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CASE 374

COURT OF GENERAL SESSIONS OF THE PEACE,

COUNTY OF NEW YORK,

PART III.

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

vs. :

MARY L. WRIGHT, :

indicted as Mary Davis, otherwise
called Mary Demorest, otherwise
called Mary Noble, otherwise called
Victoria Stokes, otherwise called
Mary Brooks. :

Before

HON. MARTIN T. McMAHON, J.

and a Jury.

-----X
Indictment filed June 17, 1903.

Charge: Grand Larceny, First Degree, and Receiving,

(Sections 528, 530 and 560, Penal Code).

New York, June 25th, et seq., 1903.

A P P E A R A N C E S :

ROBERT TOWNSEND, ESQ., Assistant District Attorney,

for the People.

OSCAR A. CAMPBELL, ESQ., for the Defence.

-----X
George F. [illegible]
Official [illegible]

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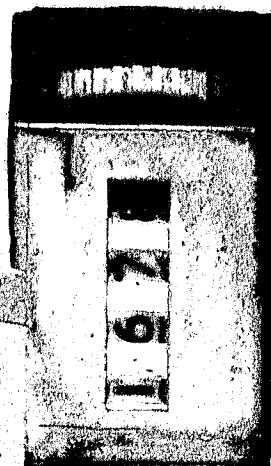
THE COURT: What is your right name?

THE DEFENDANT: Mary L. Wright.

MR. CAMPBELL: I believe that my client has certain legal rights, and I think I ought not at this time to appear for her except as I did yesterday, when I had no notice that the case would be moved for trial. I think it now my duty to move this Court to release the defendant from custody under this new indictment. I have carefully investigated the law in the matter, and I find that there are three very prominent and much-quoted decisions on this matter of extradition. I find that the Courts in this State and the United States States Courts have held distinctly and unqualifiedly and exactly in point, that where a person is brought into this State on an extradition from another State, that he or she cannot be arrested, tried, prosecuted or held, even after a conviction, or at no stage of the proceedings, on another and different charge.

THE COURT: In other words, they have immunity to remain here and commit crimes all the rest of their lives?

MR. CAMPBELL: No, sir. I shall submit decisions covering my argument, and the point is that they shall be allowed sufficient time to return to the places whence they were taken for a specific and definite



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purpose, and for no other. I have prepared a brief on the subject, and I ask your Honor's permission to read from it.

Prisoner is charged with grand larceny.

She was extradited from New Jersey in two other cases and pleaded guilty of petit larceny in one case and it was agreed that the other case would stand over until after she had served her time on the one on which she pleaded guilty. In pleading guilty as above, prisoner waived all rights to object to extradition papers and proceedings and her waiver was only as to the case on which she pleaded.

Subsequently, after being sentenced, and before the finding of a third indictment, prisoner was held in the Tombs when she was entitled to be taken away to serve her time.

A third indictment was found and the prisoner was arraigned without counsel and without being informed of her right to counsel. No opportunity was given to object to the extradition because it did not apply in this case. No warrant was issued and prisoner was not arrested in the act of committing a crime nor by an officer under the belief that she had committed a felony. Prisoner was not a fugitive from justice, but waived this objection to extradition in other case, but



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is now precluded from setting this up to objection to trial in this case. We have had no opportunity to object to any warrant or other process to bring her before the Court.

Hence I. Prisoner is not properly arraigned nor has she been brought before the Court by due process of law.

And II. Having been brought here by extradition in another case, she cannot be arrested, tried, sentenced nor imprisoned until she has had a reasonable time to return whence she was forcibly brought after having served the time under sentence on case in which she pleaded.

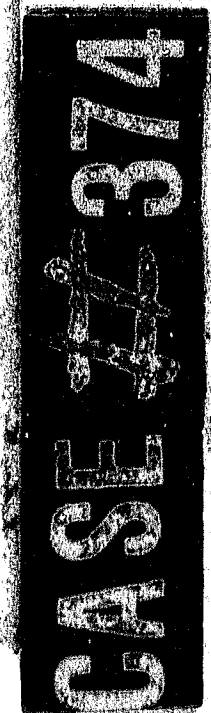
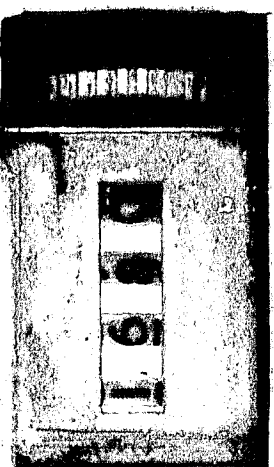
119 U. S. 407 -- Ranscher.

7 N. Y. Crim. 406 -- Matter Hope.

7 N. Y. Crim. 325.

The United States case is the leading case and the principle of that case is said in 7 N. Y. 325 to be that "the exercise of jurisdiction over the prisoner for any other purpose than that mentioned in the treaty, under which he has an opportunity to return, is a fraud upon the rights of the party extradited and bad faith to the country which permitted the extradition."

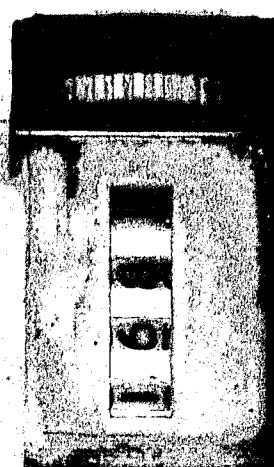
In Id. 325 the prisoner was brought into this State to attend before Commissioner of Circuit Court upon extradition for the purpose of a preliminary trial and upon



being discharged was arrested at the door, and the Court said:

"A person brought in the State before a Commissioner of the Circuit Court upon extradition and for the purpose of preliminary trial only has after his discharge on the preliminary trial a lawful right to a reasonable period of exemption from arrest to return to the place from which he had been taken. As the prisoner was therefore brought here involuntarily from New Jersey by force of the Federal law under treaty provision and for no other purpose than the examination under the treaty and the Federal law, common justice demands that he be treated as under the protection of that same Federal law until the lapse of a reasonable time for return; after his discharge during this period his enforced presence under the Federal law for treaty purposes and for this special purpose only is a presence which no other persons have a right to take advantage of nor under the law and the treaty that force him here shall he be allowed to suffer disadvantage until by voluntarily remaining he waives the privilege and protection to which he is entitled until he has an opportunity to return.

In matter of Hope Id. the prisoner was extradited on one charge and before he had an opportunity to return was again arrested. He was discharged on habeas

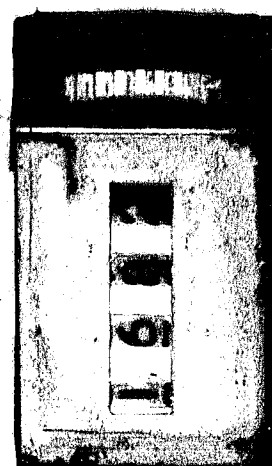


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corpus but the matter came before the Governor and below the Governor says:

"I think it is clear that when a prisoner is brought into this State from another State or country upon extradition proceedings he cannot properly be tried upon any other charge than that mentioned in the requisition and that upon his acquittal, or if convicted then upon the expiration of his imprisonment, he is entitled to a reasonable time in which to return to the other State or country from which he was forcibly taken before he can be again arrested. The true theory which now seems to be thoroughly established is that a State should not be allowed to obtain jurisdiction of the fugitive from a distance and then to take advantage of that jurisdiction thus obtained and use it for another and a different purpose, but the fugitive surrendered on one charge is exempt from prosecution on any other; that he is within the State by compulsion of law upon a single accusation and has the right to have that disposed of and then to return in peace and that is after his release he remains in the State beyond a reasonable time he can then be arrested but not otherwise."

