything sold to them outside of that in June.

Q Do you recall any in July? A Not specially.

Q When Mr. Kay (the 9th juror) asked you the question as to the custom of your office, you stated in substance --- and I want it a little more in detail -- that when you sent back bills receipted to the purchasers they were enclosed in an envelope with your business stamp upon them, is that right? A That's right.

Q There is nothing upon the face of this bill to indicate how it was sent, is there? A Is that a question?

MR. APPLETON: "I object. I will have the bill in evidence just as soon as I can call the requisite witness."

THE COURT: You may look at the paper to see if there is anything which indicates what counsel asks.

Q Anything upon that bill to indicate how it was returned or sent? A I should say there was.

Q Any mark of your concern or of yourself ----

THE COURT: To show it had been sent out in any way.

A It has been creased over that way and folded and mailed in an envelope. We have that sort of envelope and I just take that ---

Q Suppose a man brought the check right there to your establishment and paid right there with a check ---

MR. APPLETON: I object to that. He asked if there was anything about that bill to indicate that it was sent out and the witness in an honest way tells us. I don't see why he should be browbeaten.

THE COURT: There is no browbeating.

MR. STANCHFIELD: Well, your Honor, was that a proper remark?

THE COURT: It is not a proper remark.

MR. APPLETON: I apologize to the Court.

Q Is there anything aside from the fact that there are folds there to show that it had been sent by mail? A yes.

MR. STANCHFIELD: Will your Honor allow me so come and see what he refers to?

THE COURT: Yes, you may.

(Mr. Stanchfield steps to the witness chair.)

Q I want to know what mark you refer to on that exhibit outside of the fold upon there? A I thought you meant what other reason.

Q No, I asked you if there was any other mark aside from the

folded? A There is no other mark.

Q Well now that bill was sent before it was ever received somewhere, wasn't it? A It was.

Q And the folds to which you refer in it might have been there as a result of sending it in the first instance before it came back with a check or anybody brought a check to pay it?

MR. APPLETON: If your Honor will pardon me, I cannot see the use of wasting time on this, because with another witness that I will call I will show that that particular paper came from the office.

THE COURT: If this is in the form of an objection it will be overruled.

MR. APPLETON: It is not. I am only suggesting, to save the time of the Court and jurors, I will connect that with the defendant's office and then offer it in evidence. I think as to whether this man knows who sent it, or any of those things, are perfectly irrelevant in any way, and if they will bear with me they may call the witness back if I do not show it to the satisfaction of everybody that that bill after it was receipted reached the office of the defendant.

MR. STANCHFIELD: There never will be any controversy I say here, that it did not reach the office of the Metropolitan Equipment & Supply Company, and

A. Kramer as being that company; but I deny the statement that he can prove any where, from any source, or that this evidence shows, that Kramer himself ever saw that bill.

THE COURT: I will take your question, if you press it.

MR. STANCHFIELD: I do not know of any objection known to the practice of law ---

THE COURT: Do you press your question?

MR. STANCHFIELD: certainly.

THE COURT: Read the question.

Q (Question repeated as follows by stenographer.) And the folds to which you refer in it might have been there as a result of sending it in the first instance before it came back with a check or anybody brought a check to pay it? A yes.

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T H O M A S P E N D E R, called as a witness on behalf of the People, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. APPLETON:

Q Now, Mr. Pender, in the month of June 1905 where were you employed? A Wall Rope Works, 56 South Street.

Q What was your business or employment there? A Charge of the shipping department.

MR. NOTT: Speak a little louder, please.

THE WITNESS: Charge of the shipping department.

Q And were you in charge of the shipping department on the 12th and 13th days of June 1905? A Yes sir.

Q On or about the 12th day of June 1905 did you personally weigh five coils of rope ordered by the Metropolitan Equipment and Supply Company to be shipped to the free floating baths, foot of 22nd Street, Brooklyn? just yes or no, if you know.

MR. STANCHFIELD: Objected to upon the ground that it is hearsay as to the defendant; incompetent immaterial and irrelevant, and no requisition calling for the weight of rope by the witness.

Objection overruled. Exception.

BY THE COURT:

Q Did you personally weigh it? A Not on that date, no sir.

BY MR. APPLETON:

Q. What date? A. About the 10th.

Q. About the 10th? A. Yes.

Q. Of June? A. Yes sir.

Q. And did you make a pencil memorandum of the weight of each coil of rope at the time you weighed it? A. I did.

Q. I show you this piece of paper which is marked People's Exhibit 14 for identification and ask you if you made the pencil marks on that piece of paper? A. Yes sir.

Q. And did you then deliver this piece of paper People's Exhibit 14 to another person? A. To my shipping clerk.

Q. What is his name? A. James Felter.

Q. Now does this piece of paper correctly represent the weight of each coil of rope? A. It does.

MR. APPLETON: I offer that piece of paper in evidence.

MR. STANCHFIELD: I object to it as hearsay, incompetent, irrelevant, immaterial and no foundation laid for its introduction in evidence.

MR. APPLETON: I will connect it by the next witness that it was this particular---

THE COURT: Withhold it then if you are going to connect it. Get the connection now.

MR. STANCHFIELD: What is your Honor's ruling?

THE COURT: On the assurance of counsel that he

would connect it with the next witness I will not receive it at this time. Perhaps that will remove counsel's objection to it, if it be connected.

MR. APPLETON: It is only in the order of proof, I would have to recall the witness as I apprehend---

THE COURT: Go right ahead.

MR. STANCHFIELD: As a matter of expedition, because I am getting restive under these accusations of Mr. Appleton about my professional conduct here---

THE COURT: I think counsel upon both sides are

MR. STANCHFIELD: (Continuing) I don't care anything about the order in which that paper goes in. Of course if it is necessary to put it in now while this witness is here, for convenience mark it in over my objection and exception. If he does not connect it of course your Honor would have to strike it out.

THE COURT: Well, I will take it in evidence and give you an exception and if it be not connected I will ask the counsel for the defendant to move to strike it out, and I am taking it at this time because of the attitude of the counsel for the defendant.

Received in evidence and marked People's Exhibit
14.

(Exhibit 14 is now read and exhibited to the Jury

by Mr. Appleton)

Q What does the #3" represent. A Three inch.

Q And does that mean that there were three coils of three inch rope? A Yes sir.

Q And the "6" what does that represent? A Six inch.

Q Does it mean that there were two coils of 6 inch rope?
A A coil and a part of a coil.

Q Of 6 inch rope? A Yes sir.

Q And these figures on the left hand side, the "339" does that represent feet or pounds? A Pounds.

Q And the next number underneath "345" does that represent feet or pounds? A Pounds.

Q And "336" does not represent feet or pounds? A Pounds.

Q And "1225" does that represent feet or pounds? A Pounds.

Q And the "1102" does that represent feet or pounds? A Pounds.

Q And that was the weight of each of the five coils, is that correct? A Yes sir.

CROSS EXAMINATION BY MR. STANCHFIELD:

Q The numerals upon the exhibit, the figures, you identify as being figures in your handwriting, do you? A Yes sir.

JAMES FELTER, called as a witness on behalf of the people, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. APPLETON:

Q In the month of June 1905 where were you employed? A Wall Rope Works.

Q 56 South Street? A Yes sir.

Q And what was your employment there? A Shipping Clerk.

Q In the month of June 1905 did you receive from Mr. Pender, the witness who has just preceeded you, this slip of paper People's Exhibit 14? A Yes sir; those are his figures, yes sir.

Q And you received that piece of paper from him? A Yes sir.

Q I show you this piece of paper which I ask to be marked for identification People's Exhibit 15---

(Marked for identification People's Exhibit 15)

Q And ask you if that piece of paper is in your handwriting? A That is my handwriting, sir.

Q Now did you make the entries on the right hand side of that piece of paper, People's Exhibit 15 for identification from People's Exhibit 14 for identification? A I certainly did sir. I took those weights from our weight master and I made an entry upon the books, shipped the goods and the weights are on the receipt

MT. STANCHFIELD: I move to strike that out.

THE COURT: Strike it out.

MR. APPLETON: The answer "yes" may stand?

THE COURT: Yes.

Q After you wrote out People's Exhibit 15 for identifi-

ocation did you ship five coils of rope to the foot of 10th
Brooklyn, just yes or no?

MR. STANCHFIELD: Objected to as hearsay and
incompetent ~~and~~ as to the defendant.

Objection overruled. Exception.

BY THE COURT:

Q Did you? A I did, sir, on that receipt.

BY MR. APPLETON:

Q Then did you give the truckmen People's Exhibit 15 for iden-
tification when you shipped the goods out? A The receipts I
gave, I gave the truckmen the receipts, and he brings back the
receipt signed. That is all I know.

MR. STANCHFIELD: I move to strike that out.

MR. APPLETON: Consented to.

THE COURT: It is leading. Yes.

Q Did you give this piece of paper People's Exhibit 15
for identification to the truckman to whom you gave the rope? A
I certainly did.

Q Then did the truckman bring back to you People's Exhibit
15? A They brought me back that receipt signed.

Q This piece of paper? A

MR. STANCHFIELD: I don't care about his answer-
ing the question, but I ask to strike out that he brought
back the receipt signed.

MR. APPLETON: He brought back People's Exhibit 14 signed, is that right?

THE WITNESS: He certainly did, yes sir.

THE COURT: Any questions.

MR. STANCHFIELD: Not at present, no sir.

THE COURT: Stand down.

EDWIN T. HYDE, called as a witness on behalf of the people, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. APPLETON:

Q In the months of May and June 1905 did you hold an official position in this City? A Yes sir.

Q And what was that position? A Foreman of baths.

MR. NOTT: Speak a little louder please.

Q Foreman of baths? A Foreman of baths.

Q And that is the free floating baths? A Yes sir.

Q Now in the Fall after the weather gets too cold, what happens to the baths, what do they do with the free floating baths? A We have them towed away from the moorings to South Brooklyn, foot of 22nd Street.

Q Then in the Spring time do you do anything with respect to those free floating baths? A We have them overhauled and put in condition for the coming season.

Q Did you do that in the Spring of 1905? A Yes sir, we do that every Spring.

Q Now do you overhaul the ropes or the hawsers on the baths?

A We make an inspection of all the old ropes that we have on hand.

Q And those rpes are used for what in connection with the baths? A The hawsers are used.

MR. STANCHFIELD: We need not spend much time over that.

A (Witness continuing) they are used for mooring the baths, and the smaller lines are used for running lines.

Q Then do you put in a request for rope to your superior officers? A Yes sir, I made a request, for a certain amount of rope.

Q On or about the 13th day of June 1905 wãre five coils of rope delivered to the free floating baths at the foot of 22nd Street, Brooklyn? A Yes sir.

Q And at the time the rope was delivered did you sign that piece of paper, People's Exhibit 15? A Well, I signed one, I don't know whether that is the only or not.

Q Will you look at the letters "E.T." down there? A I see the letters.

Q Are those in your handwriting? A They seem to be but I don't understand how it is I did not sign the full name.

Q You got five coils of rope, did you? A Yes sir.

Q Delivered down there about the 13th day of June 1905?

A Yes sir. We got all we ordered in feet.

Q Well, I will get to that in just a minute. ---

MR. APPLETON: Now if your Honor please I offer in evidence People's Exhibit 15 for identification.

THE COURT: Any objection?

MR. STANCHFIELD: Objected to, as hearsay and

MR. APPLETON: It is not offered, your Honor, for the object----

THE COURT: I understand. It is taken in evidence if there is no objection that has not yet been urged.

MR. STANCHFIELD: Pardon me?

THE COURT: I say if there is no other objection than the one already urged----

MR. STANCHFIELD: It is hearsay, irrelevant, incompetent, and no foundation laid for its introduction. Your Honor, I take it, understands from the testimony that the delivery was made by the Wall Rope Company, that the rope itself never went to the Metropolitan Equipment and Supply Company and was in turn by it delivered.

THE COURT: Yes. Mark it in evidence.

MR. STANCHFIELD: Exception.

Received and marked in evidence People's Exhibit

15.

BY THE NINTH JUROR:

Q Those coils of rope that you received, were they done up in canvas or burlap, and was there any marking on them. A They

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were done up with small rope.

Q Just tied around with small rope? A I don't think there was an canvas around; I am not sure.

Q There were nobtags on? A No sir.

Q No marking of any kind? A No sir.

Q Any indication of the weights being marked on each coil?

A No sir.

BY MR. APPLETON:

Q And was that the ^{only} consignment of rope that you got in the month of June 1905 for your free floating baths? A Well, I am not sure about that. We generally make a small order in the first part of the season, around February or March.

Q But I say in June, was that the only ----A This is all the orders was in June:

MR. APPLETON: (Reading People's 15 to the Jury)

New York, June 13, 1905. Received from the Metropolitan Supply and Eq. Co. in good order Department 3 floating baths, foot of 22nd Street, Brooklyn, the following order 1200 feet 6 inch, 1100 feet 6 inch, 1000 feet 3 inch; 1000 feet 3 inch, 1000 feet 3 inch.

And then the weights over here (Indicating): The top one is 1225, 1002, then 339, 345, 336.

Q Now then, Mr. Hyde, later on was People's Exhibit for identification #3 presented to you? A Yes sir.

Q Now upon this piece of paper, People's Exhibit 3 for iden-

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tification is your signature, is it not? A Yes sir.

Q And your signature is enclosed in that little rectangular shaped place? A Yes.

Q And in that also are "Correct, E.T. Hyde, Jr. foreman"; is that correct? A Yes sir.

Q What did you mean when you signed that "Correct." A It was correct on the amount of feet we ordered and received.

Q It was correct on the amount of feet you ordered and received? A Yes.

Q Did you ever weigh that rope? A No sir.

Q Were there any scales over at the free floating baths at the foot of 22nd Street, Brooklyn? A No sir. We had no facilities for weighing.

Q Did you measure the rope to see if you had the right number of feet? A Yes sir.

Q And you found you had the right number of feet? A Yes sir. We got the right number of feet.

Q And then did you assume that the pounds---

MR. STANCHFIELD: I object to that; no matter what he assumes.

Q So you marked the bill "correct", when you found you had the right number of feet, but never weighed the rope? A No sir, never weighed any since I have been in the business.

Q Never weighed any since you have been in the business? A No sir.

CROSS EXAMINATION BY MR. STANCHFIELD:

Q Did you see the truckman that came to the bath from the Wall Rope Company with this load of rope? A Yes sir I think I did. I think I was there when the rope was delivered; I am not sure about that.

Q And saw the truck man? A I am not sure about that.

Q Where did you make out---

MR. STANCHFIELD: Will your Honor send an officer here to take this exhibit to the witness?

(Mr. Appleton I should be very glad to do it, sir.

MR. STANCHFIELD: I don't expect you to do it.

THE COURT: I have no doubt your adversary would gladly accommodate you?

MR. APPLETON: I so state and I have this morning, stated all morning that I will pass the papers and very gladly do it.

MR. STANCHFIELD: Well, I did not think of asking you to do it.

Q At the time when the truckman delivered that rope did you have any independent recollection of seeing that paper at all?

A No sir, I don't have any.

Q Your names does not anywhere appear upon it? A No It has got my "E.T.".

Q You say your full name no where appears upon it? A Only

upon the back.

Q Is that in your handwriting? A Yes sir.

Q On the back of it, which you recognize to be your handwriting? A Yes sir.

BY THE COURT:

Q Are those initials in your handwriting on the other side?

A They seem to be, to the best of my knowledge.

BY MR. STANCHFIELD:

Q Your recollection is now that they are, is that right?

A Yes sir. That is, I saw this paper, This signature on the back here was made in the district attorney's office.

Q Well that was a year or two or three after the event, wasn't it? A 1907.

MR. APPLETON: Let us fix the date.

THE WITNESS: It is dated on the back here.

Q When were you in the district attorney's office? A It is dated June 20 1907.

Q That is when you put your name on the back of it, is it? A Yes sir.

Q I am not interested in that. What I want to know is, back in June 1905 whether you are able to say under your oath positively that those initials on the bottom of that paper are yours? A To the best of my knowledge and belief they are.

Q Now there is nothing there except the two letters "B.T"? A Yes sir.

2-14

Q How do you ordinarily sign your name Mr. Hyde? A E. T. Hyde, Jr.

Q Do you know why you did not put on "H" or "Hyde" on that paper? A No sir, I don't know. They generally have two of these slips, and I might have got hold of two them and signed one and then kept this or kept the other one in mistake.

Q Did you keep in your department that particular paper? A Well, we generally keep them for a certain time.

Q No, did you keep them or not? A Not to my recollection.

Q Who filled in the body of that paper; did you? A No sir. I never fill in anything.

Q When it was brought there from the Wall Rope Company it was already filled out then? A Yes sir.

Q Now do you know what you did with the duplicate of that paper? You say they generally present it too. A Well I generally keep it in the desk, on file in the office.

Q You keep them on file? A For a certain length of time.

Q Then what do you do with them? A Well, we destroy them after a certain length of time, after a couple of years.

Q Do you recollect whether you kept the suplicate of that one? A No sir, I do not.

Q Was your attention called to that at all, between June 1905 and the time in 1907 when you were at the District Attorney's office? A Yes sir; the district attorney asked me what receipts I had, to bring them over to him.

2-15

Q You looked to see, did you? A Yes sir; I brought him all I had.

Q When you looked did you find the duplicate? A Well, I am not sure about that. I brought all I had and gave them to Mr. Appleton.

Q Did you bring that one and give it to Mr. Appleton? A I don't know, I am not sure. I know I signed it in Mr. Appleton's office, on the back, that day.

Q But you are not sure about whether you took the other one to him or not? A No sir, I am not.

Q Only sure about that one there? A No sir.

P E T E R C. R A S M U S S E N , called as a witness on behalf of the People, being first duly sworn testified as follows:

DIRECT EXAMINATION BY MR. APPLETON:

Q In the month of May 1907 where were you employed? A In the district attorney's office, New York County.

Q And in that month were you given a subpoena duces tecum to serve---

(Question withdrawn)

Q In what capacity were you employed? A As a process server.

Q In that month did you go with others to the office of the defendant Max Kramer 142 East 14th Street, in the County of New York, with a subpoena duces tecum; yes or no?

MR. STANCHFIELD: I object to that question. Honor pleases as leading. He went to the office of Metropolitan Equipment and Supply Company, if he was anywhere---

Objection overruled, exception.

A I went up in 14th Street.

Q Did you bring any papers or documents from the office of the defendant Max Kramer? A Yes.

Q And was there a filing case there in the office of Max Kramer? A Yes.

Q Did you take the papers out of the filing case? A I did not.

Q Were they taken out in your presence? A Yes.

Q And then were they all bundled together and brought down to the District Attorney's office? A Yes.

Q And delivered to whom? A I turned them over to Mr. Appleton---you, and ~~you~~ Mr. Smyth, assistant district attorneys.

Q Turned them over to me and to Mr. Smyth? A Yes sir.

Q Then what did you do? A Well, my duty was done then. I had nothing else to do.

Q You went away? A Yes sir.

CROSS EXAMINATION BY MR. STANCHFIELD:

Q When did that episode occur? A Latter part of May. I have refreshed my memory and I fixed the date.

Q May of what year? A 1907.