The District Attorney upholds my view because he got out two extradition papers in the first two cases, knowing that if brought here in one case only she could not



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be tried on both.

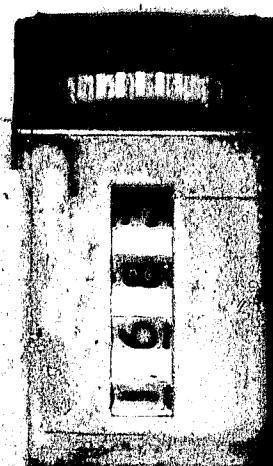
Recess till 2:30 P. M.

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

MR. CAMPBELL: In this case I want to make the statement now that I am only appearing for the purpose especially of raising these questions in the case.

THE COURT: I have examined your brief very carefully, Counselor, and I shall have to rule against you upon all the points, and I shall just simply suggest to you my reasons for doing so. Here (Showing) is your brief, and in the second paragraph is the statement that the defendant² was extradited from New Jersey in two other cases and pleaded guilty of petit larceny in one case and it was agreed that the other case would stand over until after she had served her time on the one on which she pleaded guilty. In pleading guilty as above prisoner waived all rights to object to extradition papers and proceedings and her waiver was only as to the case on which she pleaded."

Her waiver was absolutely on the ground of her being a fugitive from justice and being extradited by due process, and applies to after the extradition, without reference to the case in point, and amounts to a waiver of all her rights, technical or otherwise. She



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is now within the jurisdiction of this Court, brought here by virtue of extradition papers issued by the State of New Jersey. The legality of the extradition papers was a question for the New Jersey Courts to determine.

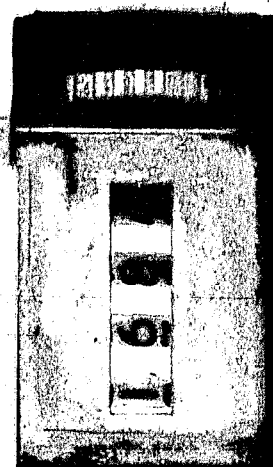
"Subsequently, after being sentenced and before the finding of a third indictment, prisoner was held in the Tombs when she was entitled to be taken away to serve her time." As to that, I can only say that they do not send special trains to convey prisoners.

MR. CAMPBELL: That is true, but trains run every day, your Honor.

THE COURT: "A third indictment was found and the prisoner was arraigned without counsel and without being informed of her right to counsel. No opportunity was given to object to the extradition because it did not apply in this case. No warrant was issued and prisoner was not arrested in the act of committing a crime", and so on.

Well, she has counsel now, and all her rights are very earnestly claimed and are duly considered.

"No warrant was issued, and prisoner was not arrested in the act of committing a crime nor by an officer under the belief that she had committed a felony. Prisoner was not a fugitive from justice but waived this objection to extradition in other case, but is now pre-



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cluded from setting this up to objection to trial in this case. We have had no opportunity to object to any warrant or other process to bring her before the Court."

Well, a warrant of arrest is not necessary, when a defendant is already arrested and is actually in prison.

"Hence I. Prisoner is not properly arraigned nor has she been brought before the Court by due process of law".

In that I disagree with you.

"And II. Having been brought here by extradition in another case, she cannot be arrested, tried, sentenced nor imprisoned until she has had a reasonable time to return whence she was forcibly brought after having served the time under sentence on case in which she pleaded."

I say, her waiver covers all questions as concerns the legality of extradition. The cases you refer to there are chiefly in regard to international extradition, which is regulated by treaty, and there is a very essential difference between international extradition regulated by treaty, in which extraditable crimes are specified, and interstate extraditions, which are regulated by the provision of the Constitution which requires the States to surrender fugitives from justice upon proper evidence that due process of law has been had in the State from

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which they are supposed to have fled.

"A person brought in the State before a Commissioner of the Circuit Court upon extradition and for the purpose of preliminary trial only has after his discharge on the preliminary trial a lawful right to a reasonable period of exemption from arrest to return to the place from which he had been taken."

But she (Indicating defendant) has not been discharged, and will probably not be until the expiration of the term imposed on her plea in the other cases.

"As the prisoner was therefore brought here involuntarily from New Jersey by force of the Federal law under treaty provisions and for no other purpose than the examination under the treaty and the Federal law, common justice demands that he be treated as under the protection of that same Federal law until the lapse of a reasonable time for return."

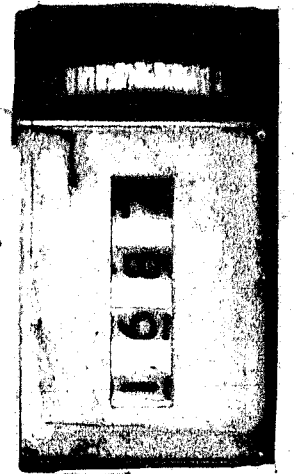
This right, if it exists in State extradition, may be asserted after the expiration of the term she is about to serve. In the meantime, the People have a right to prepare, either by an indictment or by a conviction, for further extradition, if it is found necessary, and all the right that you now claim for her may be fully exercised upon the expiration of the term which she will serve under her present sentence.

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You say: "I think it is clear that when a prisoner is brought into this State from another State or country upon extradition proceedings he cannot properly be tried upon any other charge than that mentioned in the requisition and that upon his acquittal, or if convicted then upon the expiration of his imprisonment, he is entitled to a reasonable time in which to return to the other State or country from which he was forcibly taken before he can be again arrested. The true theory which now seems to be thoroughly established is that a State should not be allowed to obtain jurisdiction of the fugitive from a distance and then to take advantage of that jurisdiction thus obtained and use it for another and a different purpose".

That all goes to the good faith of the People. Whether she was brought here by fraud or device and then proceeded against, it is admitted that she was brought here by regular extradition proceedings.

"But the fugitive surrendered on one charge is exempt from prosecution on any other; that he is within the State by compulsion of law upon a single accusation and has the right to have that disposed of and then to return in peace and that if after his release he remains in the State beyond a reasonable time, he can then be arrested but not otherwise."



Well, the Courts do not lend themselves ordinarily to acts that merely obstruct the course of justice. Suppose that course were pursued in her case, and she, after serving her term, was then discharged? Immediately the People would, if they deemed it proper, apply for another extradition. That would simply amount to a delay, and would be rather an obstruction of justice, and would neither be in her interest or in that of the People. All of your objections will be available on her discharge from ~~the~~ imprisonment after serving the term for which she has or may be sentenced.

"A fugitive surrendered on one charge is exempt from prosecution on any other."

In that the decisions are decidedly against you in interstate extradition cases, even in some of those which you quote. That is my opinion, at all events.

MR. CAMPBELL: Do I understand your Honor to rule that these objections may be taken at the expiration of her term?

THE COURT: Most assuredly.

MR. CAMPBELL: But that in the meantime she may be arrested, tried, convicted and sentenced for a long period of time, beyond the time when the objections may be raised?

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THE COURT: I think each case will stand upon its particular merit.

MR. CAMPBELL: Perhaps there is some doubt —

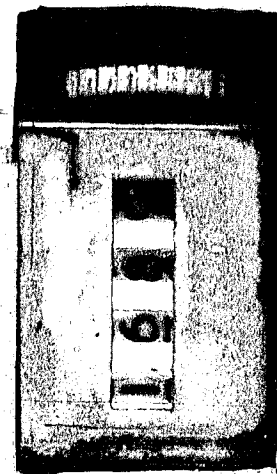
THE COURT: If, for instance, she is arrested, and tried in this case, and convicted, she of course cannot serve two sentences at the same time.

MR. CAMPBELL: True.