Q Now how many men from the district attorney's office were with you? A Three besides myself.

Q Who were they? A Lieutenant Beery, Lieutenant Flood, Mr. Gleason, process server in the district attorney's office, and myself.

Q You called them Lieutenants--- some of them were detectives
A Lieutenant Beery was a Lieutenant in New York Police Department and so was Lieutenant Flood.

Q You had no warrant for the arrest of Kramer? A I had no warrant.

Q Well, they didn't have? A Not to my knowledge.

Q You didn't see any? A They didn't show me any. No sir.

Q Now the office to which you went was the office of the Metropolitan Equipment & Supply Company, wasn't it? A Yes sir.

Q Now when you got there you didn't find Mr. Kramer there, did you. A Mr. Kramer wasn't there, no.

Q And you men, with no warrant for him in his absence broke into his files and took his books and papers and brought them to the District Attorney's office, didn't you? A No sir.

Q Well, opened the files? A Well, the subpoena duces tecum was served by Lieutenant Beery on the young lady in charge of the office.

Q I am not asking about the subpoena ; I am asking if you did not take out the books and papers of Mr. Kramer with no warrant for him and part them down to the District Attorney's office?

MR. APPLETON: I object to that, he had a subpoena duces tesum.

THE COURT: You may tell what was done.

MR. STANCHFIELD: I ask whether you did not do that?

A Well we were shown the papers and they were taken out.

Q I ask you didn't you do that? A Yes, they were taken out of his office.

Q Whom did you find in this office there? ---a young girl?

A A young girl in there.

Q Was anybody else there besides this young girl? A No, I didn't see any other.

Q No one came in there except ~~you~~ this girl while you were there? A No, I don't recollect any.

Q Now these papers that you brought down to the district attorney's office consisted of books? A Books.

Q And all sorts of papers that you found there? A Yes, and long envelopes and bills and everything, whatever was in the letter file.

Q Did you have with you any subpoena for Kramer? A I didn't have any. Lieutenant Beery maybe had one---I don't know.

Q Did you see any subpoena for Kramer? A No, I wasn't shown any paper subpoena.

Q Then so far as your knowledge goes no one of you had any subpoena for him, did you? A Well, I can only speak for myself.

Q I say so far as your knowledge goes? A I had none.

Q Well you didn't see anybody else have any? A Well, I couldn't say that.

Q Isn't that true, officer? A I didn't see any one have any. I didn't have any myself, I don't know what the other people had.

Q You had no subpoena and didn't see one in the possession of any one else? A I saw a subpoena ~~in~~ duces tecum.

Q Who had it? A Lieutenant Beery.

Q Whom did he serve it on? A On the young lady in charge.

Q Did he have any subpoena for Kramer? A Well I couldn't say.

Q Did you know the name of the young lady in charge? A I don't know her name.

Q And do you mean to say under your oath that he had made out a subpoena when he went there for nobody? A Well, I don't know. I can only say about what I know.

THE COURT: What you know yourself.

THE WITNESS: Yes sir.

Q Didn't you say a little while ago that he had some sort of subpoena there? A He had a subpoena decues tecum there---white.

Q How do you know it was? A Well, I have seen so many of them. He was reading it off to her, and served it on the girl--

Q What name was upon it? A I don't recollect?

Q Was there any name at all upon it. A There must have been.

Q You didn't see any? A No, I had nothing to do with the

subpoena duces tecum at all.

Q I ask what did you see? A I didn't see nothing written on it, so far as I am concerned because I had no charge of it.

Q Did you take all these books and papers away at that time with you? A He took quite considerable; Yes, that was shown to us.

Q Without notifying Kramer? A Mr. Kramer, the defendant, wasn't there.

RE-DIRECT EXAMINATION BY MR. APPLETON:

Q Were a number of envelopes brought down similar to this envelope that I now show you? A Something like that, with letter heads on.

Q Was Mr. Gleason in the room with Mr. Smyth and me when you delivered these papers in the room? A Yes.

J O H N E. G L E A S O N, called as a witness on behalf of the people, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. APPLETON:

Q In the latter part of May 1907 where were you employed?
A District Attorney's office, New York County.

Q In what capacity? A Process server.

Q In the latter part of May 1907 did you go to the office of the Metropolitan Equipment & Supply Company at 142 East 14th Street in the County of New York? A I did.

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Q Before you went there had you seen a man by the name of John Dooling, an attorney and counsellor at law? A No sir.

Q Had you received in the room upstairs, in company with Mr. Smyth and myself, some papers from the witness who just preceded you, Rasmussen? A I had, after the visit.

Q Now I show you this envelope and I ask you if that is one of the papers that you received or saw delivered to me by Rasmussen? A I wasn't there at the time Rasmussen delivered them.

Q You weren't there? A I was still at the office of the Metropolitan Equipment & Supply Company when those were delivered to the district attorney's office.

Q And then did you afterwards examine this envelope? A I did, in the District attorney's office.

Q Just answer yes or no, and no more? A Yes.

Q Did you take the contents of that envelope out? A I did.

Q And what did you do with it when you took it out? A I examined it.

Q And then did you communicate to anybody ~~what~~ what you had found in the envelope? A I did.

MR. STANCHFIELD: I object to that.

Q Just say yes or no? A Yes.

Q Who was the person to whom you gave the communication? A Mr. Appleton and My Smyth.

Q When you say Mr. Appleton your refer to me? A I do.

Q Then did you deliver the envelope over to me, and the contents of it? A I did.

Q And at that time did you initial each of the papers that you found in this envelope? A I did.

Q Now I show you this piece of paper---first, let me ask you were they all pinned together? as they were just before---

MR. STANCHFIELD: Objected to as leading, incompetent immaterial irrelevant and hearsay.

THE COURT: What form they came to you in I will take.

MR. STANCHFIELD: Exception.

Q In what form were those papers when you took them out of the envelope?

MR. STANCHFIELD: Objected to as hearsay incompetent, irrelevant immaterial and inadmissible.

THE COURT: If he knows I will take his answer.

A I remember these three ~~xxx~~ here being in the edge of that thing and I---

Q Will you please look at the back of each one of those papers and see if you find your initials there A Yes.

Q Each one of the papers? A Yes.

Q Now look at the back of the two small ones ? A Yes, they are in the same condition now as they were then; they were inside the envelope.

Q With respect to the pin, were they pinned together exactly as they are now?

Same objection; same ruling; exception.

A They were, yes.

Q Did you find this piece of paper that I show you now in that envelope? A It was.

MR. APPLETON: I offer that piece of paper in evidence.

THE COURT: Show it to your adversary.

MR. APPLETON: I withdraw the offer and ask to mark it for identification People's Exhibit 16.

Marked for identification People's Exhibit 16.

Q I show you this piece of paper and ask you if that is another one of the pieces of paper that you found in that envelope?

A It is.

Q You wrote your initials on the back at that time? A Yes.

MR. APPLETON: I ask to mark it for identification People's exhibit 17.

Marked for identification People's Exhibit 17.

MR. APPLETON: I ask that the envelope itself be marked People's Exhibit 18 for identification./

THE COURT: It may be.

Marked for identification People's Exhibit 18.

CROSS EXAMINATION BY MR. STANCHFIELD:

Q You were one of the quartet made up of the two detec-

2-24 77
tives mentioned by the last witness, were you not? A I was sir.

Q Now where you went was to the Metropolitan Equipment & Supply Company's offices? A Metropolitan Equipment and Supply Company.

Q Offices? A Yes sir.

Q You found how many rooms? A I found three rooms.

Q And did you find Mr. Kramer there? A No sir.

Q You didn't see him at all? A I saw him later on.

Q Well I say at that time? A No, not at that time.

Q You found in charge of his office a young girl? A Yes sir.

Q Did you inquire of her for Mr. Goldstein? A I did not.
Lieutenant Beery---

Q Well, somebody did? A Yes sir.

Q A Mr. Jacob Goldstein? A Yes sir.

Q Now did or did you not ascertain his whereabouts? A
Lieutenant Beery was the one that inquired as to Mr. Kramer
and Mr. Goldstein, and I believe the young lady---

Q Well did you find Mr. Goldstein there? A No sir, we did not.

Q Inquiry was made for him? A Not at that time we didn't, no.

Q Did you find him there later? A I did.

Q When you say later how much later? A Why I should judge 1

2-25

it was about 2 o'clock in the afternoon when I served Mr. Kramer personally.

Q Whereabouts? A In the office.

BY MR. STANCHFIELD:

Q I am now talking about Mr. Goldstein. When did you first see him? A Mr. Goldstein?

Q Yes? A It was two o'clock in the afternoon. Did I say Kramer before? I meant Goldstein. We saw him in the afternoon at 2 o'clock.

Q When you said that you saw Kramer and served him you were mistaken? A I was mistaken in that. It was four o'clock or so when I saw Mr. Kramer.

Q Well, just answer my questions and we will get along a great deal smoother. It was at 2 o'clock when you first saw Goldstein? A Yes sir.

Q When you say you served him, what do you mean by that--you served him with a subpoena? A I served him with a forthwith subpoena to appear before the grand jury.

Q Before you ever served him all of the books and papers of the office had been taken away from there, hadn't they? A Not all of them, no sir.

Q Well the great bulk of them? A Some of them were.

Q And carted down to the district attorney's office? A Yes sir.

Q You knew perfectly well that you had no right to do that?

MR. APPLETON: I object to that as immaterial,
he was acting under orders.

Q I ask you didn't you know perfectly well you had no right to do that? A I knew we had a right with the consent of the part served.

Q Well now you took the books before you ever saw Kramer and Goldstein there, didn't you? A We did.

Q What time in the forenoon did you take away those books and papers? A Didn't take them away in the forenoon; they were taken in the afternoon, I should judge about one o'clock or twenty minutes to 1, somewhere around that.

Q Now when those books and papers were taken away did you go with them? A No sir I did not. I remained on the premises.

Q Who did take away the books and papers? A Rasmussen and Lieutenant Beery and a detective by the name of Flood connected with the district attorney's office.

Q Did they take among these papers this envelope to which your attention has been called here? A Well, yes sir.

Q You did not keep it in your custody? A No sir. I did not.

Q When did you next see that envelope? A I saw it next in the District Attorney's office, the same night I see that.

Q That is the first time you had examined it, wasn't it? A No sir.

Q Where did you examine it first? A The next morning I

2-27

examined the numbers and made a memorandum of the numbers of all envelopes.

Q I call your attention to Exhibit 18 for identification, with the contents of it, when did you first see that? A Why, I see it a few days afterwards.

Q Now you didn't see it at all at the offices of the Metropolitan Equipment and Supply Company? A Well, I couldn't swear to that. There were a certain number taken out, I couldn't swear to that particular one.

Q You cannot swear that you saw that particular envelope at the Metropolitan Supply and Equipment Company's offices at all? A Not that particular one, no sir.

Q Nor any of the exhibits in it? A No, I couldn't see inside of it.

Q When it was first called to your attention, the envelope or the exhibits in it, was several days after these things had been removed from these offices? A It was.

Q And it had no during that time been in your custody? A It was.

Q It had been? A Well, in the custody of Mr. Appleton.

Q Well I am not talking about Mr. Appleton, but about you. It had not been in your custody? Ah No sir.

RE-DIRECT EXAMINATION BY MR. APPLETON:

Q Later on after Easmussen had taken the envelopes and things

2-28

down town did you see him at the office of the defendant? A

I did.

Q The same day? A The same day.

Q Was the defendant there himself then? A He was.

Q That is the defendant, Max Kramer? A Yes sir.

Q And was there anybody there with Max Kramer? A There was.

Q Who was the person? A A lawyer by the name of John T. Dooling.

Q Now commissioner of elections? A Yes sir; and another gentlemen.

Q Now at that time did the defendant Kramer and his lawyer consent that the district attorney have the books and papers in the office.

MR. STANCHFIELD: I object to that, "At that time" as irrelevant, incompetent and immaterial.

MR. APPLETON: I am not going to speak of this Exhibit 18 at all; I am leading to something else.

MR. STANCHFIELD: Then I withdraw the objection. Of course we consented you could look at our books and papers.

Q Did they consent then that we might have the books and papers and anything that there was in the office? A They did.

Q Was there a safe there? A (No answer)

Q What was the language? A Mr. Dooling, I understood him

2-29

to say at that time that they could have any books they wished, and in case any books they don't require they would be left at the office.

BY MR. APPLETON:

Q Was there a safe there in the defendant's office? A There was.

Q Was it opened? A Yes sir.

Q Do you recollect who opened^{it}? A Why I am not sure whether Mr. Goldstein---I think Mr. Goldstein opened the safe.

Q Was there any other books that were taken from the office on that occasion other than the books that were in the safe? A There was.

Qc I show you this book, which I ask to be marked People's Exhibit 19 for identification---

Marked for identification People's Exhibit 19.

Q Do you recollect where that book was? (People's Exhibit 19 for identification)? A I do.

Q Where was it? A In a dress suit case in the store.

Q In a dress suit case where? A In the office of the Metropolitan Equipment and Supply Company.

Q Whereabouts was the dress suit case? A Standing near the wall on the floor, on the other side of the show case.

Q What is on the back of the showcase. A Back of the showcase.

Q Did you see the defendant make any act or do anything with respect to the dress suit case that contained People's Exhibit 19

for identification.

MR. STANCHFIELD: I object to that as leading and calling for a conclusion, incompetent, and improper. He can state what took place there, that is the only proper way to prove that or what he said?

THE COURT: Are him what he observed there?

THE WITNESS: I observed Mr. Goldstein over where the dress suit case laid, and put his foot against it and it fell over, and Mr. Kramer was there at the time, and either one of the two---I don't know which one it was--- gave the order to have it taken in the back, and at that time I then informed of what they had done.

Q And then was the dress suit opened? A Did I insist that the dress suit case--- A Mr. Appleton had stopped them before they went in the back room with the dress suit case, and the dress suit case was opened and there were several books taken out, which one of them was a small cost book---price book, and this book here (Indicating People's Exhibit 19 for identification).

Q People's Exhibit 19 for identification? A Yes. I don't know what book that is.

Q People's Exhibit 19 for identification? A Yes, that's it.

RE-CROSS EXAMINATION BY MR. STANCHFIELD:

Q By one o'clock in the afternoon of the day you had taken a great many books and papers, you say? A Yes sir.

Q Now later in the afternoon, you saw Mr. Kramer? A About four o'clock.

Q You saw Mr. Kramer about 4 o'clock. A Mr. Kramer, yes sir---I saw him around that time, I should.

Q Was Goldstein with him then? A I believe Mr. Goldstein was with him at that time, I won't be sure. Yes, he was there.

Q Well, he came into the place? A He came into the place.

Q When you were there do you recollect whether Kramer or Goldstein came in first? A Well, I couldn't say for sure. I had been on the street at that time.

Q When Kramer came there he came with his lawyer didn't he? A Yes sir. I took it for his lawyer.

Q And isn't it a fact that the lawyer representing Mr. Kramer stated to you then, stated to Mr. Appleton then in your presence that they could have or examine any book or paper so far as he, Kramer, was concerned, in the place? A He did.

Q Giving you any opportunity you wanted to examine them? A Yes.

Q You say there was a dress suit case there. I want to know if it was not---if the man who made some reference to taking it in the other room was not Goldstein? A Well that I wouldn't be sure of. Both of them were there together.

Q I know they were but I want to know whether your oath it was not Goldstein that made that remark about taking that dress suit case into another room? A Well, that I couldn't and wouldn't want to swear to now, because it is so long ago.

Q Well you don't know whether it was Kramer? A I don't know to a certainty whether it was Kramer. There was a conversation which I had heard.

Q You don't know that it was Kramer? A No, I couldn't swear to it.

Q You can't say under your oath that it was Kramer? A No, I could not.

Q Now with reference to this dress suit case, without any protest from Kramer it was opened in the presence of Kramer?

A It was.

Q And he permitted Mr. ~~Goldstein~~ Appleton, the district attorney to take from it any contents he desired? A The books were laying on the show case, top of the show case.

Q And they were taken away? A Yes sir.

Q All that was with Kramer's consent? A Yes sir.

Q Now did you see Goldstein after that day? A I did not.

Q Have you looked for him? A I have not.

Q Well you never have seen him since, have you? A No sir, I have not.

Q And when you say "I have not looked for him" you know that other connected with the district attorneys office have, don't you? A No sir, I don't.

Q Have you yourself made any effort to find him? A No sir.

Q Now there was more than one dress suit case in those offices, was there not? A The only one I saw was one, that's all I saw.

Q Well, weren't there in there--perhaps not a dress suit case but receptacles there that contained badges and emblems and insignia of one kind or another, that you examined? A I don't recollect any other there at that time.

Q Now you recall saying to Mr. Appleton ~~at~~ with reference to the safe that Goldstein opened it? A I said I couldn't say who opened it, whether Goldstein or Mr. Kramer opened it. I had been standing.

Q Didn't you testify here within half an hour that it was Goldstein who opened it? A No sir, I didn't, I don't think so. I couldn't swear as to whether it was Goldstein or whether it was Kramer who opened that safe.

Q Don't you know Mr. Kramer said he couldn't open it and Goldstein did go and open it at his request? A No sir, I couldn't swear which one of them opened it, the two of them were there when Commissioner Dooling was there and Mr. Appleton, and I was down at the other end of the show case.

Q But I ask you what you saw and what you heard--you are on the witness stand doing the testifying. Now I want to know under your oath whether you did not hear Mr. Appleton ask Kramer in reference to the safe and Kramer replied that he didn't know the

combination and couldn't open it and thereupon Goldstein did go and open it? A No sir, I don't remember it.

Q Well, did he send for Goldstein? A Not as I recollect. I recollect that Mr. Goldstein came in with Mr. Kramer.

Q Well now, will you say now positively that you have not already sworn here to-day, that Goldstein opened the safe? A No sir. I don't recollect it.

BY THE COURT:

Q If you did, did you intend to say so. A No, I didn't intend to say so. I don't want to swear to a thing that I don't know.

BY MR. STANCHFIELD:

Q Well I want to know if you now know or claim to know who opened that safe?

MR. APPLETON: I think he has answered that sufficiently.

THE COURT: I think so. I sustain the objection.

MR. STANCHFIELD: To that I take an exception. Does your Honor hold that I am not permitted to cross examine any further.

THE COURT: No, proceed; except that I think you have got all the information that the witness is able to give you upon that particular subject.

MR. STANCHFIELD: I insist that I have a right further to interrogate him owing to his interest in this

case, with reference to who opened the safe and as to whether his testimony heretofore given conflicts with what he says now.

THE COURT: You may have an exception to the Court's ruling.

MR. STANCHFIELD: Exception to your Honor's ruling that is all, Mr. Gleason.

BY MR. APPLETON:

Q Who was in charge there and giving the orders in the room when the book was found, People's Exhibit 19?

MR. STANCHFIELD: Objected to on the ground it is leading and calls for a conclusion and is incompetent; I haven't any objection to his asking what was said or what occurred there.

MR. APPLETON: There were a number of people there. I do not see how it would be leading when he might mention any one of the number.

Q Which man gave the orders? A

MR. STANCHFIELD: Objected to upon the same ground, that it is leading and calls for a conclusion, and as incompetent.