THE COURT: (Continuing) And the other has priority. In the same way, where extradition papers have been prepared, she cannot be extradited in two pieces, and, if extradited on one case, she is within the jurisdiction on the other. So, I say, she is within jurisdiction on a mere complaint before a Magistrate, and she may be tried upon it; but whether she is entitled under our State Extradition Authorities or Laws to any reasonable ^{time} after her discharge, is a question which may be raised then. It is not necessary to consider it now.

MR. CAMPBELL: I take it that now is the proper time. I follow your argument, and I agree with you thoroughly in so far as to her being here legally, but I disagree with your Honor in stating the purpose for which she is here.

THE COURT: She is here for the purpose of being tried on a certain indictment for larceny.



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MR. CAMPBELL: And no other.

THE COURT: Very well.

MR. CAMPBELL: If that be true, I claim she cannot now be tried for anything else.

THE COURT: The authorities are against you on that, and reason is against you. All of the cases that you have quoted refer chiefly to international extradition, involving great jealousy among nations, and in which the treaties and commerce of nations come in.

MR. CAMPBELL: There seems to be something also in the idea that she cannot be held under treaty stipulation, because that might state the case of A and B, but not that of C.

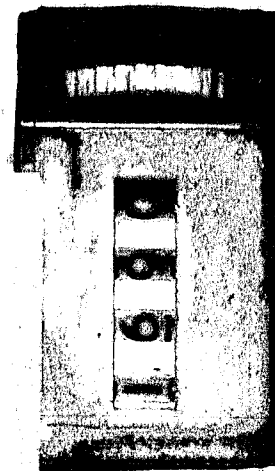
THE COURT: There is a very wide distinction between state and international extradition.

MR. CAMPBELL: But I have found two more cases, if your Honor please, since I went away.

THE COURT: So have I; several.

MR. CAMPBELL: And one of them that I have here holds that a person cannot be held for any other offence than the one for which she was extradited, and states that the principle is well settled, both as regards international and interstate extradition.

THE COURT: That is what has been done in this case precisely. She has been tried for the offence for



which she was extradited, and is waiting to serve her sentence on it.

MR. CAMPBELL: But how about the Mexico case, where a person was extradited for two murders, and an attempt was made to hold him for a third?

THE COURT: I am not discussing the Mexican case.

MR. CAMPBELL: But it is the same as this. I except, if your Honor please.

THE COURT: This theory would practically give immunity to a private individual for a certain period, because, having been brought from another State and made to answer to a particular charge, then if allowed the reasonable time that you speak of, he would be exempt from arrest, even if he committed a crime.

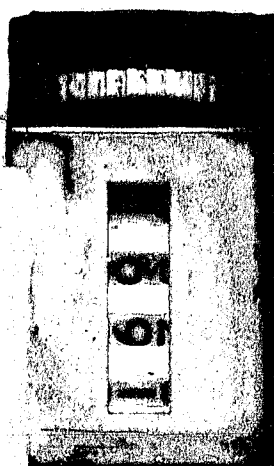
MR. CAMPBELL: That is the theory of the Mexican law.

THE COURT: It is not the case here.

MR. CAMPBELL: I know it is not binding. But this woman claimed to have been a citizen of New Jersey.

THE COURT: That was a question for the New Jersey Courts to decide.

MR. CAMPBELL: True, but following that idea and directly touching this case, I claim that under the Statute of New Jersey, even a fugitive from justice has the rights which I claim for this woman. Assuming



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that she is a citizen from another State, we are in the position of holding a citizen of another State who is extradited for a special purpose.

THE COURT: That has been settled by the judicial determination of the State of New Jersey. She is here, whether a citizen of New Jersey or not. Do you mean to claim, Counselor, that a citizen of New Jersey can come here and commit a murder, and go out and not be extradited?

MR. CAMPBELL: He can be extradited, yes.

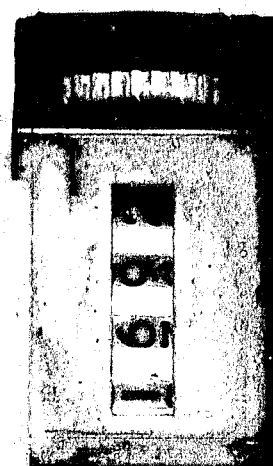
THE COURT: What has citizenship to do with it? She is a fugitive from justice from the State wherein she committed the act.

MR. CAMPBELL: But the New Jersey law says that it is unlawful to take a person from that State except for that particular offence, and it seems to me to cover the point.

THE COURT: You claim here further: "The District Attorney upholds my view because he got out two extradition papers in the first two cases, knowing that if brought here in one case only she could not be tried on both."

There were two extradition papers got out, so that if one proved faulty the other could proceed.

MR. CAMPBELL: In the two cases.



THE COURT: In the two cases. I will allow the case to proceed.

MR. CAMPBELL: I except, and I refuse to plead.

MR. TOWNSEND: She has already pleaded.

MR. CAMPBELL: Everything that I do here does not waive any of the defendant's rights in this matter. I want to object to her plea because she had no counsel at the time.

THE COURT: The plea is already made, but you may object to it.

MR. CAMPBELL: I would like to have it noted on the minutes that when the plea was made there was no counsel for the defendant, and that no opportunity was afforded her to get counsel.

THE COURT: I want to say that I am not aware that that was the fact. Oscar A. Campbell is on the records as her counsel.

MR. CAMPBELL: Merely because he appeared in the previous case.

THE COURT: It is down here in this case.

MR. CAMPBELL: I have a right to object to the use of my name by anybody else.

THE COURT: She was duly arraigned for pleading, and counsel are on record as representing her.

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MR. CAMPBELL: Counsel did not appear in this case until to-day, and then only specially.

THE COURT: Did counsel have notice that the case was on the Calendar?

MR. CAMPBELL: No, sir.

THE COURT: Well, she had already retained counsel, and she was aware of the fact.

MR. CAMPBELL: Not in this case.

A jury is duly empanelled and sworn.

MR. CAMPBELL: In regard to the name of Mary L. Wright appearing on this indictment --

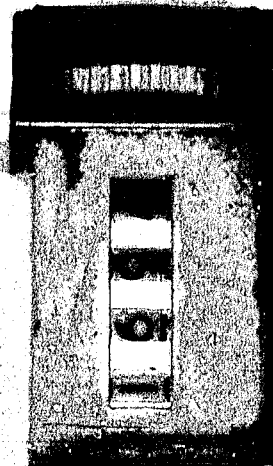
THE COURT: I asked the defendant before the trial commenced what her real name was, and she said Mary L. Wright.

MR. CAMPBELL: I desire to except to its having been done before the jury were sworn.

THE COURT: It can be done on arraignment.

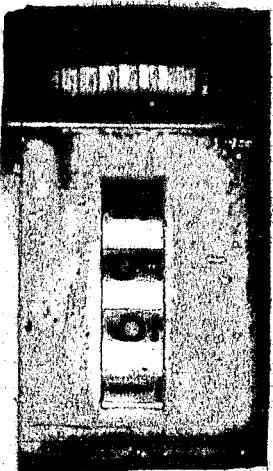
MR. CAMPBELL: I propose to take advantage of all the technical points I might have had the benefit of if there had been a technical extradition in this case, and I move now that the District Attorney be required to show that the party who is indicted in this State is the same person who was taken from the State of New Jersey.

THE COURT: Oh, there need be no question about that.



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MR. CAMPBELL: I want to raise that point, and
move that he do it.



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HELEN T. DRISCOLL, called as a witness on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. TOWNSEND:

Q You live where? A 109 West 82nd Street.

Q And do you live there with anybody? A My sister.

Q What is her name? A Mrs. Forrest.

Q What is her Christian name? A Mary E. Forrest.

Q And she and you were residing there, were you, on the 1st of April? A Yes.