Objection overruled. Exception.

A Mr. Goldstein had given the order.

Q What? A Mr. Goldstein--Mr. Kramer had given the orders, made the selection of the books.

Q And who was the conversation conducted between? A Between Mr. Downing and Mr. Kramer.

Q And who else? A And yourself.

BY MR. STANCHFIELD:

Q You understood perfectly well Mr. Appleton's question about who gave orders, didn't you? A Yes, I heard the conversation.

Q And you said, right of the reel, Mr. Goldstein? A No, I meant Mr. Kramer, I have got both of them mixed up.

MR. STANCHFIELD: Well, I think that is so.

PETER C. RASMUSSEN, recalled on behalf of the People having been previously duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. APPLETON:

Q Did you deliver the papers to Mr. Smyth and myself in exactly the condition you received them at the office of the defendant on the 14th, yes or no?

MR. STANCHFIELD: Objected to as leading, calling for a conclusion and incompetent and hearsay.

Objection overruled. Exception.

A Yes.

Q Did you take out any of the papers from the envelope before you delivered them to Mr. Smyth and myself? A We didn't open any envelope---just packed it up in four or five bundles and carted them down to the office.

Q And did all the papers that you delivered to Mr. Smyth and myself on that occasion come from the office of the defendant?

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A. Yes.

Q. You got none from no other place? A. No other place.

MR. STANCHFIELD: No questions.

C H A R L E S W . A P P L E T O N, called as a witness on behalf of the people, being first duly sworn, testifies as follows:

THE WITNESS: My name is Charles W. Appleton; I am a deputy assistant district attorney ----

MR. STANCHFIELD: I insist that questions be put so that I may object, if necessary.

THE COURT: Yes.

DIRECT EXAMINATION BY MR. NOTT:

Q What is your profession? A I am a lawyer.

Q And how long have you been admitted to the bar? A Since the 29th day of June 1899.

Q And how long have you been practicing in the City and County of New York? A Since that time.

Q Do you hold any official position, if so what? A I do; I am a deputy assistant district attorney in the office of the district attorney of the County of New York.

Q How long have you held that position? A Since the 17th day of August 1903.

Q Did you see the last witness Rasmussen on the stand?
A I did.

Q On the day which he testified to did you receive from him any papers? A I did.

Q Where did you receive them? A In the room beside the library on the top floor of the Criminal Court building.

Q In this county? A In this county.

Q I now show you an envelope marked Peoples' Exhibit 18 for identification and enclosing papers that have heretofore been marked for identification, and ask you if that envelope and those papers were part of the papers you received from the witness Rasmussen? A They were.

Q After you received them where have you kept them? A In a safe in the same room where they were received; first in a smaller safe and then the district attorney about -- as I recollect it-- about a week after we received most of the papers, purchased a larger safe that would be large enough to hold all the papers in the investigation of the Borough President's office, and we kept the papers in that safe up to about three or four days ago.

Q And can you state when those papers were, at that time they were produced here first before the jury and separated -- were they then in the same condition as when you received them? A They were in identically the same condition as when I first received them because I was very careful to keep them in that condition.

MR. STANCHFIELD: Just answer his question, Mr.

Appleton. The question has not yet called for the degree of care which you used.

Q Now will you look through the papers and give the exhibit numbers? A One is marked Peoples' Exhibit No. 16 for identification and the other is marked Peoples' Exhibit 13 for identifica-

tion, and also the same paper is marked Exhibit 17 for identification; that 17 I suppose should ----

Q Did one receive two marks in this trial? A Yes, one received two marks on this trial.

Q Now I call your attention to the small slip now pinned to the outside, in pencil, what is that number? A Exhibit No 16 for identification.

Q And was that with the papers when you first saw them after you had received them from Rasmussen? A That exhibit was upon the papers exactly as it is now when I received it from Gleason, I think the next day after they were brought into the district attorney's office.

Q Where was the paper when you received it from Gleason?

A In the room outside the library on the 4th floor of the Criminal Court Building.

Q From where was it produced? A It was with the bundle of papers on the desk and on the table when we were going through them to find ----

Q Where had you gotten that bundle from? A From Rasmussen, the day before.

Q Where has you kept it overnight? A In the safe in that room.

Q Did you put it in the safe yourself? A I believe ---

Q Or was it done in your presence? A I am positive that

either Mr. Smyth or I put it in the safe, and I believe that I did.

Q Was that the next day when the papers were taken out of the safe again, and it was then that you saw that slip that you have in your hand? A Yes, that is correct.

Q Now after that did you see the defendant at your office? A I did.

Q And did you have a conversation with him, or did Mr. Smyth in your presence have a conversation with him about that same slip? A That is, you mean Peoples' Exhibit 16 for identification?

Q Yes. A Mr. Smyth had the conversation with the defendant Kramer.

Q Was that in your presence? A In my presence.

Q And hearing? A And hearing.

Q Who was with Mr. Kramer, if anyone? A Mr. Vorhaus, I believe; the attorney that is sitting beside him now.

Q Did you show that slip of paper to Mr. Kramer or was it shown to him in your presence? A Mr. Smyth showed it to the defendant.

Q Tell the ~~the~~ jury what the defendant said about that slip of paper and what Mr. Smyth said to him? A Mr. Smyth asked the defendant if the handwriting on the piece of paper that is marked Exhibit 16 for identification was written by the defendant Kramer, and Kramer took the paper and looked at it, held it in his hand

for some few minutes, and then said he didn't know whether or not it was in his handwriting. Mr. Smyth asked him some other questions and finally asked the defendant if he would swear that the lead pencil handwriting on Peoples' Exhibit 16 was not in his handwriting, and the defendant said that he would not swear that the handwriting on there was not in his handwriting. He pointed out, as I recollect it, positively, that the blue lead pencil marks upon this piece of paper Peoples' Exhibit 16 for identification were not in his handwriting, but as to the other handwriting on there he said he was not sure and he could not tell.

Q At the time did you hear any conversation held with him about the other documents thereto annexed? A My recollection is that none of the other papers were shown to the defendant on that occasion of these that were found in the envelope Peoples Exhibit 18.

Q Now at that time did you hear Mr. Smyth ask the defendant to write anything? A First, we had a number of checks there ---

MR. STANCHFIELD: Just answer the question.

A Yes.

Q Did he say anything to him about making a writing? A Mr. Smyth had a number of checks that were also brought from Kramer's office by A. Rasmussen, and he showed them to Kramer and Kramer stated that the handwriting, the signatures, were in his handwriting. Then there was another check there that was drawn to the

order of Harry Woolf, and they asked the defendant if he wrote that and the defendant stated that he believed he did write the body of that check. Then there were a large number of other checks there and the defendant was asked if he did not write all the body of the check ~~and~~ as well as the signature, and he said he didn't know whether he wrote the body of the check or not, but that the signatures were his.

Q Have you now present some of those checks to which you referred? A yes. These checks that I hold in my hand the defendant admitted or stated that he signed each and every one of them.

MR. NOTT: Now if your Honor please, I offer these checks in evidence -- I leave out the Woolf check for the present -- I offer in evidence these four checks identified by Mr. Appleton. I offer now only the signatures to use later as standard of comparison.

THE COURT: Any objection?

MR. STANCHFIELD: Let me see them.

(The checks offered in evidence are now handed to Mr. Stanchfield by Mr. Nott.)

MR. STANCHFIELD: No objection.

THE COURT: They may be marked in evidence.

Received and marked in evidence, as to the signatures, Peoples' Exhibits 21, 22, 23 and 24.

Q I show you another paper purporting to be a check. What

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did Mr. Kramer say about that? A Why, Kramer, as I recollect it, stated that he believed that the whole of this particular check was written by himself; he was positively sure of the signature but he believed that the whole of it was written by him.

MR. NOTT: I offer the whole of this in evidence.

MR. STANCHFIELD: No objection.

Received in evidence and marked Peoples' Exhibit

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Q After that did you see Mr. Kramer write on any pieces of paper at the request of Mr. Smyth? A Yes, that was at the time that Mr. Smyth ----

MR. STANCHFIELD: Just answer the questions.

A Yes.

Q I show you three pieces of paper and ask you if those are the pieces of paper that you saw him write? A I saw the defendant write everything upon these three pieces of paper except the exhibit marks and the printed matter.

Q Before he wrote them what was said to him as to the handwriting he was to put on this paper? A He was to put his own handwriting, his regular and natural handwriting.

Q Who asked him to do that? A Mr. Smyth.

Q What did the defendant say? A The defendant said he would.

Q And after that he wrote these three pieces of paper in your presence? A Yes sir.

MR. NOTTE: I offer them in evidence.

MR. STANCHFIELD: No objection.

Received in evidence and marked Peoples' Exhibits
25, 26 and 27.

THE COURT: Gentlemen, you must not discuss this case, or form or express any opinion about it, but keep your minds open and free until it is finally presented to you; and be in your places promptly at quarter past two.

(Recess till 2:15 P.M.)

A F T E R R E C E S S .

TRIAL RESUMED.

C H A R L E S W . A P P L E T O N, resumes the stand and further testifies:

CROSS EXAMINATION BY MR. STANCHFIELD:

Q You have been connected with the district attorney's office for how long? A Since the 17th day of August 1903.

Q And your position in the district attorney's office, if I understand you now, is that of a deputy assistant district attorney? A That is correct.

Q And what was your place or title in 1907? A Deputy assistant district attorney. That is what my title has always been since the time I went in there.

Q Just answer my questions please. I don't ask for any expla-

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nations outside of the answer. Now before Kramer came to your office had you ever known him? A Never in my life.

Q You did see him, if I understand the purport of this testimony, at the offices of the Metropolitan Equipment and Supply Company? A I did.

Q You were there upon the day the papers and books were taken from his office as has been described by the officers here? A Yes, -- not all the time, however, only on one of the times.

Q Well I will get at that in a moment. What time did you go up there? A I think it was about four o'clock in the afternoon.

Q The officers had been there before you? A They had.

Q And pursuant to your instructions? A I wouldn't say whether Mr. Smyth or I gave the instructions. It is my impression that Mr. Smyth gave the instructions.

Q In any event they were there under instructions from your office? A They were.

Q Now when you went in the afternoon were you accompanied by any of the officers? A Yes, I was accompanied by an officer by the name of Bernard Flood, and Gleason was there at the time.

Q And Flood is one of the detectives of the district attorney's office? A He is. He is a member of the police department assigned to the district attorney's office.

Q When you arrived there was Goldstein present? A I think not.

Q You left Goldstein here at the district attorney's office, did you not? A That I am not positive about. I think though that we did not.

Q Are you quite positive about that? A I said I was not positive, sir.

Q Did you have any stenographer with you? A I did not.

Q So that you did not have taken down by a stenographer or any one else an exact statement of what occurred or what was said or what was done? A That is correct.

Q And in all the testimony that you are giving you are relying entirely upon your memory? A That is, I have given none except what you have asked me as to what happened in Kramer's office and I am relying entirely on ----

Q My inquiry is as to the testimony you have given, you are relying upon your memory? A Entirely so, sir.

Q And you are busy in your official capacity as a deputy assistant district attorney? A I think so.

Q You have a large number of cases assigned to you for investigation? A I do.

Q And day in and day out ever since 1907 you have been busy examining witnesses and preparing cases for trial and trying cases, haven't you? A That is correct.

Q Now when you were up at the office of the Metropolitan Equipment & Supply Company on this afternoon in question, what day was that? A I never kept the day, sir. I don't know the day of the week or the day of the month.

Q Are you able to state even what month it was in? A yes, it was in the latter part of May; I know that.

Q Of what year? A Of the year 1907.

Q You have no memoranda to fix the time? A No memorandum, no.

Q Now when you arrived there was the defendant Kramer present? A He came about the same time I did with his lawyer, Mr. Dooling.

Q And were you informed that that was Kramer? A If I am not mistaken I met Kramer in the district attorney's office before that, I am not sure I was informed it was Kramer. In any event it was the same person who is now at the bar.

Q Well what is your recollection as to whether you have seen him before you got up there this afternoon in question? A My recollection is that I had seen him in the district attorney's office before that; that is, just before I started, but I am not sure.

Q Well, the evidence as to the facts that occurred in the presence of Mr. Smyth with reference to these checks and exhibits that you have produced here, was with reference to a time subsequent to your being at the office? A On the 7th day of June

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1907 .

Q. And these papers remained in your office from June 1907 down until the filing of this indictment, did they? A From May 1907 down to the present day.

Q And when was the indictment found? A In June 1908, I believe.

Q More than a year after the time that you had the interview with Kramer, either at his office or at the district attorney's office? A Not more than a year, just about a year. Oh yes, just about a year, because I don't recollect now the exact date that the indictment was filed.

Q Well now at the office in May 1907, upon this afternoon with reference to which I am asking you, was the safe locked or unlocked? A At what time?

Q The afternoon in May 1907 when you were at the offices of the Metropolitan Supply & Equipment Company? A I don't mean to be facetious, it was both locked and unlocked while I was there.

Q Well, when you went in there was it locked or unlocked? A It was locked.

Q How did you ascertain that? A Why because the defendant Kramer said that the safe was locked and, as I recollect it, he asked Goldstein to unlock it right when we were there.

Q Isn't this the fact, that you asked Kramer to unlock the safe and he told you that he didn't know the combination to it and that you would have to get Goldstein there to do it? A No,

sir, that is not the fact.

Q Well, Goldstein in any event did unlock it? A My recollection is that he did unlock it at the order of Kramer.

Q Was it a combination safe? A It had a little wheel on the face of it and I should say it was a combination safe.

Q And opened upon a combination of numbers? A That is what I should imagine.

Q Will you say positively that Kramer did not state at the time that he did not know the combination? A I am very positive of it -- I beg pardon.

Q When he asked Goldstein to unlock the safe didn't he give as a reason for doing that that he himself did not know the combination? A No, that is not a fact.

Q In any event Goldstein himself did unlock it? A That is my recollection.

Q Kramer interposed no objection to it being opened for your examination? A None at all, because we had all the papers in his office at that time other than the books.

MR. STANCHFIELD: I move to strike that out.

THE COURT: Motion granted.

Q You are a lawyer of some years experience ----

THE COURT: Now, it is struck out.

Q I ask you again to answer my questions, Mr. Appleton. You say that you had all the papers. You wanted the safe opened, didn't you? A We wanted the books.

Q And you requested that it should be opened? A I did.

Q Was Miss Houlihan present at the time? A No, she was not.

Q Did you met Miss Houlihan? A Why yes, I met Miss Houlihan the same day.

Q She was a clerk at those offices, was she not? A I wasn't a member of that concern, I don't know.

Q Well, haven't you had her at the district attorney's office and examined her half a dozen times? A Yes. You asked me for a fact however, Mr. Stanchfield, and I am trying to give you a courteous answer.

Q Didn't you learn she was a clerk there? A I have been told she was.

Q By her? A By her.

Q You say she was not present this afternoon? A I say she was not present on the afternoon that I was in Mr. Kramer's office.

Q Now who was there besides Kramer, Goldstein, Dooling-- didn't you say the name was? A Dooling; John T. Dooling.

Q Yourself, Flood and Gleason, anyone? A I think they were the only persons there. Maybe Beery was there also, I am not sure.

Q Was anyone directed to go to the telephone and telephone for anyone while you were there? A Not that I recollect.

Q And your person recollection is that no one did telephone to Mr. Goldstein at the office of the district attorney to come up

there? A That I am not sure of; I don't know.

Q Well now isn't it a fact with that question in your mind that the reason for telephoning for Goldstein was to get somebody who could unlock the safe? A I have told you that I have no recollection of anybody telephoning.

Q I ask you to answer that question, if with that in your mind it is not your present recollection that someone went and telephoned to your office for Mr. Goldstein to come up there? A I tell you again that I have no recollection of anyone telephoning. I can answer the question in no other way.

Q How long were you there? A I should judge we were there about 20 minutes or a half an hour.

Q And in your examination, so far as Kramer was concerned you were furnished with every book or paper in that office that you wanted? A That we could find.

Q Well, that you could find? A Yes.

Q Do you mean you were looking for books that you did not find? A We were looking for everything that we could find that would in any way bear upon this case.

Q And he was affording you every facility to get it? A He was. At least he said he was.

Q Have you any doubt about it? A I have.

Q And that is what you mean by that little fling, that he said he was?

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

THE COURT: Objection sustained.

A I have made no fling.

Q Now when you say that he took that attitude, whatever you asked for he gave you, didn't he? A I don't know.

Q Well, did he secrete anything that you saw? A It is my impression and the impression of others that he tried to get rid of that dress suit case, yes.

Q Did he secrete anything that you saw? A Yes.

Q That was right there in plain sight? A It was, and they tried to put it in the back room.

Q And with all four of you men looking on? A Yes. They said there was nothing in it.

Q Who said there was nothing in it? A Kramer said there was nothing in it of any account.

Q Of any account? A Yes.

Q It was opened? A Yes sir, because we stopped them from taking it into the back room.

Q It was opened? A Yes sir.

Q Did I ask you anything else except whether it was opened?

A I think you recollect that, sir.

Q And do you think that was a fair answer to my question?

A I do, yes.

Q It was opened, wasn't it? A It was.

Q And you took whatever there was in it that you wanted?

A We did.

Q Now you realize, do you not, that you are an interested witness in this case? A Only interested in telling the truth.

Q I ask you if you did not realize that you are an interested witness? A I realize no other interest in it.

Q You have been working upon it, haven't you? A I have worked on it.

Q For years? A I have.

Q Preparing it? A I have.

Q And got the natural ambition to win law suits you are in that any lawyer has? A Not the slightest ambition to win any case that I try unless ~~it~~ it is right that it should be won.

Q Haven't you any ambition to try and win your cases? A Not unless it is right that they should be won.

Q Are you the judge of whether they are right? A I merely present the evidence to the jury to the best of my ability and stop.

Q How many times have you been a witness against a defendant in a criminal proceeding? A I believe this is the second time in all the years I have been in the office.

Q You have read the recognized rules of the ethics of the profession a good many times, haven't you?

Objected to. Objection sustained. Exception.

Q I will ask you the point blank question, whether you don't

know that no lawyer interested in the trial of a case, except in an extreme emergency, wver ought to take the witness stand?

Objected to. Objection sustained. Exception.

Q Nowyou say you were also present at an interview when Kramer was present in the district attorney's office? A I do.

Q With Mr.Smyth? A Yes.

Q You realize that it is of the utmost consequence that you should be able to give the exact language ~~ah~~ that Kramer used, do you not? A I do.

Q You didn't even take the ytrouble to call a stenographer in to take it down, did you? A (No answer.)

Q Answer my question? A I am trying to think of the answer ----

Q Well don't you know there was no stenographer there?
A I believe there was no stenographer there.

Q You also realize in this case, do you not, that you haven't any case against Kramer unless 12 men should findthat that exhibit which you produce here was in his handwriting?

A Do you mean to insinuate that I would lie to convict Kramer on that?

MR. STANCHFIELD: I ask your Honor to reprimand the witness forthat remark.

(Question and answer read by stenographer to Court.)

THE COURT: It was not an answer to the question repeat the question.

MR. STANCHFIELD: I ask your Honor to instruct the jury to disregard the remark of the witness.