Q And also resided there on the 7th? A On the 7th.

Q That is in the County of New York? A Yes, sir.

Q Look at the defendant? A (The witness complies).

Q State whether or not you know her? A I do know her.

Q When did you see her for the first time to know her?

A On the 2nd of April.

Q And where was she at that time? A She came to my house in answer to an advertisement -- I answered an advertisement that was in the Herald.

Q And in response she came? A She came.

Q About what time; do you recollect? A She came in the evening.

Q Was anybody there with you at that time? A My sister.

Q Your sister and you were present at the time? A Yes.

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Q Will you state, as near as you can, the conversation that was had between you? A We hired her for general housework and cooking, and she gave me personal references which I investigated. She gave me references of an honest girl, and I investigated her references,-- Mrs. Coswell, 1690 Broadway.

MR. CAMPBELL: I do not see what references has to do with this crime.

MR. TOWNSEND: It is leading up to it.

THE COURT: It is not material, but it is not hurting your client's case at all..

BY MR. TOWNSEND:

Q And you employed her, did you? A She came up the next evening, and I employed her. She came to work the next morning.

Q In what capacity? A To do the general housework, and cooking.

Q Now, how many rooms have you at that address, ~~was~~ 109 West 82nd Street? A Seven rooms.

Q And they are on what floor? A On the second floor.

Q And what are the rooms used for? A As a sitting room, library, two bedrooms,--

Q And kitchen? A Kitchen and dining room, and maid's room.

Q Do these rooms all connect? A All connect.

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Q And how do you enter those rooms? A From the hall.

Q You have a private hall? A Yes, sir; a private hall.

Q Which opens into what? A Into the large hall, into the apartment house.

Q Which is the public hall? A The public hall.

Q Do you recollect the morning of the 7th of April?

A It was in the afternoon.

Q The afternoon of the 7th of April? A Yes.

Q About what time was it? A About half-past three.

Q And you were where? A (No answer).

Q Where were you at that time? A I was in the different rooms. No room particularly.

Q You were in your house? A Yes.

Q And at that time state what property -- I have reference now to those articles -- what property you owned there, and also what other property you had in your possession or had the custody and control of? A The jewelry?

Q Yes, these articles. A I had six articles and a pin.

Q Six finger rings? A And a brooch.

Q Who owned those six articles? A Three belonged to me and three to my sister.

Q Three belonged to you? A Yes.

Q And three belonged to your sister? A Yes.

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Q Mary E. Forrest? A Yes.

Q Have you stated all of the articles? A Yes.

Q Did you not have a brooch? A One brooch and six rings.

Q Oh, you stated that. Did the brooch belong to you? A The brooch was mine.

Q Now, at this time, three o'clock that afternoon, did you see this property? A Yes.

Q And where was it? A Lying on the top of the dressing table, on my dressing table.

Q All of the property that you have enumerated?

A All of the property.

Q Now, do you recollect your -- you had two finger rings? A Three.

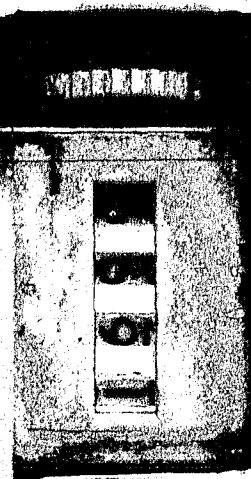
Q Well, one of those rings, do you recollect where you bought it? A They were all purchased in San Francisco, at Shreve's, excepting one.

Q Yes, one ring, the one that you speak of, that was what kind of a ring? A A Princess ring.

Q And that was your property? A It was my property.

Q How long had you had that ring? A I had it about six months.

Q And do you know where you got that ring? A It was made up of some stones that I had in another ring, and some stones that were new stones. It was made at Kirkpat-



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rick's.

Q Where is his place of business? A On the corner of 33rd Street and Fifth Avenue.

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

Q And do you know who saw that ring at that place when you got it? A Yes, sir.

Q Who? A Mr. Adams. The pin is the one that I --

Q Oh, the pin? A Yes.

Q Then there was another article; what was that, the pin? A Yes.

Q What kind of a pin was that? A It was a heart of diamonds, outlined by diamonds. There were thirty-six small diamonds in it -- a heart-shaped pin.

Q And you bought that? A Yes, sir.

Q Do you recollect where you bought it? A At Dreicer's, on Fifth Avenue.

Q And do you recollect the gentleman that saw it there?
A Mr. Kelly.

MR. CAMPBELL: I object. That is leading, your Honor.

MR. TOWNSEND: What? Asking the name of the gentleman that saw it? That cannot be leading.

THE COURT: He is asking her if she recollects the fact.

MR. CAMPBELL: I object; not particularly to this

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one question, but to all this line.

BY MR. TOWNSEND:

Q You know the name of the man, do you, who was there at the time that you got that ring? A I purchased the pin from Mr. Kelly.

Q At Dreicer's? A Yes.

Q And did you ever purchase anything else from him there?

A No, sir.

Q That was the only article you ever purchased? A The only one.

Q That pin you had, you say, at three o'clock? A At three o'clock.

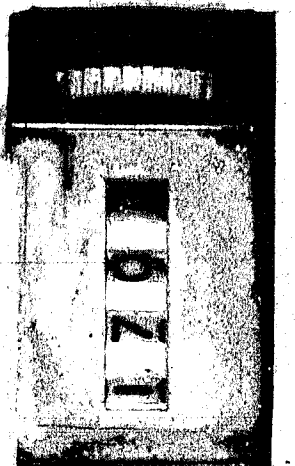
Q In your room? A In my room.

Q And on your bureau? A I had it there on my bureau and took the rings out for the purpose of washing them.

Q You had taken out all the articles and put them on the bureau, had you? A Yes, sir; I was going to wash them and I put them inside of a bracelet; and she (indicating defendant) did not take the bracelet. I had them all lying there inside of the bracelet, and she did not take the bracelet.

Q Just before taking them out, had you seen the defendant? A Yes.

Q When? A About five minutes before, or so, in the kitchen. I had been talking to her.



Q And the kitchen was how many rooms off this room?

A Three rooms.

Q But they are all connected? A Yes, by a long hall.

Q Now, after putting the rings there, where you say you did, what did you do? A I answered the telephone.

Q And that was when? A Just after I laid the rings there.

Q Where was the telephone? A The telephone was two rooms away, about.

Q It was not located in your room? A No, it was located in a small room.

Q An apartment of yours? A Yes; in the same apartment, but in another room.

Q You just stepped out into the telephone room?

A Yes.

Q And you answered the telephone? A Yes.

Q And how long, about, were you gone? A Not more than five minutes.

Q And then what did you do? A I missed my jewelry.

Q And you went back? A Yes.

Q Where? A Into my bedroom.

Q And then what did you find? A I say I missed my jewelry.

Q All these articles? A I missed everything.

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Q All the articles that are mentioned in this indictment and that you have testified to? A Yes, everything.

BY THE COURT:

Q You mean the pin? A Including the pin.

BY MR. TOWNSEND:

Q Do you know where your sister was at that time?

A Yes, she was in the bathroom.

Q What did you do then? A As soon as I collected myself, I -- my sister told me --

Q Well, you spoke to your sister, did you? A Yes.

Q Then what did you do? A I went to look for the girl.

Q Went where? A Into the kitchen and into the other rooms, and I found that she had gone, and that her things --

BY THE COURT:

Q What girl? A This girl (Indicating).

BY MR. TOWNSEND:

Q The defendant? A Yes; and her things were still there, excepting her hat; and as soon as I collected myself, I called the boy up in the hall and asked him if he had seen my girl going out, and he said yes, about --

Q Never mind what he said. What did you do then? A I telephoned at once for the police.