THE COURT: Yes, gentlemen, you will disregard the answer given by the witness.

Q Now I ask you to answer that question? A Will you read it, Mr. Stenographer?

Q (Question repeated by stenographer as follows:) You also realize in this case, do you not, that you haven't any case against Kramer unless 12 men should find that that exhibit which you produce here was in his handwriting? A (No answer.)

Q Now answer the question? A (No answer.)

Q Answer the question, Mr. witness? A I am trying to think before I answer that question. I don't believe that a conviction could be had unless that piece of paper is found to be in the handwriting of the defendant Kramer.

Q And you told Mr. Vorhaus, the attorney for Mr. Kramer, that unless that Exhibit was found to be in his handwriting that you had no case, didn't you? A I believe I did.

Q What is that? A I believe I did.

Q Now do you take the position under oath that you are able to give here the exact words that Kramer used at that interview at the district attorney's office? A I do not.

Q At the very best you can only give the substance of the language, can you? A That is true.

Q And you realize, do you not, that a change in a word or the manner in which it was said, might convey an entirely different impression from what Kramer intended to convey? A I don't know as to that. I have tried to give it the best I could.

Q I don't question but that you tried to do it, I simply ask you, do you not realize that a change in a word, or the accent of it, or the manner in which you relate it, might give a different impression from what Kramer intended to convey? A I don't know what Kramer intended to convey. I have tried to give as near as I could the language Kramer used.

Q Will you answer the question? A I can't answer it differently than that.

Q That is the best answer you can give me? A That is the best answer I can give you.

MR. STANCHFIELD: Will your Honor permit me to come to the other side of this table, to use some exhibits?

THE COURT: Yes.

Q Now the paper to which I address your attention is marked for identification Peoples' Exhibit 16? A That is correct.

Q Now that paper you have testified today was exhibited to Kramer at an interview that took place between yourself, Mr. Smyth, Kramer and Mr. Vorhaus? A Yes.

Q You four were all that were present at that time? A I am not sure but that a young man named Liebner was there; he is a process server in the district attorney's office.

Q Have you any definite recollection as to whether he was there or not? A I have not.

Q Now you had been there before Exhibit 16 was called to Kramer's attention, examining him or asking him questions with reference to checks and transactions between his concern and the City, had you not? A No.

Q Had you been talking with him at all before that was brought to his attention? A Mr. Smyth had, yes.

Q Well when I say you I include in my inquiry Mr. Smyth because I don't want to stop to spend time as between you two, and I will be perfectly content if when I say you, you will speak for yourself and Mr. Smyth, because you were present, you say. Now had Mr. Smyth been asking him questions before this exhibit was produced? A Yes.

Q Asking him with reference to checks that were there?
A Yes.

Q You had a large number of checks? A Yes.

Q The five that you produced here is a very small portion of them, is it? A That is correct.

Q In round numbers how many checks would you say you had of Kramer's there at the time? A Oh we had several hundred of them.

Q And did you have books of his or of the Equipment Company?

A I don't think that any book of the Equipment Company was displayed to Kramer on that occasion.

Q Did you have any other papers and checks? A We had that paper that you have in your hand, Peoples' Exhibit 16 for identification, and then I think Mr. Smyth had some other papers with respect to some mortgage or transfer of some real estate.

Q Now all those ~~xx~~ matters Mr. Smyth had been going over with Kramer before this was produced? A That is correct.

Q Now when this Exhibit 16 was produced Mr. Smyth took it from his pocket, didn't he? A I wouldn't say as to that.

Q And handed it suddenly to Kramer and asked him whether it was in his handwriting, did he not? A I don't think he handed it suddenly to him.

Q Well then displayed it to him and asked him right off if it was in his handwriting? A That's right.

Q Now you realize that Exhibit 16 for identification is mostly made up of figures, isn't it? A I think it speaks for itself. It is, yes.

Q Well I know it speaks for itself. There are only two complete words upon it, one the word "coil" and the other the word "each", isn't that so? A Yes.

Q Now that took place something like two years after the sale of this rope to the city? A It took place on the seventh day of June 1907.

Q And the rope was sold, according to the testimony, the 13th of June 1905? A Yes.

Q Very nearly two years afterward. Now in that conversation didn't Kramer say in the presence of Vorhaus and you that he never had seen this paper before to his best recollection? A No; he said he didn't know whether he had ever seen it.

Q Now wait. Did he say that? A No.

Q That he never had seen this paper before to the best of his recollection? A I don't recollect that he said that. I believe that he didn't say that.

Q You wouldn't say positively that he didn't say that?

A I would not, no sir.

Q Now in that conversation did he not state that he did not believe that the writing upon that paper was his? A That is what he said.

Q Now did Mr. Smyth ask him after he might have asked to take it and look at it closely? A He did.

Q Then did Kramer take it in his hand again? A He did.

Q And examined it for some time, did he not? A He did.

Q And then did he repeat the remark that he did not believe it was his handwriting? A No. Yes, he said he did not know, that is what he said -- he said he didn't know whether it was his handwriting or not.

Q Did he say he didn't know or that he didn't believe?

That is where we are getting into words; are you sure what word

he used? A I think he said both as a matter of fact. First he said he didn't believe it was his, then he said he didn't know it was his and then Mr. Smyth asked him if he would swear positively that it was not his handwriting and he said no he would not.

Q I will get at that later. I am trying to get it in the sequence of it. He first said he didn't know it was his and then he didn't believe it was his? A First he said he didn't believe it was his, then he didn't know whether it was his or not, and then next that Mr. Smyth asked him if he would swear for sure that it was not his and he said no.

Q What point would there be for a lawyer in the presence of another lawyer to ask a man not where there was a chance to swear him, whether he would swear a thing was not his?

Objected to. Objection sustained. Exception.

Q Now Vorhaus was there when that inquiry was made? A He was.

Q There was no proceeding being there carried on in which he could be sworn? A There was none. I won't say that, no -- he might have been called upon to make an affidavit to it and swear to it.

Q Well that was not suggested to him? A It was not, no.

Q He was not before any grand jury? A He was not.

Q Now having this paper there, you asked Kramer whether he was willing to write for you, didn't you? A We did.

Q And he was perfectly willing to, was he not? A He was.

Q And you asked him whether or no he would make figures for you upon a piece of paper? A Yes.

Q And he was perfectly willing to do that? A My recollection is he turned to his counsel and asked his counsel and his counsel told him to do it.

Q Well with all that he was perfectly willing to do it?

A I have told you the facts, sir.

Q And did it? A And did it.

Q Now have you produced here the paper upon which you asked him to make these figures? A Yes, all of them are there. Mr. Woolf (the clerk) has the three papers.

Q And the exhibits 25, 26 and 27 in evidence are the three exhibit which he wrote pursuant to your request at that time?

A That's right.

Q Your intention then was to obtain that handwriting so as to submit it to experts for examination? A That is correct.

Q And for 20 or 25 years Mr. Carvalho has been the expert of the district attorney's office? A I am informed that he has.

Q And they were afterwards submitted to Mr. Carvalho? A They were.

Q Now when Mr. Carvalho came there how many checks did you give Carvalho to look at? A I gave him those three papers you spoke to me about that the defendant wrote and those other checks that you hold in your hand.

Q The five other checks -- I will not stop to enumerate them? A That's right.

Q And the three that he wrote? A That's right.

Q And that is all that you gave Mr. Carvalho to examine?

A No; there is the deposit slip that the defendant made when he deposited the warrant from the City, ~~and~~ in the month of October.

Q That you have not produced here yet? A No, we expect to do that with the next witness.

Q That also was submitted to Mr. Carvalho? A That is correct.

Q Where is that deposit slip? I don't think we need bother your producing a witness. If you let me take it I think we may get it in here by agreement? A If you have no objection to my coming down here (witness leaving witness chair)?

MR. STANCHFIELD: Why no.

(Mr. Appleton produces paper and hands same to Mr. Stanchfield.)

Q Has this ever been shown to Kramer before to your knowledge, this deposit slip? A No.

Q You never ~~had~~ have, at any rate? A I don't think I ever showed it to him.

Q Well I will wait a minute. If there is any question about it you can make the proof; I will see later.

That deposit slip and these checks and the three specimens that he wrote then were all that were submitted to Mr. Carvalho?

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A Yes that is all that I submitted to Mr.Carvalho.

Q Were they also submitted to Mr.William J. Kinsley? A They were.

Q He is another expert? A He is.

Q And were they submitted to Mr.Carvalho and to Mr.Kinsley when they were together, or upon different occasions? A On different occasions.

Q This safe in the district attorney's office in which you say these papers were kept is accessible to howmany people?

A As I understandit Mr.Smyth, Mr.Nott, two acting district attorneys, and myself and possibly Mr.Howe since the Scrugham case started, have the combination to the safe; I am not sure that Mr. Howe has it. So fas as I know those are the only persons who have the combination to the safe.

Q Upon one of the occasions when thispaper was submitted to Mr.Kramer in your office, ~~reference to~~ Peoples' Exhibit 16 for identification, did he say in words that he did not recognize anything upon it as being his handwriting? A yes, I believe he said that.

MR. APPLETON: Do you want to consent to put that exhibit in evidence now (referring to deposit slip produced)?

MR. STANCHFIELD: He does not recognize it.

RE-DIRECT EXAMINATION BY MR. NOTT:

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Q You are in the district attorney's office on a salary?

A I am.

Q And your salary is not increased a dollar in case of a conviction, nor docked a dollar in case of an acquittal? A That is my understanding of it; that seemsto be the way.

M R. STANCHFIELD: I do not claim that it would be raised or lowered by virtue of results.

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M I C H A E L L R U L L M A N, called as a witness on behalf of the People, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. APPLETON:

Q. In the month of October 1905 where were you employed? A Washington Trust Company.

Q And in what capacity? A Book-keeper.

Q I show you this paper and ask you---I ask that it be marked for identification People's Exhibit 28.

Marked for identification People's Exhibit 28.

Q (Continuing) and ask you what that paper is? A It is the deposit slip.

Q Since you have been employed there at the Washington Trust Company have you had occasion to compare papers with the defendant Kramer's signature left at the bank as a standard? A I have.

Q And do you know the signature of Max Kramer the defendant?

A (No answer)

Q Do you know the signature of Max Kramer, the defendant at the bar? A Yes sir.

Q He has an account there in the Washington Trust Company?

A He has.

Q And he had an account there on the 13th day of October 1905

A I believe he had.

Q And was that deposit slip delivered to the bank on that day, the 13th day of October 1905?

MR. STANCHFIELD: Pardon me, unless the witness knows.

THE COURT: Yes.

Q The words upon that "Max A Kramer" are those in the handwriting of the defendant? A

MR. STANCHFIELD: Do you mean the signature?
Let me look at that a moment.

(Paper handed to Mr. Stanchfield by Mr. Appleton)

MR. STANCHFIELD: Do you ask whether the words "Max A Kramer--" are the words "Max A. Kramer in the handwriting of the defendant at the bar?

MR. STANCHFIELD: Now I want to ask him one question.

THE COURT: Yes, you may.

BY MR. STANCHFIELD:

Q Have you ever seen Mr. Kramer write? A No sir. I have not.

Q Never wrote in your presence at all? A Not to my knowledge.

MR. STANCHFIELD: Then I object to it on the ground that the testimony is incompetent, immaterial and irrelevant.

BY MR. APPLETON:

Q There is a standard there at the bank, is there not? A
There is:

Q And chekks are drawn from Kramer's account? A They are.

Q By and pursuant to that standard which is there at the bank? A They are.

Q And it is with that standard and your experience seeing checks purporting to be signed Max A. Kramer, whereupon money is drawn from the account, kept in the Washington Trust Company by Max A. Kramer, that you base your opinion as to whether or not the signature or the words upon that piece of paper you hold in your hand are in the handwriting of this defendant?

MR. STANCHFIELD: He is not asking what it is.

A At times---

Q Will you please listen to the question that was asked of you and answer the question? Read it, Mr. Stenographer, please.

Q (Question repeated by Stenographer as follows) And it is with that standard and your experience in seeing checks purporting to be signed Max A. Kramer, whereupon money is drawn from the account kept in the Washington Trust Company by Max A. Kramer, that you base your opinion as to whether or not the signature or the words upon that piece of paper which you hold in your hand are in the handwriting of this defendant.

A They are.

Q Now I ask you in whose handwriting are the words "Max A. Kramer upon People's Exhibit 28 for identification?

MR. STANCHFIELD: I want to ask another question.

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BY MR. STANCHFIELD:

Q You interjected another factor in the situation and stated there was a book in the bank in which depositors wrote their names? A There is no book; there is a signature card.

Q Well, a signature card? A Yes sir.

Q Now were you present when that card was written upon by any one, either by Mr. Kramer or some one in his behalf? A No sir.

Q It was not done in your presence? A No sir.

MR. STANCHFIELD: Now, I object again to the testimony.

THE COURT: I will take his opinion and you may have an exception.

MR. STANCHFIELD: Your Honor will permit me to state the grounds.

THE COURT: Yes, you may, if you have not already done so.

MR. STANCHFIELD: I have not.

THE COURT: Go ahead.

MR. STANCHFIELD: I object on the ground that the witness is not shown to be competent to speak, that he is not an expert and the testimony is incompetent, immaterial irrelevant and hearsay, and no foundation for its introduction laid.

Objection overruled. Exception.

THE COURT: You may state your opinion.
BY MR. APPLETON:

Q (Question repeated by Stenographer as follows) In whose handwriting are the words "Max A Kramer" upon People's Exhibit 28 for identification? A To the best of my knowledge and belief there are in Mr. Kramer's handwriting.

THE COURT: Anything further.

MR. APPLETON: I offer that piece of paper in evidence.

MR. STANCHFIELD: I object to the introduction in evidence of anything upon that paper except the name, with reference to which the witness has testified, of Max A. Kramer.

THE COURT: Yes, it will be limited to that.

Received in evidence and marked People's Exhibit 28.

Q I show you this piece of paper marked Exhibit 11 for identification and ask you if that was deposited along with the deposit slip People's Exhibit 28 in evidence? A I didn't take this deposit in. I am not employed in that capacity.

Q You kept the books, did you not? A I did.

Q Have you look on the record of the books for that day?

MR. STANCHFIELD: Objected to as hearsay, irrelevant immaterial and incompetent.

Objection overruled. Exception.

Q You see you do not have to look at that piece of paper to answer my question, Mr. Witness: The question is what you looked at the books? You say you are the book-keeper at that Trust Company. I asked if you have looked at your books for the 13th day of October 1905? A I have.

Q Do you find an entry there of the deposit of the sum of \$671.05?

MR. STANCHFIELD: Objected to upon the ground that it is not the best evidence, that it is incompetent, and no foundation laid, Hearsay, irrelevant and immaterial.

THE COURT: You may ask him what he found after an investigation of the books?

MR. STANCHFIELD: Same objection; the books are the best evidence.

Objection overruled. Exception.

MR. STANCHFIELD: And the testimony is incompetent, immaterial irrelevant and hear say.

Objection overruled. Exception.

MR. APPLETON: If that be so with reference to that proof I would rather supply it---

THE COURT: No, the Court will receive it.

MR. STANCHFIELD: Exception to the defendant.

Q (Question repeated by Stenographer as follows) Do you find an entry there of the deposit of the sum of \$671.05? A I do.

MR. STANCHFIELD: Same objection and exception.

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Q And one of the items that went to make up that deposit was \$624.48?

MR. STANCHFIELD: Objected to as hearsay, not the best evidence; the books must speak for themselves and as incompetent, immaterial and irrelevant.

THE COURT: You may ask how it was made up, resulting from his investigation.

MR. STANCHFIELD: Exception.

Q What was the deposit made up of?

Same objection; same ruling; exception.

A \$624.48, \$36.57, and an item of \$10. in cash.

Q Was the item of \$624.48 by cash or by check? A By check.

MR. STANCHFIELD: Objected to as incompetent, immaterial irrelevant and hearsay.

THE COURT: Speaking now from your examination, when you testify.

MR. STANCHFIELD: Exception.

A It was by check.

Q Now can you tell us whether or not People's Exhibit 11 for identification was deposited in the Washington Trust Company on the 13th day of October 1905? A It was.

MR. STANCHFIELD: I ask for an objection ~~in~~ ahead of that answer.

THE COURT: Yes.

MR. STANCHFIELD: I object to it upon the ground

that the witness states that he was not the party in the Bank with whom the transaction was had, that he had no personal knowledge of the transaction, that his information is predicated upon what the books show, no foundation for it and it is irrelevant and incompetent.

Objection overruled. Exception.

Q Your answer was that it was? A It was.

MR. APPLETON: Now if your Honor please I offer the whole of the deposit slip in evidence.

MR. STANCHFIELD: I object again to that upon the ground that there is no proof that the whole of the slip is in the handwriting of Kramer, as yet, and no foundation laid for its introduction.

MR. APPLETON: This is laid for the introduction. It is a rule of common law, reaffirmed by the Court of Appeals in the Malineux case, that the Jury are competent judges of themselves to compare disputed handwriting with a conceded handwriting of the defendant, and it is for that purpose that I offer the rest of that exhibit in evidence.

THE COURT: It will be received.

MR. STANCHFIELD: Exception.

THE COURT: And also the paper signed by the defendant.

Received in evidence and marked People's Exhibits

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11 and 28.

MR. STANCHFIELD: That is all, Mr. Witness.

MR. APPLETON: The Deputy Comptroller Mr. Phillips is here and as it is out of order I would rather not take him up now but I understand he is very busy and anxious to get back to his office, and the next witness after that is Mr. Carvalho who will undoubtedly be quite long. If there is no objection I will accommodate Mr. Phillips to that extent.

THE COURT: Yes, you may call him.

N. TAYLOR PHILLIPS called as a witness on behalf of the People, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. APPLETON:

Q In the year 1905 did you hold an official position in the City of New York? A Yes sir.

Q What was that official position? A Deputy Comptroller.

Q And was it part of your duty as deputy comptroller to at that time---that is, in the year 1905, to approve vouchers that had been presented to the Comptroller's office? A Yes sir.

Q I show you this paper which is marked People's Exhibit 2 for identification and ask you if those are your initials up there
A Yes sir.

Q Where you approved the voucher? A Yes sir.

Q When you approved that voucher what did you base your approval upon? A Upon the report of the auditing division.

Q And that appears upon the paper itself doesn't it? A The audit?

Q Yes? A Yes sir,

Q And by that you refer to the audit of Mr. Fitzpatrick on the face of it? A Mr. Connell; I think.

Q Look at the face of it inside, of the same paper---let me take it, I will point to what I want. A Fitzpatrick.

Q Was he the investigator in the Comptroller's office? A Inspector.

Q To examine that voucher and the bill attached to it? A Yes sir.

Q And it was upon that that you approved the bill? A Yes sir.

Q Now I show you People's Exhibit #11 in evidence and I ask you if that is your signature upon that warrant? A Yes sir.

Q Does that warrant People's Exhibit 11 pay the voucher people's Exhibit 2 that you approve?

MR. STANCHFIELD: I should say that was a good deal of a conclusion, but I presume---

A Yes sir, it apparently does.

Q And was it upon that voucher People's Exhibit 2 for identification that caused you to sign People's Exhibit 11 in evidence, the warrant. A Indirectly, yes sir.

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CROSS EXAMINATION BY MR. STANCHFIELD:

Q Your answer to that was "indirectly." Through how many hands in the fiscal department of the City do those papers run before they come to you for final signature? A A number of hands; I couldn't tell you how many.

Q Well upwards of half a dozen? A Well I should say fully that.

Q And it is a fact, is it not, that there were people connected with the comptroller's department whose business it was to examine and ascertain whether the amounts called for by these bills were delivered to and received by the City?

MR. APPLETON: I object to that unless they show that they did their duty in examining that bill.

THE COURT: Objection overruled.

A Yes sir.

Q And when you auditing a claim and paid it you relied upon the report of those people which you received? A Absolutely.

RE-DIRECT EXAMINATION BY MR. APPLETON:

Q And that report is in writing upon the voucher, is it not?

A It is in the papers, taken altogether.

Q Now will you please read the report upon which pass it?

A "I certify that I have examined the record in the department of P. B. O. I presume that is President of the Borough's Office--- and find satisfactory evidence that the supplies have been fur-

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nished and the work performed. The prices charged are reasonable and just as adjusted"

Q That is, he examined the records. It doesn't say he examined the property delivered, does it?

MR. STANCHFIELD: I object to that. That record speaks for itself, doesn't it.

THE COURT: Yes.

MR. APPLETON: All right, very well.

Q Now the requisition call for the goods alleged to have been delivered People's Exhibit 4 in evidence is also attached to the bill and voucher when it comes before you, is it not, and that one, People's Exhibit 4, was when you approved the bill before you with the other papers, was it not? A You mean this thing here?

Q Yes? A Presumptively, I suppose so. Of course I have no personal recollection of it at this distance of time.

Q But that is the usual custom? A That is the usual custom.

Q And by that approval you approved this bill, People's---
BY THE COURT:

Q Do you always look to see? A Never. It is never. It is purely perfunctory.

BY MR. APPLETON:

Q And by this approval you approved the bill, People's Ex-

hibit 3 for identification, did you not?

MR. STANCHFIELD: Objected to, calling for a conclusion, incompetent, and improper; he does not ever know whether it was attached or not.

MR. APPLETON: I do not press it.

RE-CROSS EXAMINATION BY MR. STANCHFIELD:

Q I askes you whether in your department there are men whose duty it was to ascertain whether the amount called for in these bills of good were actually delivered to the City of New York before you paid? A Yes sir.

Q You say there are such people? A Yes sir.

Q And it is their duty and they have the power to examine people and ascertain whether or no these bills are right, do they not? A Yes sir.

Q And when you approve a bill and pay it you act and rely upon your subordinates having done their duty, do you not? A Absolutely.

Q In other words if a bill would come in there, unless it had run the gauntlet of your department and had been approved by your subordinates you would never pay it, would you? A Certainly not.

Q You rely upon your subordinates and not upon the bill? A Absolutely.

DAVID N. CARVALHO, called as a witness on behalf of the people, being duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. APPLETON:

Q Now, Mr. Carvalho, what is your business or profession?

A Examiner of questioned handwriting, inks and paper.

Q And how long have you been in that business or profession?

A 37 years.

Q And during that time have you testified in various law suits? A Many hundreds of them.

Q And if the Court permits you to testify this time, can you tell what number of times it will make that you have already testified as an expert in handwriting? A I can't give you the exact number but it is over 1300.

Q Now I show you Peoples' Exhibit 16 for identification, and I also show you Peoples' Exhibit 28 in evidence, Peoples' Exhibit 26 in evidence, Peoples' Exhibit 27 in evidence, Peoples' Exhibit 25 in evidence and Peoples' Exhibit 24 in evidence, and also the signatures "Max A. Kramer" upon these four checks known as Peoples' Exhibits 20, 21, 22 and 23 in evidence -- just the signatures are in evidence -- and ask you to look at them. First, I would like to ask you, if you looked at all of those papers before now; have you examined them before? A I have. At least, as far as I have gone, I will let you know in a moment, sir. I do not recall this deposit slip.

Q But the others, have you examined all the others? A Yes sir.

Q And after examining those papers, all of them, and comparing them with Peoples' Exhibit 16 for identification, that small slip, were you able to give an opinion as to whether or not the black lead pencil marks upon Peoples' Exhibit 16 for identification were in the same handwriting and written by the same person as the ~~XXXX~~ person who wrote those other exhibits with which you have compared it? Were you able to give an opinion? A I have formed an opinion and am able to express it.

Q Now will you please tell the Court and jury as to whether or not the Peoples' Exhibit 16 for identification --- A That is the little slip of paper?

Q Yes; whether the black lead pencil marks were written by the same person who wrote those other exhibits in evidence that you have before you and that I have enumerated? A In my opinion they were.

Q Now will you tell the Court and jury how it is that you are of that opinion? What are the essential characteristics of the Peoples' Exhibit 16 for identification that correspond with the other handwriting? A It is rather ----

MR. STANCHFIELD: In that form I object to that question upon the ground that it is incompetent, irrelevant, immaterial, and not the proper method of making this proof.

THE COURT: I think, counsel, that when you have established without objection the competency of the witness to express an expert opinion, and he has given an expert opinion, the reasons for his judgment and the faith that is in him may be soundly left to the cross examiner.

MR. APPLETON: I have no objection to do that and I will do it.

MR. STANCHFIELD: May I go on the other side of the table to cross examine this witness? If your Honor please?

THE COURT: Yes, you may.

CROSS EXAMINATION BY MR. STANCHFIELD:

Q Mr. Carvalho, you are regularly affiliated with the district attorney's office, are you not?

MR. APPLETON: I object to that, as to its form---
"Affiliated", sir.

THE COURT: He may answer.

A I have been connected with the office for 31 years.

Q And over all that period of time you have been called by the people in criminal cases where disputed handwriting was an issue? A Many, many times.

Q You have not yet become old enough in your profession to feel that you are infallible, have you? A No sir.

Q You have made mistakes? A I presume so, yes sir.

Q Now you take in your hand Exhibit 16 -- and it is a very fragmentary, unsatisfactory quantity of writing upon which to predicate an opinion, is it not? A To say the most, it is.

Q Now on this Exhibit 16 occur, Mr. Carvalho, only two words, do there not, and one is the word ---- A Two complete words.

Q That is what I mean. One is the word "coil" and the other is the word "each"; that is right, isn't it? A Yes sir.

Q Now the word coil is erroneously spelled, isn't it?
A That is spelled out.

Q Well I say it is erroneously spelled? A It is, sir.

Q It is spelled "c-o-i-i-l", isn't it? A Or "c-o-u-l"; anyhow, it is not a single "i".

Q Well, you and I won't quarrel about that. It is incorrectly spelled anyhow? A It is.

Q And then occurs upon that exhibit the word "each"; that is incorrectly spelled, isn't it? A Yes; it has one letter too many.

Q That is spelled , instead of "e-a-c-h" it is "e-a-c-l-h", isn't it? A Yes sir.

Q Now in order to form an opinion whether that exhibit is in the handwriting of the same hand that signed the name ~~of~~ to the checks and made the numerals upon the exhibits that you ----

A (Interrupting) The request writings.

Q Yes, when you use the words "request writings", I refer to the exhibits that you had from the district attorney ----

A I call the request writings those that were written in the district attorney's office -- written by request.

Q Yes, that's right. And you had before you when you made your examination only the five or eight, in all, writings? A My first examination, yes sir. I only had the checks -- I didn't have the request writings before me.

Q You had the checks? A Yes.

Q Now on your first examination when you had the checks before you were you able to reach or form any opinion yourself at all? A No sir.

Q What is that? A No sir, I was not.

Q In other words based upon the checks you could not form even an opinion in your own mind about it? A No, I didn't have material.

Q So you made a second examination? A I most certainly made another examination.

1- Q Did you make more than one more? A I made two altogether.

Q And upon the second occasion you had those exhibits which you denominate the request writings? A Yes sir.

Q Now upon those request writings are mostly figures? A No, there is more or less writing.

Q Well, I know that---A There is more writing than figures.

Q Well it is the body of a check, isn't it? A That is, it putports to be the filling in of a check.

Q Well, the filling in of a check, and also numerals? A Some numerals.

Q Now the Exhibit 16 that you have is written by a lead pencil, isn't it? A It is.

Q Well isn't it very, very much more difficult to form an opinion as to whether writing, that is, with a lead pencil, is in the handwriting of any given person, than it is when they use ink? A Yes sir.

Q All the authorities agree upon that proposition, do they not? A I don't think there is any dispute about that.

Q In addition to these two words misspelled upon that exhibit do you notice that some of the figures---I will take the "14" in "1400" and the "39" in "398" and the "40" of "401"---those particular numerals are deeper and blacker than the others, aren't they? A No, I don't think so, sir. No, I don't think so. I think the "401" numeral, that has been gone over a second time.

Q Has it been gone over a second time---A But the others

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fairly correspond with each other.

Q Has it been gone over a second time, or did the man who wrote it wet the end of his pencil? A Well, I can't say. It looks as though it had been gone over a second time. If it is necessary I will tell you if you let me---- (Witness pauses and examines Exhibit through a magnifying glass). No, I should say, sir, that that has been carelessly gone over a second time.

Q Don't it impress you that the "14" in "1400" is heavier and deeper than the two ciphers? A No, I don't think so, sir. Let pencil wears down on one of its faces and you turn it and then it makes a different kind of a stroke for the next face of it.

Q That exhibit 16 was written some two years before ^{the} Exhibits you had to compare it with, wasn't it? A I have no information about it, sir.

Q Well assuming that to be true, that it was written two years before the request exhibit that you have in your hand (And I don't know how long before the checks), the amount of time would make a difference also, wouldn't it? A The hand writing would evolve, yes sir.

Q Now for you to be certain of your ground, Mr. Carvalho, it would be very much better that you should have figures or writings of Kramer contemporaneous with Exhibit 16, would it not? A I would have been able to reach a conclusion more quickly, yes sir.

Q Well, not only more quickly, but more accurately, wouldn't you? A No, I can't say that. When you arrive at the end of your road---

Q (Interrupting) You are either right or you are wrong?
A Yes.

Q Well now it would make also a difference whether one was writing with a pencil the lead in which was hard and sharp pointed as distinguished from a pencil with lead that was soft and blunt? A So far as pictorial effect, yes sir.

Q And so far as breadth and depth and strength of the variations of the numerals are concerned, that would be true?
A The width of line would be different, surely.

Q Now do you think the handwriting on Exhibit 16, taking into consideration two simple misspelled words, is the writing of a fairly well, common school, educated business man? A No sir, I don't think so. I think it is the writing of a rather illiterate person.

Q Well, if it should turn out that Mr. Kramer was a graduate of one of the public schools in this City and had been in business right along, that would weaken your opinion as to whether exhibit 16 was in his hand writing then, wouldn't it? A No sir, it would not, because in the request writings I find in the making of his figures he does not follow the usual method which obtain in the common schools of New York City, but they have rather a foreign attitude to them, like the figure "8", for instance.

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Q Are you assuming that he is a foreigner by birth? A I am assuming nothing; I am simply stating what is before me.

Q You don't know Mr. Kramer? A I have not the pleasure of his acquaintance.

Q You never saw him write? A I never saw him before until to-day.

Q The best judge of his handwriting would be his family and his friends who corresponded with him and saw him write every day would they not? A They would be familiar with his hand writing as they are with his face, and as the bank teller would be familiar with his signature. I do not judge from that method of comparison.

Q In other words, in that little lead pencil scrap that you have there, none of the individual characteristics that would obtain if he had written it with a pen and ink are present?
are,

A Oh yes they, sir,

Q Well, many of them? A A great many of them.

Q Well take that "c" in "coil"? A Yes sir.

Q That is a capital letter, the "c" in "coil", isn't it?

A It is.

Q Now on the checks and every where else there is a "c" like that---that looks like it? A It is the same type of "c"; it is cut off. I think we have a "c" looking very close to it.

Q Well Let's see it? A So far as its top is concerned

it has a cut off top. The mere form of the "c" does not affect me.

A Where is the "c" you were going to show me? A I am not affected at all, sir, ~~xxx~~ by the mere form of the letter "c". There is the top of the capital "c" which typifies

Q I ask you how a layman might look at it, not how you are affected. There is no "c" on the standard with which you compare Exhibit 16, are there anything like, are there? A There is not, sir.

Q Now there isn't the slightest effort visible upon the part of Exhibit 16, visible upon Exhibit 16 on the part of the writer, to disguise his handwriting, is there? A It is an undisguised handwriting.

Q So that you could give no reason why a man would misspell such easy words as "coil" and "each" if he knew how to spell them could you? A That is a metaphysical question, sir, and I cannot answer it.

Q Well, with that thought in your mind, what I am getting at is ---- I want to know if that writing is not more apt to be the writing of a truckman, a man who would put down weights and measures, than it would be of a merchant or a working man?

Objected to. Objection overruled.

A Well, I have said sir I thought it was illiterate, if that fits the truckman well and good. If that fits your man well and good.

Q Well I will take it as the writing of an illiterate man, in your judgment ---- A It is an illiterate writing.

Q And when you say illiterate writing don't you mean that it is the writing of an illiterate man? A No, I don't, because illiterate men can write very handsomely; an illiterate man can write very handsomely sometimes, but this particular writing we have here on Exhibit 16 is illiterate in the sense that it is not what I call an educated hand.

Q I show you some figures on a slip of paper. Is there any comparison in form and style between the figures upon that slip of paper and upon Exhibit 16 as you look at it? A Yes, there is a resemblance, in so far as it is inferior writing, and an inferior quality of writing, but I would not undertake to say whether the same hand wrote that that wrote Exhibit 16, without time to formulate an opinion.

Q Well I mean as you sit there, isn't there a general resemblance between the figures on the paper I hand you and Exhibit 16? A They are the same types of forms, but the ciphers are not made the same way, the "3"'s are more scraggly, it is written more loosely -- like a more loose hand, so to speak.

Q But quite a general resemblance, isn't there? A In so far as the actual figures are concerned they are the same types of figures. They might have been written by the same person and might not; I don't pretend to say.

Q Well the paper I hand you is Peoples' Exhibit 5. The figures there were written by Mr. Pender who was on the witness stand this morning --- A Yes sir.

MR. APPLETON: I will offer Peoples' Exhibit 16 for identification in evidence now. The jury would like to see them, and shall we let them see them now?

THE NINTH JUROR: I would like to see Exhibit 16.

MR. STANCHFIELD: You can use a photograph.

MR. APPLETON: I offer the original in evidence, and I don't see why Mr. Stanchfield hands to the jury a paper which is not in evidence.

THE COURT: Yes, that may be returned to Mr. Stanchfield, and the original handed to the jury.

Peoples' Exhibit 16 for identification now marked in evidence Peoples' Exhibit 16.

(Peoples' Exhibits in evidence 14 and 16 are now handed to the jury.)

MR. STANCHFIELD: Mr. Appleton, just wait a moment before you take Exhibit 16. If the exhibit 16, if your Honor please, is not yet in evidence ----

MR. APPLETON: I have just offered it in evidence.

MR. STANCHFIELD: When?

MR. APPLETON: Just now.

MR. STANCHFIELD: Then I want to object to it. Exhibit 16 has not been offered in my hearing.

MR. APPLETON: I stood right beside you and you gave to the jury an alleged photograph of it, sir.

MR. STANCHFIELD: I know I did, because I was going on with the examination.

MR. APPLETON: Now the jury asked to see it and I offered it in evidence.

MR. STANCHFIELD: There isn't any dispute that he

asked to see it.

THE NINTH JUROR: I would like to see these two clips of paper.

MR. STANCHFIELD: Will your Honor allow me, ahead of the introduction of Exhibit 16 in evidence, an objection?

THE COURT: Yes.

MR. STANCHFIELD: I object to the introduction of Exhibit 16 in evidence upon the ground that the testimony is hearsay, it is incompetent, irrelevant and immaterial, there is no foundation laid for its introduction. Now if your Honor please, with reference to the Exhibits, I want you to have this thought in mind ----

MR. APPLETON: If you will pardon me --- may I be pardoned just a moment -- I don't mean to interrupt you, but there is another paper that should go along with Exhibit 16 which I may offer now so that Mr. Stanchfield can make his argument?

THE COURT: I think that might be well.

MR. APPLETON: Along with Exhibit 16 I offer in evidence Peoples' Exhibit 13, the bill to which Exhibit 16 was attached when it came into my hands; I offer both of them in evidence.

THE COURT: Now I will hear .

MR. STANCHFIELD: There is no proof, if your Honor please, in the case, that the defendant Kramer ever had in his manual possession, so as to have his personal, immediate attention directed to the bill alleged to have been attached to Exhibit 16. So if your Honor please, this is a criminal trial; the doctrine of criminal agency has been exploded in the Court of Appeals, there is no such thing known as a doctrine of agency or of estoppel and the case is absolutely nude of any testimony that Kramer ever saw the bill attached to Exhibit 16. If they are being offered together, why I object to the bill upon the same grounds that I urged with reference to the introduction of Exhibit 16.

THE COURT: I will hear you, Mr. Appleton.

MR. STANCHFIELD: There is no admitted proof when it was made; it might have been a month before it was obtained.

MR. APPLETON: The evidence is this. Rasmussen obtained Peoples' Exhibits 13 and 16 in the envelope marked Peoples' Exhibit 18 for identification and brought it to the district attorney's office. It was delivered to Mr. Smyth and myself, and then Gleason in going through these envelopes took out the contents of Peoples' Exhibit 18 for identification and showed it

to Mr. Smyth and myself. At that time the two pieces of paper were pinned together with three other pieces of paper. The contention of the people is that the handwriting on Peoples' Exhibit 16, the black lead pencil marks, are in the handwriting of the defendant at the bar. They are pinned upon the bill received from the Wall Rope Works. That bill set forth, your Honor, the exact number of pounds that those coils of rope weighed, identically; that has been proved beyond any question of doubt, sir. The men who weighed them, the bill made up from the weights, the shipment of it --- every paper corresponds in every respect to Peoples' Exhibit 13 for identification, and that is pinned to Peoples' Exhibit 16 for identification; and then, sir, for the first time we find that the weight of these coils of rope is changed, we find the same number of coils, we find the same kind of rope, 6 inch and 3 inch rope, we find identically the same number of feet in each coil of rope, sir, and appears upon the mill from the Wall Rope Works, and then, sir, the bill goes to the City; that is the next step in the proof. Now it seems to me that this incompetent, material and relevant evidence for this jury of twelve men to pass upon -- the fact as to whether or not the defendant Kramer did this or did not do it. If the jury say no that ends it, but

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it seems to me that it is competent evidence to submit to this jury, that they may say whether or not the defendant had knowledge that this rope sent to the City was short in weight; and, more than that, Peoples' Exhibit 16 is competent in evidence at any rate, it is material and relevant in evidence at any rate because as I said a few moment ago, the Court of Appeals in the Molineux case reaffirmed the common law doctrine that the jurors themselves were competent judges to compare conceded handwriting with the disputed writing,-- this Exhibit 16 being the disputed handwriting. Now it seems to me that it is admissible in evidence for two reasons -- the latter one that I mentioned is admissible beyond any question of doubt, and the former is the whole contention in this case, that the jury may pass upon the facts. It is not a question of law, it is a question of facts for the jury to determine; hence the papers are competent in evidence.