Q You found that the defendant was missing, and also all of your property? A Yes, sir.

Q And you found that her clothes were -- A In her



room.

Q When did you next see her? A In the Tombs.

Q How long after? A Just two months to the day.

BY THE COURT:

Q How long after missing the articles, you were asked.

A Just two months.

Q Two months after? A Two months after I saw her in the Tombs. The articles went on the 7th of April and I saw her in the Tombs on the 7th of June.

BY MR. TOWNSEND:

Q Did you say anything to her? A Yes; I at once identified her as the girl who took my things.

Q When did you first tell the police of the matter?

A Immediately.

Q That afternoon? A That afternoon, at once.

Q You have never seen any of the articles since?

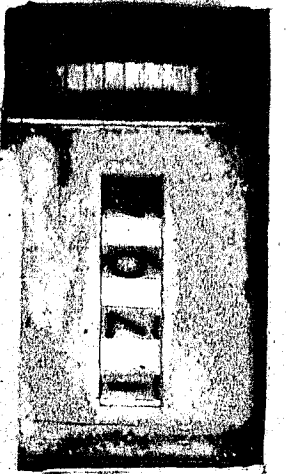
A Never; not one.

Q Did you hear her say anything in reference to the articles at any time? A Never.

CROSS-EXAMINATION BY MR. CAMPBELL:

Q The kitchen is towards the outside door, that is, towards the big hall door? A Towards the back door.

Q And there is one entrance to the hall? A There is but one entrance to the hall.



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Q And the kitchen is nearest to that? A Yes.

Q And then comes what? A The kitchen and dining room.

Q The kitchen and dining room? A Yes.

Q And your bedroom? A No; the hall runs through, and there are two small rooms on the hall.

Q And the fifth room is your bedroom? A The fifth room is my bedroom.

Q And it was in this room? A It was in that room.

Q Then there is another room? A Yes, another room, a library and parlor between.

Q And sitting room? A Yes, sir.

Q Now, you say as soon as you had heard the telephone ring, you left these articles to go to the telephone?

A Yes.

Q And you were there about five minutes? A Yes.

Q And that you had seen her in the kitchen just previous to that? A Yes.

Q But I understood you to say that you had been taking these articles of jewelry out and had put them on the top of the bureau. Was that before you had begun to take these articles out that you saw her? A Well, it was just at that time. I can't --

Q Just before you began to take them out? A I went out into the kitchen and spoke to her something about the dinner, and I went back to attend to these articles, and I took them



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all out, and I was going to wash them, and I laid them on the dressing table, and then I went to the telephone. My sister was taking a bath. And while I was speaking at the telephone and my sister was in the bath, this girl came through, and went out the backway and left the back door open after her.

Q You did not testify to that on your direct examination, that you heard her (Indicating defendant) going through?

A I did not see her going through. She sneaked through.

Q That is, so far as you know, you think she did?

A I know she did.

Q Isn't it possible that she might have opened the back door and gone out and left it open, and that some sneak-thief came in? A No; there are no sneak-thieves.

Q Well, isn't that possible? A Why should she go out and leave her things all there?

THE COURT: That is all argument.

MR. CAMPBELL: Very true, but suppose she came back, after going to the corner -- if it was a man, I would say for a drink -- and heard from the hall-boy that there had been a robbery, and then did not go in for fear there might be some trouble for her?

THE COURT: You have nothing to do with that.

BY MR. CAMPBELL:

Q Now, another point: You say she worked for you three

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days? A Four days.

Q When did she come? A She came on the 3rd, in the morning.

Q Have you had very many dealings with colored people?
A No.

Q You have lived a large part of your life in New York?
A No.

Q Where, may I ask? A In San Francisco.

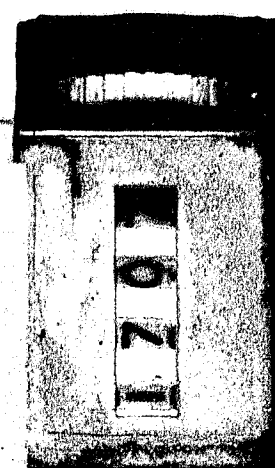
Q There are not so very many colored people in San Francisco? A No, there are not, I am glad to say.

Q I want you to be as fair to justice as you are to yourself. I want to question you a little definitely as to whether you might perhaps be mistaken as to this person (Indicating defendant). There were several other people alongside of her at the time of the alleged identification. Could you readily and in an instant identify her? A I did, in the Tombs. I picked her out from several other people.

Q Did you see anybody in there that looked anything like her? A No. I could remember her wherever I saw her.

Q What characteristics are there about her that leads you to say you could identify her wherever you saw her? A I remember her appearance and characteristics very distinctly; and then her face. She has a very unusual face.

Q Did she talk to you in the Tombs? A She said she had



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never seen me before, and also spoke to the detective who took me there.

Q Was that said loud enough for you to hear? A Yes.

Q Did you notice her face in the Tombs? A Yes.

Q About how near were you to her in the Tombs? A About as near as I am to the Judge.

Q In what name did she apply for this position? A Mary Brooks.

Q Are you one of the people who notified the detectives and who sent them out for a person by the name of Peterson? A No.

Q Did you ever have anybody by the name of Peterson work for you? A No.

Q Do you know why the name of Peterson is included in this indictment? A I did not know that it was. The name in the Herald was Dickinson, that I answered in the Herald -- Dickinson.

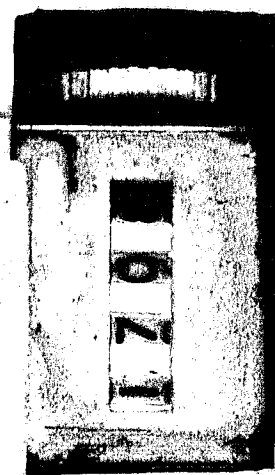
Q And she told you her name? A When she came, she said her name was Mary Brooks.

BY THE COURT:

Q Did you have any other servants there at that time?

A No; no other servant.

Q Did you see anybody during the time that she talked with the defendant in the kitchen, and up to the time when you missed your jewels; did you see any other person there in the



rooms or in the hall, or anywhere? A No, there was no other person in the house that day, and our front door is latched from the inside.

Q And when you discovered the loss of jewels, and called your sister's attention to it, you then telephoned to the police, the first thing, or went down and spoke to the hall boy? A I went down and spoke to the hall boy first.

Q And when did you find out that the rear door was open? A When I went back -- as soon as I missed the things, I went back -- my sister said, "See where the girl is", and I went right back and discovered that she had flown and had taken the things.

Q Never mind about that, but she was not there? A No.

Q Go on. A And then I immediately telephoned to the station, and they sent two Central Office men, and I explained to them, but no one was ever able to get on her track until she was arrested on some other charge and brought here.
BY THE THIRD JUROR:

Q You say there was a latch on the front door? A It is latched on the inside, here on the side (Illustrating); we have a bolt fastened across; we always keep that latched that way (Indicating).

Q That is the front door? A That is the front door; and the back door is locked with a bolt there.

BY THE COURT:

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Q On the inside? A On the inside.

BY THE THIRD JUROR:

Q You generally keep it bolted during the day? A Generally.

Q It was bolted that day, was it? A Well, I think it was, but you see the things disappeared so suddenly, and she disappeared when the things went. There was no chance for any other person to be in the house, it was discovered so quickly, on almost the minute.

Q Your telephone is near the front door or the back door?

A It is in a little room leading off -- a small room leading off -- and the telephone is inside.

BY MR. CAMPBELL:

Q I understood you to say distinctly that you found the front door open?

THE COURT: No; she said the back door.

A The back door was left wide open after her.