MR. NOTT: It also seems to me, in addition to what Mr. Appleton has stated, that the following proof is in this case. As I recall the first exhibit put in by the people it was a certificate from the county clerk's office showing that this defendant was carrying on business in the name of the Metropolitan Equip-

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ment & Supply Company, that that concern is not a corporation but is nothing but the defendant -- it is nothing but his trade name -- that's all it is. It is undisputed that the paper in question which is now offered was forwarded from the Wall Rope Works to the defendant doing business under that name; it is undisputed that it is later taken from the defendant's place of business and brought from his place of business, where he does business under that name, to the district attorney's office; and annexed to it is a piece of paper which was there at the time it was taken from his place of business, and which this gentleman on the stand has sworn, ~~in~~ in his opinion, to be in the handwriting of the defendant.

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MR. STANCHFIELD: Now, just one moment. With reference to the facts Mr. Nott and I would be in perfect harmony. The name, The Metropolitan Equipment and Supply Company signified that it was a name under which Kramer by filing the certificate had the right to do business, but my position is that this is not a civil case, it is not an action by the City of New York to recover from Kramer the amount of this over payment, in which presumptions and estoppels would figure. Now, in a nut shell, in objecting to this Exhibit 17 upon all the grounds which I have enumerated, I want your Honor to have in mind that there is no presumption in point of time in a criminal case as to when these two papers were pinned together, there is no proof in the case that the defendant ever pinned them together or that he saw them pinned together, or that they were found in any part of those offices in which were kept any of his private affairs or private papers. The case is absolutely bare of any testimony upon which your Honor can send to a Jury the question of facts as to whether the defendant Kramer directly or indirectly was a party to pinning those two papers together, and I submit there is no foundation laid for the reception of the papers. I am distinguishing between exhibit 17, the bill, and Exhibit 16, which is

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the memorandum attached to it. It must be brought home to Kramer before it is competent evidence, he must be shown to have known it; it cannot flow from the fact that he was in the business.

THE COURT: I think it is competent for the people to introduce this character of proof in view of People ex rel Phelps against the Oyer and Terminer (83 N.Y.); I will take it and give you an exception.

MR. STANCHFIELD: This is not a conspiracy---

THE COURT: That was not either.

MR. STANCHFIELD: Well, it is on that general theory. Exception to the ruling.

MR. APPLETON: May it appear upon the record that the paper that is marked in evidence People's Exhibit 13 has also been marked People's Exhibit 13 for identification and People's Exhibit 17 for identification, so that ~~the~~ if the record is ever read it will be understood.

THE COURT: Yes.

(Mr. Appleton now hands Papers to the Jury)

MR. STANCHFIELD: What exhibits are you handing to the Jury?

MR. APPLETON: Request writings and the deposit slips and one of the checks and the handwriting of Pender.

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MR. NOTT: I suggest that it might be as well to suspend a minute to let all the jurors hand those different papers around and examine them if they want to do it.

THE COURT: If they do not desire to do it now it would be better perhaps to conclude the examination, but if the jurors would like to look at them now they may. Will you be some time with the witness, Mr. Stanchfield?

MR. STANCHFIELD: Yes, some few minutes longer, probably longer than the hour of your Honor's adjournment. May we not go any further to-night.

THE COURT: Well, up to 4 o'clock.

THE WITNESS: Am I excused, your Honor?

THE COURT: Yes.

MR. STANCHFIELD: Will your Honor allow the defendant to remain in here a while after the adjournment?

THE COURT: Oh yes. Now, neither counsel should anything to the jurors in explanation of an exhibit, but the exhibits will speak for themselves to the jurors.

MR. APPLETON: May it be explained to the Jury that this piece of paper, Exhibit 14, is in the handwriting of Pender, and not alleged to be in the hand-

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writing by anybody, of the defendant?

THE COURT: They may ask a witness, so that it may be made plain to them.

(The Jury now consumes some five minutes examining the papers which have been handed to them by counsel)

THE COURT: Gentlemen, you must not discuss this case, or form or express any opinion about it, but keep your minds open and free until it is submitted to you. You ought not form any impression about the case either until all the evidence is in, until the last word has been said and until you retire to your deliberating room, because an impression formed during the trial might be difficult to eradicate. It is well for you, therefore, to be carefully about that and wait until all the evidence is in, before you form any impression about this case or any of its features. You must not permit anybody to speak to you about it, you must not read about it, but keep your minds free and take up all the evidence at the end of the trial after the court has charged you upon the law and after the counsel have addressed you in argument upon the facts. I will ask you to be promptly in your places at half past ten tomorrow morning.

Adjourned to Wednesday March 31st, 1909. at 10:30

A.M.

New York March 31, 1909.

TRIAL RESUMED.

SAMUEL WILLET WHITSON, called as a witness on behalf of the people, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. APPLETON:

Q What is your employment? A Receiving teller and general book-keeper.

THE COURT: Just one second. Was the examination of Mr. Carvalho finished?

MR. STANCHFIELD: Yes sir. Mr. Carvalho telephones last evening that he desired to go to Boston to keep some professional engagement, and on looking over the evidence I didn't think there was sufficient new matter to keep him here.

THE COURT: Well, I didn't know. I rather thought you had not finished your cross examination.

MR. STANCHFIELD: Well, I hadn't, but I excused him by consent.

Q What did you say your business was? A Receiving teller and general book-keeper.

Q For what bank? A Washington trust company.

Q Is there an account in that bank in the name of Max A. Kramer? A Yes sir.

Q At 142 East 14th Street? A I don't remember the address.

Q Did you open the account there? A To my best knowledge and belief.

THE COURT: You will have to speak louder so that everybody will hear you.

THE WITNESS: I have a cold.

THE COURT: Well I know, but speak louder anyway.

Q When did you open that account? A To my knowledge seven years ago.

Q Have you got the standard of signature that is left in the bank with the name Max A Kramer? A I have.

Q Is that with you? A Yes sir.

Q Will you produce it, sir. A Yes sir (Producing same)

Q The paper that you now present and which I will ask to be marked for identification People's Exhibit 29---

Marked for identification People Exhibit 29.

Q (Continuing) The card you have just received to in your answer? A Yes sir.

Q Is this the standard that has been kept in your bank since the 20th day of December 1902 ? A Yes sir.

Q As the standard of checks signed by the person Max A Kramer who opened the account? A Yes sir.

Q If you will just look at this card, what address is given there.

MR. STANCHFIELD: Objected to on the ground that the card speaks for itself and is the best evidence.

THE COURT: Yes.

MR. APPLETON: Then I will offer the card in evidence.

THE COURT: Show it to your adversary.

MR. STANCHFIELD: I will ask a question.

THE COURT: Yes.

BY MR. STANCHFIELD:

Q Do you know Mr. Kramer, the defendant, personally? A I have met the gentleman, yes, in business ways.

Q How many times? A I couldn't tell you.

Q Have you any definite recollection of ever having seen him at any given time? A I have, yes sir.

MR. APPLETON: Would you pardon me till I ask one question.

MR. STANCHFIELD: Yes.

BY MR. APPLETON:

Q Is the Max A Kramer you refer to this defendant at the bar? A Yes sir

BY MR. STANCHFIELD:

Q Were you present when that card (People's Exhibit 29) for identification) was signed? A I must have been present, I opened the account. There are different ways of opening the account.

Q I don't ask you to argue it. Were you present and did the defendant Kramer sign that card in your presence, before your eyes? A I can't say that; I don't know.

MR. STANCHFIELD: Then I object to the card going in evidence on the ground that it is not sufficiently proven.

THE APPLETON: The address is the address given by the defendant.

BY MR. APPLETON:

Q Is that the card, the signature on that card that controls the account of the defendant at the bar in your bank, the Washington Trust Company? A Yes sir.

MR. STANCHFIELD: Objected to as calling for a conclusion; that is a legal proposition.

MR. APPLETON: It is the fact, sir.

Objection overruled. Exception.

MR. STANCHFIELD: It is incompetent, immaterial and irrelevant, and an exception.

MR. APPLETON: Now I offer the card in evidence.

MR. STANCHFIELD: Objected to, no foundation laid for its introduction; incompetent, immaterial irrelevant and not sufficiently proven.

THE COURT: I will take it and give you an exception.

Received in evidence and marked People's Exhibit

29.

Q Is that the only card of Max A. Kramer in your bank? A Of his personal account, yes.

BY MR. STANCHFIELD:

Q What did you mean by that qualification, the only card of his personal account? A He has an executor's account there, an estate account.

Q In which he is-- A He is one of the executors of the estate.

Q Have you that card with you? A No sir, I have not.

Q Have you looked at it recently? A I must have, yes. I refer to that---all the cards, during the day.

Q Has he any other account there other than that as executor of some estate? A Not to my knowledge.

Q In any official capacity? A Not to my knowledge, sir.

Q Did you bring up with you either the bank book or a copy of the account of Mr. Kramer? A No sir.

Q Has it been for all the years that he has kept an account there comparatively an active account? A Fairly so.

Q And into which and out of which ebbed and flowed considerable sums of money? A I wouldn't say considerable sums of money.

Q I don't know what to a magnate of finance considerable sums might mean, but reasonable sums of money have passed through

it. A Reasonable sums.

THE WITNESS: May we have the signature card
back.

THE COURT: It is marked in evidence; it is an
exhibit.

MR. APPLETON: I think after the trial Mr.
Stanchfield will consent that it go back?

MR. STANCHFIELD: Why, certainly I will.

M I C H A E L L. R U L L M A N, recalled on behalf of the people
having been previously duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. APPLETON:

Q Is this card People's Exhibit 29, the signature Max A
Kramer, the signature that you compare the deposit slip with in
the Washington Trust Company? A To the best of my knowledge
and belief it is.

Q It was produce by Mr. Whitson from the Bank? A Yes, it
was.

MR. STANCHFIELD: I object to that evidence as
hearsay and irrelevant and immaterial. This witness
apparently yesterday did not know anything about it
and doesn't know any more about it to-day, and I object
to it as hearsay irrelevant and incompetent. Mr.
Whitson produced a different situation.

Q Did you compare and use as a standard of comparison for

signatures on checks and deposit slips the individual account standard used in the Washington Trust Company, of Max A. Kramer?

A At times I have compared--

Q Just answer my question; yes or no.

Objected to as incompetent, immaterial and irrelevant.

Objection overruled. Exception.

A At times I have.

Q Then your answer is yes, is it not?

MR. STANCHFIELD: Objected to; he has answered the question.

MR. APPLETON: Well, that is satisfactory.

Q It is a fact, Mr. Rullman that you never saw Mr. Kramer write? A Not to my knowledge.

Q Do you know him personally? A Only from coming in the bank.

MR. STANCHFIELD: I want to ask Mr. Whitson a question before he goes which escaped me.

SAMUEL WILLET WHITSON, recalled for further cross examination.

MR. STANCHFIELD: With reference to that first answer of the last witness Rullman in which he stated the use that he had made of this card, I ask that the

objection and exception go in ahead of the answer,
that it is incompetent, immaterial and irrelevant.

THE COURT: Oh, of course, yes.

CROSS EXAMINATION BY MR. STANCHFIELD, CONTINUED:

Q Mr. Whitson, one question that I forgot to ask you. You have already answered as to this card, you never had any correspondence or saw any writing of this defendant Kramer, leaving out the card, that I have passed by? A No, I never have.

BY MR. APPLETON:

Q You have seen his check? A I mean to say that I have never seen him write, and I understand he asked had I ever seen him write.

Q But you have passed these checks calling for money to be drawn from the bank? A Oh yes.

W I L L I A M J. K I N S L E Y, called as a witness on behalf of the people, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. APPLETON:

Q I show you People's Exhibit 16, and I also show you People's Exhibit 20, 21, 22, 23, 24, 25, 26, and 27 in evidence, and I ask you if you have ever seen those papers before? A I have.

Q What is your business? A I am an examiner of questioned documents, handwriting, typewriting, ink and paper.

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Q How long have you been in that profession? A For 23 years I have been a professional penman; for something over 14 years I have been testifying in courts of law in regard to disputed writings.

Q Can you tell approximately how many times you have testified in courts of law in disputes during that time? A Sev-
eight
eral hundred times. I have had a hundred and ninety five cases in 27 states of the United States and Canada, as far South as New Orleans and as far West as San Francisco.

Q And in all those different cases you have testified as an expert? A Not in all of the eight hundred and ninety and ninety five. I keep a record of the number of cases I have. I probably testified in half to two thirds that number.

Q Now Mr. Kinsley I ask you if you have formed an opinion as to whether or not the same hand that wrote the black lead-pencil marks on People's Exhibit 16 also wrote People's Exhibit 27 25 and 26 and 24 and also wrote the signatures Max A Kramer on Exhibits 20, 21, 22 and 23? A I have formed an opinion.

Q What is that opinion? Did the same hand write it on these exhibits? A In my opinion it did.

CROSS EXAMINATION BY MR. STANCHFIELD:

Q Confining now your attention to that exhibit 16, when did you first see that? A June 6th 1907.

Q At the office of the district attorney? A Yes.

Q Employed by the District Attorney? A Yes.

Q Now did the district attorney show you the 200 or 300 or more samples of handwriting that he had of Mr. Kramer at the time? A My recollection on that point is a little hazy.

Q Have you the slightest recollection of seeing any other than the checks that are lying there before you, at that time?

A I don't think I have, I can't recall. The table was filled with papers and there was more than one case under consideration at the time.

Q ~~WXXX~~ Are all the specimens you can recall of having your attention addressed to, are those lying on the table before you? A Yes, and I could not be so very sure of those, having not seen them since then until to-day except that they bear a mark. I know that there were some checks and some scraps of writing, that is all I can recall.

Q Now the exhibit 16 that you hold in your hand is so far as figures and writing upon it are concerned entirely in lead pencil, isn't it? A Yes.

Q And the exhibits upon the desk with which you compare it are entirely in ink? A All except one, Exhibit 27, which is in lead pencil, as I judge it is a request exhibit because it is district attorney's paper.

Q With that exception they are all in ink? A Yes.

Q Now were you informed that the exhibit 16 that you hold in your hand was prepared, was probably prepared or written

at any particular time? A I don't recall what I was told about it, two years ago.

Q Did you learn that it was about two years old at the time when you saw it, that it had been written somewhere around June 1905? A No, I don't believe I knew anything about the date of it.

Q Is it or is it not a fact that every year the handwriting of a person changes in some material respect. A It changes some and whether or not it be material would depend on conditions. Some handwriting would go to pieces in a few months or weeks, according to the conditions; others would change but very slightly but there would be some changes in every handwriting every year.

Q And the degree of which would be governed and controlled by the temperament and the habits of the individual? A Yes; his physical condition and mental condition.

Q So that in order to arrive at a judgment upon which you would be willing to rest great weight preferably you would prefer when you were making comparisons of handwriting, contemporaneous writings as nearly as possible would you not? A Yes.

Q Now isn't it a fact laid down in all of the authorities that deal with your profession that leadpencil handwriting is far more difficult to determine as to its authorship than ink? A Yes.

Q Your answer to that was yes, was it not? A Yes.

Q Now upon the occasion when you made this examination you of course could not tell whether the writer of the exhibit that you hold in your hand used a sharp pencil or a dull pencil, a hard one or a soft one, could you. A Yes, I think I could tell then and tell now from the character of the writing.

Q Was it a dull one or a sharp one? A Dull one.

Q Did he moisten his pencil? A It looks as if it was moistened and looks as if it was a soft pencil.

Q And it is quite apparent upon it, that certain of those numerals indicate that he moistened his pencil in order to make the heavier stroke appears there? A Yes.

Q And it is your judgment that he did moisten his pencil? A Yes.

Q That is true, Mr. Kinsley, with reference to what numerals that appear upon exhibit? A I think it applies to the figures "1" in almost every case, it also applies to the first cipher in the "1100" and also to the dash just before the "1400" in the first line. It is true of the capital "c" in the first line and it is true of the figures "401" in the next to the ~~an~~ last line. I think it is true of the line drawn just before the addition of the figures "3903".

Q Now in addition to that fact you observe, do you not, that the only complete words upon that exhibit 16 are "coil" and "each"? A Yes.

Q And each of them or both of them, is mis-spelled? A Yes.

Q Now comparing the "c" in the word "coil" with any "c" that appears upon the standard handed you for examination you find none like it, do you? A None exactly like it.

Q Now having in mind the mis-spelling of those two words "coil" and "each", what would you say as to whether the numerals and the writing upon People's Exhibit 16 were the writing and the numerals of an educated ~~man~~ or an illiterate man, a business man or a working man? A Well, I would say they were not the writing of an educated man. I won't draw the line in the other two.

Q What would say in looking at it, as to whether it was the work of a man accustomed to earn his livelihood by the use of his hands rather than his brain?

Objected to; objection overruled.

A I think it is some one who was accustomed to using his hands and using his hands more than his head.

Q That is your opinion? A Yes.

Q I say, that is your opinion? A He has used his hands a great deal. He may have been using his head at this time or after that, but he has used his hands so much that it has made him rather clumsy in the use of a pencil.

Q In other words in your judgment that would be the writing of a man who followed manual labor rather than the occupation or vocation of a business man who didn't do it? A Yes, the writing would indicate that. It wouldn't be controlling, of course, but the indication judged by this scrap of writing, if you had

nothing else, you would say that he was a man accustomed to using his hands a great deal and not in writing, but in manual labor.

Q That exhibit 16 that you have in your hand is at the best a very unsatisfactory piece of writing upon which to express positive opinion, isn't it? A It is.

Q And, Mr. Kinsley, if you were to change places from where you sit and take a place in the Jury box here, with your knowledge of handwriting and experience, and you had those before you, would you convict a man of felony upon that hand writing?

Objected to. Objection sustained. Exception.

MR. STANCHFIELD: Your Honor will pardon me for a remark. The Courts have held that when witnesses were ~~asked~~ upon the stand under cross examination, expert witnesses, that they could be asked whether if they occupied the position for instance of a paying teller in a bank they were sure enough of their opinion to say that they would honor a check predicated upon the exhibit that they had in their hand. That has been held perfectly proper.

THE COURT: You have your exception.

MR. STANCHFIELD: Well, I renew it.

RE-DIRECT EXAMINATION BY MR. APPLETON:

Q Will you look at exhibits 25, 26 and 27 and tell the jury whether or not the handwriting of those exhibits indicate

a person of the same general type as you have described, as to the person who wrote People's Exhibit 16? A Yes.

BY THE COURT:

Q What do you mean by that, the same type. A I understood Mr. Appleton's question to mean a person not much accustomed to writing, who used his hands more than he had his head?

(MR. APPLETON: That was just what I intended to convey.

BY MR. APPLETON:

Q Now will you look at the pencil pressure in People's Exhibit 16 and also the pencil pressure in People's Exhibit 27 and tell us if there is any similarity or difference? A There is considerable similarity. People Exhibit 16 is I think a softer pencil, but there is I think the same tendency towards pressure in both exhibits.

Q Now will you look at the formation of the letters and tell us whether or not there is a similarity between People's exhibit 16 and People's Exhibits 25, 26 and 27? A The capital "e" in "each" in Exhibit 16 and in "80" in Exhibit 27 are much the same construction; they start with an upward stroke. In Exhibit 27 the "e" is a backward slant; in Exhibit 16 it is an upward slant; it differs in that particular. The capital "c" generally, the only one here is in "dash" in Exhibit 27 and they don't compare so well; they are the same general type but made in

different manner.

Q Now will you look at the figures "9" and "8" and "0" and "3" in those exhibits and tell us whether or not those figures are of the same general style, or what similarity there is? A The figures "0", "8" and "9" are the same style and made in much the same way, with the same emphasis, and the "8" has the same tendency to turn over to the left and back at the top, and the ciphers are made in the same way, with a tendency to turn over to the left and back; the "9" 's run to-gether at the top-- the last up stroke uniting with the last down stroke.

Q Now with respect to the spacing, will you compare the spacing in Exhibit 16 with the so called request writings Exhibits 25, 26 and 27? A There is much similarity in the spacing between letters words and figures.

Q Now tell us with respect to the alignment, and as to the alignment; first define to the jury what is meant by alignment

A Alignment is how--

MR. STANCHFIELD: If this was proper examination I submit it should have been on direct.

MR. APPIETON: On the cross examination they brought out this similarity. Now I think it is proper for me to show--

THE COURT: Yes, I think so.

MR. STANCHFIELD: Exception.

A Alignment is how letter approach to or recede from an imagin-

ary base line, and in general alignment Exhibit 16 compares very well with the alignment in Exhibit 27, for example.

Q Now, Mr. Kinsley, will you please hand to me Exhibit 16 and take exhibits 20 to 27 inclusive in your hands--that includes the three request writings, and then I show you exhibit 28 and I ask you whether or not you have compared that paper with the other papers ? A I have.

Q Have you formed an opinion as to whether or not the same hand that wrote exhibits 20 to 27 inclusive also wrote exhibit 28? A I have formed such an opinion.

Q And what is your opinion? A In my opinion it is written by one and the same hand.

Q That is the deposit slip, exhibit 28. Now, Mr. Kinsley, I ask you to take,--hand me all the exhibits back and then will you take exhibit 16 and compare it with People' s Exhibit 14 and tell me whether or not you have previously made an examination of those two papers and compared them together, 14 being the Pender handwriting? A I have.

Q Have you formed an opinion as to whether or not the same hand wrote both of those two papers? A I have.

Q Did the same hand write both those two papers? A In my opinion it did not.

BY MR. STANCHFIELD:

Q Did the district attorney tell you what Mr. Carvalho said about those two exhibits? A No, he did not.

Q If Mr. Carvalho expressed the opinion that they might have been written by the same handwriting and they might not, he was unable to determine, would you differ from him?

Objected to as immaterial.

THE COURT: I don't think he ought be called upon to pass judgment upon Mr. Cravalho. He is accountable only for his own professional opinion.

MR. STANCHFIELD: This is a question of cross examination. Your Honor can sustain it or overrule it as you please.

THE COURT: Well I shall overrule it and you may have an exception to it.

MR. STANCHFIELD: Well I will take an exception to it.

Q Are you willing to say under your oath that those might not have been written by the same hand? A I would like to explain and qualify--in my opinion I don't think they were written by the same hand--I don't say--because of one peculiarity in it;--I go by one characteristic alone in that.

Q Well take up those two exhibits 16 and 14, aren't those "3"'s startlingly similar? A They are.

Q Well, so similar as to faaze even a retained expert, aren't they.

Objected to.

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

Exception.

Q So similar as to feaze, you are a retained expert, aren't you? A No, I don't know whether I am retained. I known I am brought here under subpoena. I wouldn't come unless they subpoenaed me. I refused to come.

BY MR. APPLETON:

Q You have had some dispute as to money affairs, the bills and so forth--

Objected to; objection sustained.

THE COURT: Strike out the statement of Mr. Appleton.

BY MR. STANCHFIELD:

Q ~~By~~ What I said by retained expert, you are testifying-- you make your living testifying for pay, don't you? A Oh yes. And about this figure "3" about which you have asked the question I say frankly that I would pass the "3", that I couldn't tell.

Q In other words, looking at the "3" the figure three upon those two exhibits, they may have been written by the same hand?

A They might, if I would just consider those alone. I had to eliminate from consideration the three in arriving at my conclusion. I had to throw them out absolutely.

Q That is if you had the "3"'s presented to you alone you would say they might have been written by the same person? A

Yes.

Q And it is only by taking into consideration other portions of the handwriting that you arrive at a different conclusion? A Yes.

Q Now both of those samples Exhibit 16 and exhibit 14 were written in your judgment by the same type of hand, were they not? A Well exhibit 14 is even more meagre than 16, which is meagre enough; and I would ^{not} want to pass much upon the types, but it is written by some--- yes, so far as this goes, so far as I can judge from the handwriting in 14 as compared with the handwriting of 16, one writing is about as good as the other, and both accustomed to manual labor, I should judge.

Q And when you speak about 16, which is the exhibit in question, being meagre enough, you mean by that that it is too meagre to base any great certainty upon it, isn't it? A Yes.

BY MR. APPLETON

Q Now, Mr. Kinsley, you say that in coming to a conclusion as to whether or not exhibit 14 and 16 were written by the same hand you eliminated the "3"'s? A Yes.

Q Now having eliminated the "3"'s is there a marked dissimilarity in the other figures on exhibit 14 from the figures on exhibit 15. A Yes.

Q Will you point out to the jury what those dissimilarities are? A Particularly in the ciphers and the "9"'s.

Q Stand right before the jury so they can see what you mean.

MR. STANCHFIELD: Wait a minute. I haven't the slightest objection to the jury taking the exhibits when they come to it, but I do object to any professional discourses or homilies in the trial of this case from the witness stand.

THE COURT: In view of the cross examination this witness may answer the question?

MR. STANCHFIELD: Exception to the ruling.

Q Will you just take those two papers down and stand before the jury and show the jury what you mean by saying that those

A
ciphers--In exhibit 14 the--

MR. APPLETON: May the jurors stand up so they can see.

THE COURT: Yes.

THE WITNESS: The ciphers finish at the top with a left curve and move towards the right, whereas in Exhibit 16 the ciphers finish in diametrically opposite manner, towards the left and down, one towards the right and up, and the other towards the left and down. In the figure 9, I rely on those two figures alone--the figure "9" in exhibit 14 has quite an open angle; between the oval part and the main down stem there is an opening; in exhibit 16 that is not true--the oval part and the main down stem run together. It is on those

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two things ~~key~~ alone that I hardly take into consideration 4 and 5---I think one does not have any 5 in it. the 4's are hard to compare. On the cipher and 9 alone is the opinion expressed. Of course the two figures occur very few times and I cannot make it very strong, or any stronger than that.

BY MR. STANCHFIELD:

Q Now I will ask you if you were in a bank as the paying teller of it, passing upon checks, would you be willing even in paying out money to have your actions controlled by so meagre an exhibit as 16 furnishes?

MR. APPLETON: Objected to; he has given his opinion.

MR. STANCHFIELD: I submit that that is a perfectly proper inquiry.

THE COURT: Yes, I think so. I will take an answer to it.

A No.

BY THE SIXTH JUROR:

Q Do you find in your experience that the letter "O" is writing has any similarity in its formation to the cipher zero? A Yes.

Q Would the similarity in that tend to identify his handwriting? A It does where the letter "O" is a final letter in a word, like "to" or "do", because the cipher stands alone, but in the middle

portion of a word it is not so much. Its general form in height and proportion and angles, it would, but the best "o's" to take would be at the end of a word and that would have some tendency--

THE SIXTH JUROR: May I see the other exhibits, your Honor.

THE WITNESS: He would like to see these two I think--14 and 16.

THE JUROR: No, I have those pretty well in mind.

(The juror now examines exhibits)

THE SIXTH JUROR: Thank you.

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NATHAN A. SMYTH, called as a witness on behalf of the people, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. NOTT:

Q What is your profession? A I am an assistant district attorney, and a lawyer.

Q How long have you been admitted to the practice of the law? A Since 1901.

Q And you hold now the office of Assistant District Attorney in the County of New York? A I do.

Q How long have you held that office approximately? A Since 1906, first of January.

Q Before that you were a deputy assistant district attorney? A For about four years.

Q Were you in company with Mr. Appleton in a room in this building when you had a conversation with the defendant? A I was.

Q In the early part of the month of June 1907? A Yes.

Q And when you had that conversation did you have before you certain checks and other papers? A I did.

Q I show you Peoples' Exhibit 16 and ask you if during that conversation did you show that paper to Mr. Kramer? A Yes I did.

Q His attorney was present at the time? A Mr. Vorhaus, his attorney, was present, yes.

Q Will you give your best recollection of what you said to Mr. Kramer about that slip of paper Peoples' Exhibit 16 and what he said in answer thereto? A I said to him "Is this in your hand-

writing?" He said "I don't know." I said "Do you deny that it is in your handwriting?" He said "No, it may be and it may not be".

Q And then after that, was it before or after that according to your recollection that you requested Mr. Kramer to write off Peoples' Exhibits 25, 26 and 27? A These Exhibits 25, 26 and 27 were written before I showed him this Exhibit 16.

Q And you saw him write those? A I saw him write these, yes.
CROSS EXAMINATION BY MR. STANCHFIELD:

Q You did not take the trouble to have a stenographer come in to take down that conversation did you? A No.

Q And that occurrence took place very nearly two years ago?
A Yes.

Q And since that time you have interviewed thousands of witnesses? A I have interviewed a great many.

Q And you have no memorandum in writing of any sort or discription as to what that conversation was? A I made no memorandum, no.

Q Do you profess here to be able to give the words that Kramer used at the time? A Not the exact words.

Q You at the best are able only to give your recollection of their substance, are you? A That is correct.

Q Now have you read over the testimony that Mr. Appleton gave here yesterday as to what ~~he~~ was said in that conversation?
A No, I have not, Mr. Stanchfield.

Q Well did Mr. Kramer say in that conversation that he was unable to recognize any of the writing on that exhibit as his?

A He didn't say it in any such phraseology as that.

Q Did he say that in substance? A Only in so far as what I have stated, that he said maybe that in substance.

Q Did he say that in substance, that he was unable to identify or recognize anything upon that Exhibit O? A I have given exactly what he said, so far as I can recollect it, and I think that is all that he said.

Q Well did he say that or did he not, according to your best recollection? A I think he did not. I say I think ^{because} it was of the difficulty of the phrase "in substance".

Q When you handed it to him did he glance at it just cursorily? A He looked at it.

Q Well now did he not say that he ^{did not} believe that the writing upon the paper was his? A As I recollect it he said it may be and it may not be.

Q Did he say just what I am asking you, that he did not believe that the writing upon that paper was his? A I don't remember that phraseology. I think that is exactly the same meaning as what I stated.

Q Did you ask him to look at it closely? A I don't remember asking him to look at it closely.

Q Then did you hand it to him a second time when you asked him to look at it closely? A I may have, I don't recollect.

Q After looking at it closely did he not say that he did not believe it was his handwriting? A I don't recollect that phraseology of it, Mr. Stanchfield.

Q Have you stated all that conversation that you recollect?
A I have, yes.

Q Did you at any time during that conversation---A Pardon me, do you mean with regard to those specific things or with regard to matters that preceded it?

Q I am limiting my inquiry to Exhibit 16? A. Yes.

Q Have you stated all that was said at that time? A I have stated all that I recollect.

EDWIN T. HYDE, recalled as a witness on behalf of the people, having been previously duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. APPLETON:

Q Do you remember when you cut that rope up that you received in June 1905? A I cut the most of it up the day I received it.

Q Now do you know what the various floating baths were brought over to the Borough of Manhattan and moored at the different docks? A Yes sir.

Q Have you examined the records of the department of Superintendent of Public Buildings and Offices to ascertain when that happened? A Yes sir; this is the list of them.

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Q And did you make that list that you hold in your hand?

A Yes sir.

Q From the records? A Yes sir.

Q Now when was the last floating bath brought over to the Borough of Manhattan? A That was on July seventh.

Q 1905? A 1905.

Q And when you received the bill to the city from ~~the~~ the Metropolitan Equipment & Supply Company had all the floating baths been taken over from Brooklyn to Manhattan?

MR. STANCHFIELD: Objected to as calling for a conclusion and a state of facts not proven to exist in this case.

THE COURT: What is the importance of it?

MR. STANCHFIELD: And as incompetent, immaterial and irrelevant.

THE COURT: What is the importance of it?

MR. APPLETON: Only to show, your Honor, that the bill when it reached the hands of this witness, who was the first man to take official action with respect to the bill, the rope had all been cut up and was in use as hawsers and up in the Borough of Manhattan.

MR. STANCHFIELD: Would your Honor hold that this defendant was chargeable with that fact, criminally?

MR. APPLETON: I am put to the most technical proof in this case----

THE COURT: It may be a circumstance, I will take it.

Exception.

A I don't remember what date it was I received the bill.

Q Can you refresh your recollection as to the date you received the bill by looking at the voucher that was filed in the Comptroller's office?

MR. STANCHFIELD: Objected to as assuming, if your Honor pleases, and as not proven in the case.

THE COURT: Well he is asking him whether something he is about to show him will refresh his recollection, it may or may not.

MR. STANCHFIELD: That part of it is perfectly proper.

THE COURT: That is the extent to which the question goes, as I understand the question.

MR. STANCHFIELD: Well, that is ^asatisfactory disposition of it.

MR. APPLETON: I don't think I care to press the question. I think the jury understand it. I call Mr. William H. Walker, unless you care to cross examine.

MR. STANCHFIELD: No.

W I L L I A M H . W A L K E R , recalled on behalf of the people, having been previously duly sworn, testifies as follows:

Q I show you People's Exhibit 3 for identification and call your attention to the words "correct, William H. Walker, Superintendent of Public Buildings and Offices," and ask you if the signature William H. Walker thereon is in your handwriting and if it was written by you? A Yes sir it is in my handwriting.

Q Now did you ever see the rope that was called for by that bill?

MR. STANCHFIELD: Objected to as hearsay, irrelevant and immaterial, whether he saw it or not.

Objection overruled. Exception.

A No sir.

Q What caused you to mark the bill "correct"?

MR. STANCHFIELD: Objected to on the ground that the mental operation of the witness's mind is incompetent and hearsay.

MR. APPLETON: Question withdrawn.

Q Upon what did you base your audit of that bill? A On the report of our foreman Mr. Hyde.

Q Stamped thereon? A Stamped on the bill.

Q The mark of Mr. Hyde there? A Yes sir.

Q Is that correct? A That is correct sir.

MR. APPLETON: If the Court please, the counsel for the defendant stipulates and agrees with the counsel for the people that the jury may take as a fact proved in the case this concession, namely, that the

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round circle on the right hand side of People's Exhibit 3 for identification, with the printed words "correct", "Bureau P.B. & O.," and the initials "P.J.M." inside were put upon Peoples' Exhibit 13 by Patrick J. McCabe, an employe in the office of the Superintendent of Public Buildings and Offices, and that that word "correct" and the initials denote that the additions of the number of pounds and the multiplication by number of cents and the number of pounds and the total \$624.48 were correct as to those calculations.

THE WITNESS: Patrick J. McGrath.

BY MR. APPLETON:

Q He is now an assemblyman in the state Legislature? A Yes sir.

M A Y E . H O U L A H A N, called as a witness on behalf of the people, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. APPLETON:

Q Where are you now employed? A Metropolitan Equipment & Supply Company.

Q How long have you been employed by the Metropolitan Equipment and Supply Company? A I will be with the company four years next November next November.

Q That is, you started in upon your employment with the Metropolitan Equipment & Supply Company in November 1905? A I did.

Q And you have been continuously employed there since that time? A I have.

Q By the defendant, Max A. Kramer, is that correct?

MR. STANCHFIELD: Let her answer whom she was employed by.

A I was employed and seen about the time of my taking on by the company by Mr. Jacob Goldstein but I understood that I was employed by Mr. Kramer, that is that he was my employer, but my dealings were with Mr. Goldstein.

Q And you received your pay for your services from Mr. Kramer did you not? A I received my pay for my services from Mr. Goldstein.

Q Always? A Always from Mr. Goldstein up to the time of May when he disappeared, when I received it from Mr. Kramer.

Q Now just a minute. When Mr. Goldstein disappeared he started away on a vacation did he not? A I don't know.

Q Did you not tell Mr. Smith and me in the district attorney's office when we sent for you to inquire where Goldstein had gone that he had been given a vacation? A I don't recall that I ever said Mr. Goldstein had been given a vacation. I didn't know whether Mr. Goldstein went on a vacation or don't know to this day what became of Mr. Goldstein.

Q Were you not informed at that time that Goldstein had been given a vacation by Mr. Kramer? A I was not.

Q And did you not tell Mr. Smyth and myself that he had been

given a vacation? A I don't recall that I ever said that Mr. Goldstein was given a vacation. I said I wished----

Q Never mind, just an answer----

MR. STANCHFIELD: I submit, your Honor, that she has a right to complete her answer.

THE COURT: I think that is enough. Strike out "I said I wished"---- that is not responsive.

MR. STANCHFIELD: Exception.

Q Now will you look at Peoples' Exhibit 3 for identification and tell us first if you have seen Jacob Goldstein write?

A I have.

Q Many times, haven't you? A Many times, yes.

Q Do you know his handwriting? A I do.

Q And is that People's Exhibit 3 for identification in the handwriting of Jacob Goldstein? A All of the ink on it is in the handwriting of Jacob Goldstein.

Q That is all except the exhibit marks and the three marks of approval, one made by Hyde and one made by Walker and one made with the initials P.J.M., is that correct, all the rest of the paper is in the handwriting of Jacob Goldstein? A All of it.

MR. APPLETON: Now if your Honor please, I offer in evidence that Exhibit 3. It is the bill filed by the City.

MR. STANCHFIELD: That is the bill of June 19th to the City.

THE COURT: Any objection?

MR. STANCHFIELD: Certainly, against Kramer there is, not against Goldstein. It is objected to as hearsay, incompetent, irrelevant and immaterial and not in the handwriting of Kramer, no foundation laid for its introduction, no proof that it was ever brought to the attention of Kramer, no ratification, no conscious ratification of the sending of the bill, proven in the case.

THE COURT: I will take it, and you may have an exception.

Received in evidence and marked People's Exhibit

3.

Q Who was employed by Mr. Kramer, the defendant Kramer, at 124 East 14th Street during the time you worked there? A Who was employed there?

Q Yes. A Why Mr. Goldstein and myself was the only ones that I know that was employed there. I don't know that Mr. Goldstein was employed, I don't know anything further than that he was in the office with me.

Q That will do. Now would you just as soon take a pen and ink and write out a duplicate of People's Exhibit 3 in evidence, being the bill submitted to the City, and would you write it with lead pencil-- I think that would be preferable, to write it with lead pencil.

MR. STANCHFIELD: You need not take off your glove yet. That exhibit is in evidence already, it is the bill upon which you just passed.