BY MR. CAMPBELL:

Q You can go down through that into the street?

A You can go down into the back and through the basement into the street.

BY MR. TOWNSEND:

Q That leads into the kitchen? A That leads into the kitchen from off the little back porch. That is closed in.

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BY THE COURT:

Q Did she ever return to your apartments? A Never.
I never saw her again.

Q Never saw her again until you saw her -- A Saw her
in the Tombs.

Q Have you been purchasing jewels of that character
during your life? A I have purchased nearly all my jewels.

THE COURT: Do you want to ask her on values?

MR. TOWNSEND: I might ask her if she knows, but I
can prove it otherwise.

BY THE COURT:

Q Do you know the value of the articles taken there?
A Yes, I know just exactly the value.

Q Not what you paid for them, but what they could be
sold for? A Since my jewelry has been gone, I have gone to
different jewelers and looked over the articles so as to get
an idea, and I have found that my jewelry was worth even more
than I thought it was at the time.

MR. CAMPBELL: I object to what jewelers told her.

THE COURT: Objection sustained.

BY MR. CAMPBELL:

Q And I want to ask, further, did you give any of these
articles that you say were your sister's, to her? A I did not.
Her rings, however, were with mine.

Q Was she present with you when they were bought?

A Yes, she was with me when most of them were bought.-- You mean my rings?

Q I mean her three rings. A Her three rings are her own.

THE COURT: When you say "Was she present", do you mean the lady's sister?

MR. CAMPBELL: The witness. Was the witness present when her sister came into the possession of those rings?

THE WITNESS: Yes.

Q Where was that? A In San Francisco. All of my sister's rings were purchased in San Francisco.

Q Did she purchase them? A Yes.

Q Whereabouts? A At Shrever's in San Francisco.

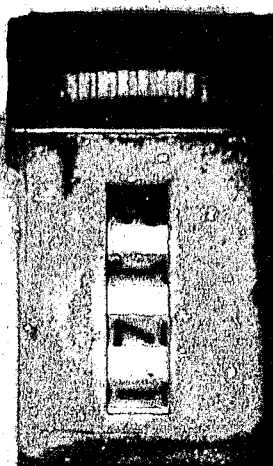
Q You were present at the time? A I was present at the time.

Q Do you know whether she gave them to anybody after that?
A She never gave them to anybody.

Q How do you know that? A I know because she had them up till the day that they were taken.

Q Did you see them every day? A I saw them every day. I saw them five minutes before this girl (indicating defendant) took them. They were with mine.

Q And you saw your sister have them every day? A Every day -- while I was with her.



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Q You were with her every day, were you? A I say, while I was with her, but I was away at different times.

BY THE COURT:

Q But those articles were with the property that you placed upon that table? A Yes; the six rings and the pin were there together.

BY THE FOURTH JUROR:

Q Is that the first time that you left rings on your dresser? A No, I had been careless about my things, because I never had had anything taken from me before. That was my first experience, and I had been not as careful as I ought to have been.

Q Were they covered with something? A No; they were inside of a little round bracelet, a gold bracelet.

BY MR. CAMPBELL:

Q I didn't quite understand that. You say they were inside of a bracelet? A Yes, and she did not take the bracelet. The bracelet had my name engraved on the inside.

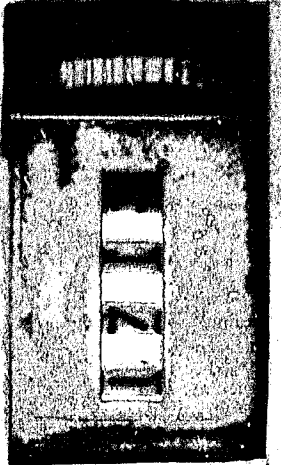
Q What do you mean; the rings were sitting there? A Yes, the rings were sitting inside the bracelet.

BY THE COURT:

Q Lying on the dressing table? A Lying on the dressing table.

BY MR. CAMPBELL:

Q Had you left these things exposed before during the



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period that this girl worked for you? A She had had a chance to take one of the two rings, but she never had a chance to take the whole lot. I suppose she was waiting till she could get them all.

MR. CAMPBELL: Well, suppositions!

BY THE FIRST JUROR:

Q How did you learn that she was in the Tombs; who notified you? A The detective.

WILLIAM F. KELLY, called as a witness on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. TOWNSEND:

Q Where do you live? A 108 East 86th Street.

Q What is your business? A Diamond business.

Q And you are with whom? A J. Dreicer & Son.

Q Their place of business? A 292 Fifth Avenue.

Q You have been employed there for how long? A Eleven years.

Q Before that, what was your business? A In Tiffany's.

Q How long were you there? A Eight years.

Q Then you have bought and sold diamonds and jewelry of all kinds? A I have.

Q During the past fifteen years? A During the past fifteen years.

Q Handled it daily? A Daily.



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Q You know the value, then, of diamonds, do you, and jewelry? A Yes, sir.

Q Do you know Miss Helen Driscoll, the last witness?
A I do.

Q Did you hear her testify that she bought a pin at Mr. Dreicer's, and that you saw it, and had charge of the sale to her? A Yes, sir.

Q And that was the only time she ever bought any property there? A Yes.

Q You remember that occasion? A Yes, sir.

Q Remember that transaction, do you? A Yes, sir, a diamond heart pin, containing thirty-six diamonds, and I sold it on February 19th, 1901.

Q You recollect the occasion? A I do, perfectly.

Q And you recollect the young lady? A Yes.

Q Do you know the value of that pin? A Well, the market value to-day would be about \$160.

BY THE COURT:

only
Q Is that the ~~reference~~ pin, or the article of jewelry that you ever sold to this lady? A It is.

CROSS-EXAMINATION BY MR. CAMPBELL:

Q You sell a great many pins? A I do.

Q A good many articles of jewelry? A Yes, sir.

Q And this was over two years ago? A In February, 1901.

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Q Is there any particular thing to call your attention especially to this particular pin and the sale of it? A Not at the time, no.

Q It is merely speaking about it afterwards and being asked if you remembered selling the pin? A That is all. That is the only pin I ever sold to her.

Q Do you know if it is the only pin she ever bought? A That she ever bought off me.

Q In that place? A In that place.

Q Might she not have bought some others? A No; that is the only time she was ever in the store.

Q Do you mean that she absolutely was never was in that store but that one time? A I can swear.

Q How many people go in and out of that store during a day? A That is hard to say.

Q You must have a very good memory if you are willing to swear positively that she never was in that store but that one time.

BY THE COURT: (Interposing)

Q Do you mean to say that she never was in there, or that you never saw her in there but that time? A I never saw her there, your Honor.

BY MR. CAMPBELL:

Q Then she might have been there? A Yes.

Q And she might have bought a pin there? A That is

the only pin she ever bought there.

Q Do you mean to say that she never bought a pin off any other clerk? A Positively, because we keep a record of every pin sold, and to whom sold.

MR. CAMPBELL: I don't know that it is very good evidence to say that you have a record, unless you refer to that record.

THE COURT: Well, you asked him.

BY MR. CAMPBELL:

Q You have not produced the record.

THE COURT: It is not necessary unless you want it.

MR. CAMPBELL: I don't want it.

THE WITNESS: I could.

MR. CAMPBELL: I am merely trying to impress it upon his mind, as to his own recollection. I want to know if he will testify from his own knowledge, outside of any records, that she did not buy any other pin there.

THE WITNESS: She did not.

Q Are you going by the records? A She didn't buy any pin, to my knowledge, but one gold pin.

Q Will you swear positively that that is the only pin she ever bought there? A That is what I say. That is the only pin she ever bought there.

Q Do you swear that of your own knowledge, or from the



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record? A To my knowledge.

BY THE COURT:

Q You don't know of her having bought any other pin?
ever

A I do not.

MR. TOWNSEND: He testified to that.

BY MR. CAMPBELL:

Q Are you familiar with what is paid by Dreicer & Son
for diamonds? A Am I?

Q Yes. A I am.

Q Or what they sold them for? A Yes, both what they paid
for them and what they sell them for.

Q Do they buy diamonds wholesale, or did they just buy
these particular diamonds? A They are importers and whole-
salers, both.

Q At wholesale, what would these diamonds be worth?
A In this particular piece?

Q Yes, if going to buy them, not sell them. A I
should think about \$60 or \$70 a carat.

Q Will you state what the pin would be worth? A I
did state.

Q I mean at wholesale? A \$160.

Q Just the same as from the importer? A The same thing.

MARY E. FORREST, called as a witness on behalf
of the People, being duly sworn, testified as follows:



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DIRECT EXAMINATION BY MR. TOWNSEND:

Q You are the sister of the complainant? A I am.

Q You are a married lady? A I am a widow.

Q You live where? A At 109 West 82nd Street.

Q And were you living there on the 1st of April?

A I was.

Q Living there with whom? A My sister, Miss Driscoll.

Q And you were living there on the 7th of April? A I was.

Q Continuously between those two dates? A Yes, sir.

Q Look at the defendant at the Bar, and state whether you know her by sight? A I do.

Q When did you see her for the first time to know her? A Somewhere about the 1st of April.

Q Do you recollect where she was at that time?

A Yes; she came to our apartment.

Q And you had a talk with her? A Yes, sir.

Q Was your sister there at that time? A We were both there.

Q And you employed her, did you? A We did.

Q As housemaid? A Yes.

Q On the 7th of April, in the afternoon of that day, do you recollect whether you saw her? A I did.

Q When, for the last time, did you see her at your house; about what time? A Please ask me the question again.

Q About what time of day do you recollect it was that you last saw her there? A After three o'clock.

Q And where was she at that time? A She was in the bedroom.

Q Then after that, do you recollect where you went? A I went into the bathroom.

Q And about what time had you finished your bath? A Very shortly afterwards.

Q When you came back, did you see the defendant? A I did not. She had gone.

Q What did you do? A I discussed the question of her disappearance with my sister.

Q Did you make any examination? A I did.

Q Of the rooms, or anything? A I did.

Q State what you found? A I found that the jewels were not in the place where they had been laid.

Q These jewels and articles mentioned in this indictment, when had you seen them last? A I saw my sister laying them there.

Q You saw her lay them there about what time? A Just previous to this time.

Q Just previous to your taking your bath? A Yes.

Q And she put them where? A Inside this bracelet on the dresser.

Q In what room? A In the bedroom.

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Q You found, you say, that the articles were missing?

A Yes, sir.

Q All of the jewelry except what? A Everything but the bracelet.

Q And how about the rooms; did you make any examination of the kitchen or other rooms about there? A We looked carefully about, and then went to look for the girl, and found that she had gone and left her things; and she never came back.

Q You were owing her money at that time? A I was.

Q Her wages? A Her wages from the time -- from the 1st till the 7th.

Q You had had no quarrel with her? A No quarrel.

Q You did not discharge her? A No.

Q And she had not told you of her being about to leave, or anything? A No, sir.

Q Do you recollect about the door -- anything about the door? A I remember the front door was bolted. We always keep it bolted.

Q The front door was bolted? A Bolted strongly. We always keep it that way.

Q And that was the door which entered from your apartments? A From the public hall.

Q With reference to any of the other doors, can you state? A We found that she had gone by the back way, and

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left that door open. It was the way she generally came and went.

Q She did not stay there over night? A No.

Q She only worked by the day? A I had not discussed that with her. She said that she wanted to go at night, and until I found whether she suited me or not, I did not make any arrangement about that.

Q So that she only worked for you during the day?

A Yes.

Q She went home at night? A Yes.

Q And came back in the morning? A Yes.

Q And she was in the habit of using which way? A She came to the front door when he came in the morning, but when she went out on errands or anything like that, she went by the back -- by this back door.

Q By the back door which opened into your kitchen?

A Opened from my kitchen into the back stairway.

BY THE COURT:

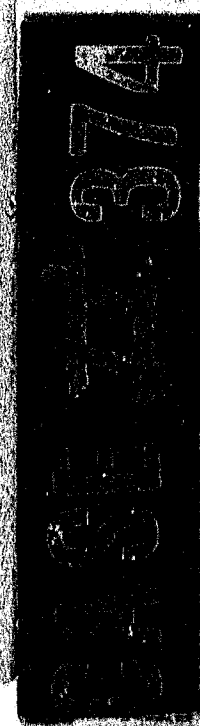
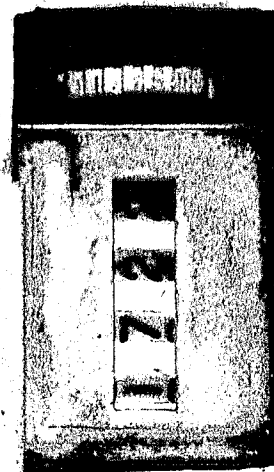
Q Your apartments are on what floor? A On the second floor.

BY MR. TOWNSEND:

Q And you could get from there out into the street, could you? A Yes, the way you start.

Q Now, when did you next see her after this time?

A I saw her on the 7th in the Tombs.



Q At the time your sister was there? A Yes, shortly after; my sister identified her first, and then I went in.

Q So you did not look to see her at the time your sister did? A Well, within the minute. I didn't enter the corridor with my sister; but my sister identified her first and then I did.

Q You are certain she is the person? A I am positive of it.

Q During the time that she worked with you, you saw a good deal of her? A I saw and talked with her.

Q For those six days? A I saw her often. She was about me a great deal.

Q And you knew her face? A I know it, yes.

CROSS-EXAMINATION BY MR. CAMPBELL:

Q I merely want to ask one question, please: "Where were you on the 8th day of April? A I was at home.

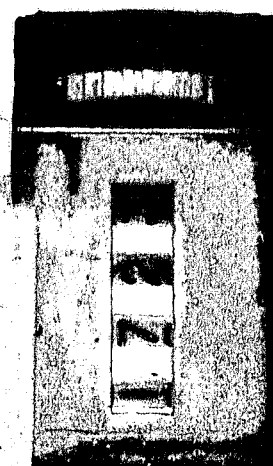
Q All day? A Yes; I was ill. To the best of my recollection, I was at home.

Q It was not that day -- you did not see any detectives or go out? A I can't recall that the detectives came to see me on the first day; but I think I was at home, because it was very bad weather and I was ill.

Q Very bad weather? A Yes, sir.

BY THE COURT:

Q Do you know the value of those rings that belonged to



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you, that were taken? A I know what I paid for them.

Q You have bought rings, I suppose? A I bought the

Q Any others? A Never bought any other diamond rings than those; not diamond rings.

Q That is the only knowledge you would have of the value of those? A The only knowledge.

BY THE THIRD JUROR:

Q Did you have any business that day? A No business. It was a rainy afternoon, very stormy, and there was no one in the house but the three of us until the detective came in, when I sent for him.

RE-DIRECT EXAMINATION BY MR. TOWNSEND:

Q This pin that your sister testified to, do you know where she got that? A Yes, she got it at Dreicer's.

Q And about how long ago? A Two years ago in February.

Q You knew the pin? A Perfectly.

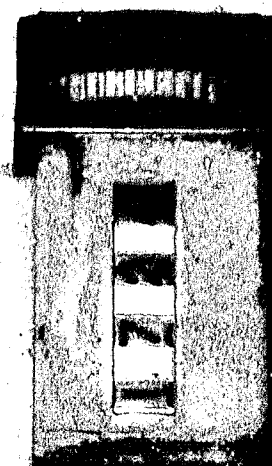
Q And you recollect the time when she bought it?