THE COURT: What is the purpose of this?

MR. APPLETON: The purpose is that the jury may see the handwriting of this young woman.

THE COURT: No, I will sustain the objection.

MR. APPLETON: Will your Honor not hear me?

THE COURT: Yes, very briefly.

MR. APPLETON: People's Exhibit 16 is found in the defendant's office, Goldstein and this girl worked there, we have the sample of Goldstein's writing and of Kramer's writing and we want the jury to see the sample of this girl's writing.

THE WITNESS: You also have the sample of my writing.

MR. APPLETON: I am not talking to you. You are quite anxious----

THE WITNESS: No, I am not, but I have already wrote for the district attorney's office three or four times.

MR. APPLETON: But we want you to write in the presence of the jury.

THE WITNESS: All right, I shall do so.

THE COURT: Strike this out. There is an objection raised by the counsel for the defendant and the Court sustains it.

MR. APPLETON: Then, sir, if they introduce evidence to show that this girl wrote it, or if there is any question that this girl wrote it, may I have the privilege of recalling this witness?

THE COURT: That will be a different matter.

MR. APPLETON: By the time the case goes to the jury unless we have the sample of this handwriting it will be a logical argument for the defendant to argue that the people have not shown but what she wrote that paper. That seems to me to be very important in this case.

THE COURT: The objection is sustained.

BY MR. APPLETON:

Q I show you Peoples' Exhibit 16 and ask you if the black lead pencil marks on that paper are in your writing? A They are not.

CROSS EXAMINATION BY MR. STANCHFIELD:

Q You are how old? A I was 25 last November.

Q You have not as yet attained to the dignity of the married state? A I have not.

Q So ~~xxx~~ that you are not madam, you are Miss Houlahan?

A Miss.

Q Now you have been called in reference to this case to the

district attorney's office upon a great many occasions? A I have.

Q And have they examined you and questioned you in detail with reference to the business affairs of Mr. Kramer so far as you knew them, and as to Mr. Goldstein and his whereabouts? A They did.

Q And have you always completely and frankly told them all you knew about either one of them? A Everything that I did know I always told.

Q Has anybody, either Mr. Kramer or Mr. Vorhaus or any of the lawyers that have represented him ever in any way asked you to shade or color in your conversation with the district attorney the exact truth as you understood it?

Objected to.

MR. STANCHFIELD: I submit it is proper.

THE COURT: Yes, I will take it.

A I have only answered the truth to the district attorney and more than that I can't tell to anyone.

Q Well has anyone ever asked you to do anything else?

A They have not.

Q Now what is your occupation? A A bookkeeper.

Q And were you employed for that purpose at the offices of the Metropolitan Supply & Equipment Company in November 1905?

A I was.

Q Were there two concerns there, one the Metropolitan Equipment Company and the other the Metropolitan Equipment & Supply Company? A There was.

Q Now under or for which concern was Mr. Kramer principally occupied? A In the Metropolitan----

MR. APPLETON: Just a moment, I ~~have~~ object to that.

THE COURT: Objection sustained.

MR. STANCHFIELD: I desire, with your Honor's courtesy, I desire by the witness to show in so far as her knowledge goes the doings and goings and occupation of Kramer.

THE COURT: I do not think from this witness that you can extract much wisdom upon that subject.

MR. STANCHFIELD: Oh, I can show how little she did know of it, that is certain.

MR. APPLETON: She was not employed there until after November.

THE COURT: I will sustain the objection.

MR. STANCHFIELD: Exception.

Q How often was Mr. Kramer at this place of business?

MR. APPLETON: Objected to.

THE COURT: She may say how often she saw him.

MR. APPLETON: This witness was not employed at Kramer's office until November. This crime alleged to

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have been committed was committed in the month of June 1905, some months before this girl was employed there. It may be that she was called in to take Mr. Kramer's work or his hands or something like that, we don't know.

MR. STANCHFIELD: I submit that when they called this witness I have a legal right to cross examine her for her credibility.

THE COURT : You ^{may} have full latitude in your cross examination.

Q Now you may answer, how often Mr. Kramer came to the office?

MR. APPLETON: Objected to, I donot see how it can possibly-----

MR. STANCHFIELD: That is what the Court has just ruled upon.

THE COURT: Yes, I will take it. It is cross examination.

MR. APPLETON: I know, sir----

MR. STANCHFIELD: I protest against this continual interruption by the district attorney when your Honor has ruled.

THE COURT: Yes, the counsel for the people will sit down.

MR. APPLETON: May I rise again and address the Court?

THE COURT: No, go right ahead and answer the questions.

A Mr. Kramer came to the office about between the hours of 9 and 10 or thereabouts every morning.

Q How long would he remain? A Just long enough to open letters addressed to him personally and go right out of the office again without--- sign checks that were laid on his desk for which the body was made out by Mr. Goldstein, he would just sign his signatures-- never asked any questions, and walked right out of the office again.

MR. APPLETON: I move that that answer be stricken out as not responsive. They asked how often he came to the office.

THE COURT: I will let it stand.

Q Did he come up again as a rule during the day? A Well he might come back in the night and he may have, but as a rule it was just in the morning--it was very rarely he came back at night and then only to see if there was any mail or checks to sign and go right out.

MR. APPLETON: Objected to as not responsive.

THE COURT: She may say when he came there, what was the usual time--speaking only generally.

Q Now when he came there mornings have you watched him opening mail, have you seen him opening mail? A Why, I didn't watch him. The mail was laid on the outside office-- on Mr. Kramer's desk

by Mr. Goldstein and all the personal mail was laid on his desk with the checks which he signed. I never watched him opening the mail but I presume it was opened.

Q No, no presumption? A It just laid there on his desk for him to open.

Q Did he have a desk there? A He had a desk, yes.

Q Did Mr. Kramer have the keys to the outside door of that office? A I believe not.

Q Have you found him there upon occasions without keys to get in? A I have not.

BY THE COURT:

Q You have not found him at the door? A I have not found him at the door.

BY MR. STANCHFIELD:

Q Let me refresh your recollection. Was there not one occasion when you went there and found him unable to get in because he said he had no key?

Objected to.

THE COURT: How is that important?

MR. STANCHFIELD: My contention, if your Honor please----

MR. APPLETON: I have forgotten my keys before now.

THE COURT: Counsel, let the defendant's counsel continue.

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MR. STANCHFIELD: I would not attach any consequence to an isolated instance of a man not having a key, that is not the pith of the inquiry. What I desire to show was the infrequency, if your Honor please, of Kramer's attendance at this place of business, that as the correspondence here shows and as the testimony of Miss Houlahan shows, the business was conducted---

THE COURT: Well you have that already, haven't you?

MR. STANCHFIELD: I know I have, but I was going into detail.

THE COURT: Well no, I think you had better let it stand as it is.

MR. STANCHFIELD: Well I take an exception to your Honor's ruling, and I claim the right in the broadest kind of a way to show just what facilities he had for information in this room.

THE COURT: Take an exception.

MR. STANCHFIELD: And an exception.

BY MR. STANCHFIELD:

Q Did Mr. Kramer, so far as your observation went, have the combination to the safe?

Objected to.

THE COURT: If she knows she may say.

A He did not.

Q Did Mr.Kramer keep any of the books in that office? A He did not.

Q Did he ever direct any of the entries appearing in these books in your presence or hearing to be made? A He did not.

Q Did Mr.Kramer so far as your knowledge goes ever examine the books of that concern? A I never seen him.

Q Now who did direct the method of entries to be made in those books to you? A Goldstein.

Q Now how much of the time was Mr.Goldstein usually there?
A Well in the morning he would leave the office around 11 or 12 o'clock probably and would return around 2 or 3 in the afternoon. During all the rest of ~~time~~ the time I was there alone.

Q How were you in the office in May 1907? A I was.

Q Who in the office opened the mail that was addressed to the Metropolitan Supply & Equipment Company? A Mr.Goldstein.

Q Was there a filing case in that office? A A file case?

Q Yes. A There was.

Q Did you ever see Mr.Kramer look into or make any examination of the papers in that file case? A I did not.

Q Now you state you were there in May 1907? A I was.

Q Were you there at those offices when the four officers and detectives came up there from the district attorney's office?
A I was. At first one came.

Q Well, there were four in all? A There were four in all.

Q You are the Miss Houlahan they stated was present at the time? A I am.

Q Now do you recollect what day of the week that was?

A As near as my recollection goes I think it was either a Thursday or Friday or a Wednesday or a Thursday,-- I can't say positively.

Q How soon after that did Mr. Goldstein go away? A Why I didn't know anything about Mr. Goldstein going away. It was on Saturday afternoon, he was there Saturday morning and asked as he was going downtown----

Objected to as not responsive.

Q I am not calling for the conversation. You say you saw him Saturday morning? A Saturday morning.

Q What Saturday was that with reference to the time when these officers were there? A It was the Saturday, May 25th, I should judge, about one or two days after.

Q You saw him Saturday forenoon? A I did.

Q Did he state to you-- this you can answer yes or no-- when he left the offices that day,--whether he was going away or not? A He did not. I left the office before him.

Q Did you come back on Monday? A I did.

Q Was Mr. Goldstein there? A He was not.

Q Have you ever seen him since? A I have not.

Q Have you ever heard from him? A I have not.

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Q Since he went away has Mr. Kramer been at the offices?

A He has.

Q And the business has been going on? A Yes.

Q Do you recollect on this Monday morning seeing Mr. Kramer?

A I did.

Q Did he make inquiry as to Goldstein?

Objected to. Objection sustained.

MR. STANCHFIELD: Will your Honor allow me to finish my question?

THE COURT: Yes.

MR. APPLETON: Don't answer until I make an objection.

MR. STANCHFIELD: Mr. Appleton is very quick on the trigger; he objects before I finish my question.

Q Did Mr. Kramer on that Monday morning inquire as to the whereabouts of Mr. Goldstein?

Objected to. Objection sustained.

MR. STANCHFIELD: I ask your Honor to permit that testimony as competent and legitimate evidence upon the question of criminal intent in this case, and limit the offer to make the proof to the question of intent.

THE COURT: No, take an exception.

MR. STANCHFIELD: I will take an exception. Now I offer that evidence generally.

THE COURT: Take an exception to that.

MR. STANCHFIELD: And I take an exception to your

Honor's ruling.

Q Now on this Monday----

MR. APPLETON: Don't answer until I have a chance to object.

MR. STANCHFIELD: There isn't the slightest doubt judging from the past---

THE COURT: If either counsel has any directions to the witness, direct that to the Court's attention and the Court will then pass upon the merits of the question, but just ask questions of the witness.

MR. APPLETON: May I ask your Honor to ask the witness not to answer any of the questions until I have an opportunity to object?

THE COURT: Yes, you must not answer the question until the counsel on the other side has the opportunity if he sees fit to object to it. Go ahead, counsellor.

Q About what time did you see Mr. Kramer on this Monday morning?

MR. APPLETON: Objected to as immaterial, what time she saw Mr. Kramer on that Monday morning.

THE COURT: That is the date the officers were there?

MR. APPLETON: No sir, the day Goldstein is supposed to have gone away.

THE COURT: The objection will be sustained.

MR. STANCHFIELD: Exception. Dess your Honor---

THE COURT: You have an exception, Mr. Stanchfield.

Your rights are preserved.

Q Did you see Kramer on more than one occasion on this Monday?

Objected to as immaterial.

Objection sustained. Exception.

Q Upon different occasions upon this Monday of which we are speaking did Mr. Kramer when he came to the office inquire whether you had heard from Goldstein?

Objected to. Objection sustained. Exception.

MR. APPLETON: And I ask you to direct counsel to abandon that line of questioning now.

THE COURT: I think perhaps he has got sufficient questions to raise the point.

MR. STANCHFIELD: I haven't any objection to your making just the ruling the district attorney asks you to make--

THE COURT: Yes, go ahead. You have the benefit of an exception.

MR. STANCHFIELD: But if the district attorney is willing to take this line of procedure---

THE COURT: Go right ahead.

MR. STANCHFIELD: I will take an exception to the ruling.

Q Has any mail ever been received at that office, Miss Houlahan, from Goldstein, since that Monday?

Objected to. Objection sustained. Exception.

Q You say you are familiar with his handwriting? A I am.

Q Have you ever seen his handwriting upon any envelopes that have come into that office since this Monday of which I am speaking? A I have not.

Q Did Mr.Kramer on this Monday of which we are speaking direct you to make inquiries by telephone to see whether you could ascertain the whereabouts of Goldstein?

Objected to. Objection sustained. Exception.

Q Now calling your attention, Miss Houlahan, to the Exhibit 16, to which Mr.Appleton called your attention--Mr.Kramer you say came there mornings and signed checks? A Yes sir.

Q You were familiar with his signature to the checks? A I was.

Q Now I will ask you to look at the "C" on that Exhibit 16 and ask you during the years you were working there whether you ever knew him to make a C like that one?

Objected to.

THE COURT: I will take an answer.

A I don't ever recall having seen a C in Mr.Kramer's signature with that same curve at the top or curve at the bottom; it does not look to me like Mr.Kramer's C.

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BY MR. APPLETON:

Q Mr. Kramer signed all the checks? A He did.

Q And your connection with the Metropolitan Equipment Supply Company began in November 1905? A It did.

Q You don't know anything as to what happened before that, do you?--You weren't there? A Why no I don't know anything that happened while I wasn't there, but I am just saying in regard to the signature, that's all.

Q No, I just ask you to answer my question. Thank you, Miss Houlahan.

J O S E P H T . B A R R Y , called as a witness on behalf of the people, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. APPLETON:

Q What is your business or employment? A I am employee in the City Chamberlain's office .

Q In what capacity? A As bookkeeper.

Q I show you People's Exhibit 11 and ask you if that is a city warrant? A It is.

Q Have you examined the records of the Comptroller's office to ascertain whether or not that warrant has been paid and the money deducted from the City funds?

MR. STANCHFIELD: Objected to as calling for a conclusion. If it has any point to the proof it must be proved in the regular way; and as incompetent, ~~inma-~~

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terial and irrelevant and not the best evidence.

Objection overruled. Exception.

BY THE COURT:

Q You have made an examination for the purpose of informing yourself as to the facts, have you, or not? A As to the payment of this warrant from the City Chamberlain's office, not as to the Comptroller's.

BY MR. APPLETON:

Q Well, the City Chamberlain's? A Yes.

Q The City Chamberlain paid out the money? A Yes.

MR. STANCHFIELD: Will your Honor give me an objection to your question upon the ground that it is not the best evidence and that it is incompetent, immaterial and irrelevant, hearsay, and an exception?

THE COURT: Yes.

Q What did you find, that the amount called for on that warrant had been deducted from the City funds?

MR. STANCHFIELD: Same objection, not the best evidence, incompetent, immaterial and irrelevant.

BY THE COURT:

Q You made an examination of the books to see and informed yourself as to the facts? A Yes sir.

Same objection and exception.

Q You may testify? A I did.

BY MR. APPLETON:

Q And that warrant was paid and the money deducted from city funds?

MR. STANCHFIELD: " How many times do you want it answered?

THE COURT: I think you have it already in evidence.

MR. APPLETON: Your Honor considers I have it in evidence, that the particular warrant has been paid and the money deducted?

THE COURT: If you don't think you have it you may cover it.

Q That warrant has been paid, has it? A It has .

MR. STANCHFIELD: I insist that I have a right to make these objections.

THE COURT: You certainly have, sir.

MR. STANCHFIELD: And I want to object to Mr. Appleton's rushing this evidence in in this fashion.

MR. APPLETON: I don't think counsel for the people has done anything that is discourteous; it may have been that he was a little in haste about it, but you may have an objection to the question and an exception to it.

MR. STANCHFIELD: I am not putting it upon the ground that it was discourteous, I do not attribute any

such motive to him, but I mean in his eagerness and zeal to get this witness to answer he rushes a person through everything.

THE COURT: I don't think that is a fair comment on the conduct of the counsel for the people, I think his attitude is entirely proper so far as it requires him to represent the interests of the people.

MR. STANCHFIELD: I take an exception to your Honor's ruling and I object for the fourth time to that testimony upon the ground that it is in and your Honor ruled upon it but if it is in again I want another objection and exception.

THE COURT: Yes.

MR. STANCHFIELD: No questions.

MR. APPLETON: Now I offer in evidence people's Exhibit 2 for identification, the voucher filed in the City Chamberlain's office on the 29th day of July 1905.

MR. STANCHFIELD: Objected to as to this defendant as hearsay, on the ground that he has no relation to or connection with it, and as incompetent, immaterial and irrelevant.

Objection overruled. Exception.

Received in evidence and marked Peoples' Exhibit 2.

MR. STANCHFIELD: Will your Honor send an officer

to get 83 New York?

THE COURT: Yes.

MR. NOTT: If your Honor please, I read the following under a stipulation from the counsel for the defendant, that the following questions were put to this defendant, Max A. Kramer upon his examination before the commissioners of accounts in this city on the 22nd day of May 1907, and that the following answers were made by him under oath to the questions.

MR. VORHAUS: Before you read it may it appear that he was examined by the commissioner of accounts with reference to his transactions with the city and in the course of that examination he gave that testimony?

MR. NOTT: Yes. (Mr. Nott now reading) "My company is myself solely, I am the company, That is merely a trade mark I have used.

Q Nobody else interested in it? A No sir.

Q Nobody whomsoever interested in the company?

A Nobody is interested but myself. That is a trade mark I use, Metropolitan Equipment Company, that is filed in the County Clerk's office when I first went into business according to law I made a statement to that effect".

MR. STANCHFIELD: That is as to the Metropolitan Equipment Company, isn't it?

MR. NOTT: Well I will read from the next page.

(reading) "Q Do you know both those companies? A Yes sir.

Q That is you are the only person interested in both of them? A Yes sir."

MR. STANCHFIELD: That is the Metropolitan Equipment & Supply Company and the Metropolitan Equipment Company?

MR. NOTT: Yes.

MR. STANCHFIELD: That's right.

MR. APPLETON: The only of calling Mr. McKinney is that the inspectors from the Comptroller's office do not start to investigate a bill until the voucher has been filed, and with that the people will rest .

THE COURT: Perhaps counsel will concede that.

MR. STANCHFIELD: What is that?

MR. APPLETON: That the inspectors employed in the office of the Comptroller of New York do not begin an investigation of supplies furnished the City until after the voucher has been filed in the auditing department of the comptroller's office.

THE COURT: Can you concede that?

MR. STANCHFIELD: I don't know very much about the routine of that office.

MR. APPLETON: I mean the voucher People's Exhibit 2.

MR. STANCHFIELD: And before the bill is paid?

MR. APPLETON: Before the bill is paid.

MR. STANCHFIELD: That is all right.

MR. APPLETON: It is conceded. People rest, sir.

MR. STANCHFIELD: I ask your Honor to dismiss the case and advise the jury under the appropriate section of the Code to acquit the defendant.

THE COURT: The motion will be granted. Gentlemen of the Jury, in the view that the Court takes of this evidence it is not sufficient to warrant the conviction of the defendant, and impressed with that opinion I advise his acquittal.

By direction of the Court the jury now return a verdict of Not Guilty.

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