A Yes; I was with her when she bought it.

Q And do you recollect Mr. Kelly, the gentleman who was a witness here? A Yes, sir.

Q And he was there at the time? A He sold her the pin.

Q And was that *the pin* laying among these other articles that day? A It was.



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Q And you know that of your own knowledge? A I saw it there.

Q The pin mentioned in this indictment? A The same pin.
BY THE FIRST JUROR:

Q Where were you at the time that the jewelry was put on the dresser? A I was lying in bed, ill.

Q Did you see when the jewels were put on the dresser? A I did. I saw my sister lay them there.

Q Did you see them when your sister went out, when she was called to the 'phone? A I left at the same moment, or perhaps just before I left to take this bath.

Q You left before your sister left? A Well, just about the same time we both left. My sister was preparing the things to wash this jewelry with. She was preparing a jewelry soap.

BY THE THIRD JUROR:

Q Did the defendant have any visitors? A She had no visitors while she was in our house.

BY THE COURT:

Q You say she had no visitors while in your house, but she only stayed there during the daytime? A Yes, during the daytime, and nobody came to see her. She was not there in the evening, but nobody came in the daytime.



RE-CROSS-EXAMINATION BY MR. CAMPBELL:

Q You say that perhaps you left the room first?

A It was about the same time. I can't recall that.

Q If you had left the room first, how do you know that your sister left immediately after? A Because it is a very small apartment. I left the door ajar in the apartment, and this girl passed the bathroom with the door ajar. It was not closed tightly. I could hear the conversation of my sister over the telephone.

Q You know it was about the same time? A It was at the same moment.

MR. TOWNSEND: We have some other witnesses to offer.

THE COURT: I will let the case go over till to-morrow, then. Gentlemen, I am required at each adjournment to give you the usual statutory caution not to converse with each other nor with anyone else in regard to the case, and of course to come to no conclusion upon any branch of it until it is finally submitted to you. You are excused until to-morrow at half-past ten.

Adjourned to Friday, June 26, 1903, at 10:30 A. M.

Friday, June 26, 1903, 10:30 a. m.

Trial resumed.

THE PEOPLE REST.

MR. CAMPBELL: I make the ordinary motion in this case, if your Honor please, that it be dismissed on the ground that only circumstantial evidence has been produced and that there is not sufficient proof in each item of the chain to convict.

THE COURT: Motion denied.

MR. CAMPBELL: Exception. I move to dismiss on the ground that the indictment is not sustained by the evidence.

THE COURT: Motion denied.

MR. CAMPBELL: Exception. And particularly I want to say that as to value, there being absolutely no proof on any of the articles but one; no grand larceny has been proved, and, this being an indictment for grand larceny, I move that the case be dismissed.

THE COURT: Motion denied.

MR. CAMPBELL: Exception. Now I want to do

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something a little unusual, even when a counsel appears in a case, to request the witnesses on the other side of the case to be separated and all but the one on the stand to leave the room. That happened when he was speaking about the other side. Now on this side of the case, in order that this matter may be pleaded just as fairly as it possibly can be, I ask Mrs. Green, who is one of the witnesses, to kindly step aside, and that an officer tell her to stay.

MR. TOWNSEND: I will make the motion that all of the witnesses for the defense be also excluded. I am not having any people here--

THE COURT: Do you propose to call Mrs. Green, to call her as a witness?

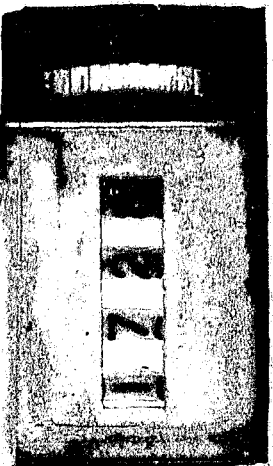
MR. CAMPBELL: Yes, and I have no other witness.

THE COURT: Do you want her excluded from the room during the examination of others?

MR. CAMPBELL: During the examination of the defendant.

MR. TOWNSEND: I ask that all of the witnesses for the defendant be excluded.

MR. CAMPBELL: Surely, all the witnesses.



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MR. TOWNSEND: All right.

THE COURT: All the witnesses to be excluded.

THE CLERK: Who have not yet been examined?

THE COURT: Yes, who have not yet been examined.

T h e D e f e n s e .

M A R Y L. W R I G H T, the defendant, called as a witness in her own behalf, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. CAMPBELL:

Q You are the defendant in this case ? A Yes.

Q You are charged with having taken certain articles of jewelry from a certain residence in which lived a Miss Driscoll and a Mrs. Forrest on the 7th day of last April. You may state whether or not you ever worked for any person of the name of Driscoll or any person of the name of Forrest?

A No, sir.

BY THE COURT:

Q You have heard the question? A Yes.

Q Why don 't you answer it? A I say no, sir; I never did.

BY MR. CAMPBELL:

Q Did you or did you not take any articles belonging to these people? A No, sir; I did not.

Q Where were you on the 7th day of last April? A The 7th day of April I was at a friend's house of mine.

Q What is the name of that friend? A Mrs. Green,

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Q What were you doing there? A I went around there to see her because her baby was sick. She asked for me to go around to see her.

Q Is it true that at different times propositions have been made to you that, if you were guilty and would return the goods, or do what you could towards returning them, that it would be taken in mitigation of the offense, and that a very light sentence would be imposed?

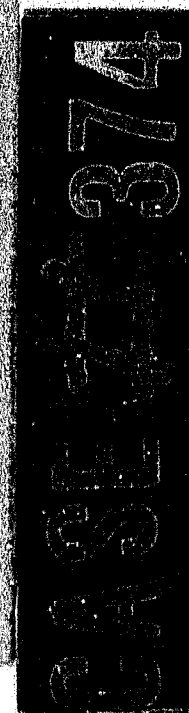
MR. TOWNSEND: Objected to.

THE COURT: Objection sustained. In the first place, the question is most emphatically leading.

MR. CAMPBELL: I understand, your Honor. I want to get this matter--

MR. TOWNSEND: And it is absolutely immaterial and irrelevant.

MR. CAMPBELL: I wanted to follow that question



with another question.

THE COURT: I know it, but you must ask your questions in proper form, especially of your principal witness.

MR. CAMPBELL: very true, your Honor.

Q You may state whether or not you absolutely received and give any information about any of the goods alleged to have been taken, and if so, why?

MR. TOWNSEND: Objected to.

THE COURT: Oh, I will allow it, though it is not in proper form.

A I did refuse, because I don't know anything about it.

CROSS EXAMINATION BY MR. TOWNSEND:

Q What is your name? A Mary L. Wright.

Q How many times have you been convicted of stealing?

MR. CAMPBELL: I object to that, sir.

THE COURT: Ask her first if she has ever been convicted; not how many times.

BY MR. TOWNSEND:

Q Well, have you ever been convicted?

MR. CAMPBELL: I object.

THE COURT: Question allowed.

MR. CAMPBELL: I except.

A Yes, I have.

BY MR. TOWNSEND:

Q What? A I have.

Q How many times? A Only once; two years ago.

Q Two years ago? A That is all.

Q What did you steal at that time? A

MR. CAMPBELL: I object.

THE COURT: I think it is not necessary to go into details.

MR. TOWNSEND: It goes to show the nature.

THE COURT: You may ask the sentence.

BY MR. TOWNSEND:

Q Well, where were you sentenced at that time?

MR. CAMPBELL: May it please your Honor, on this point of the examination I have not examined the witness, and this is not cross examination of anything brought out on the direct. What is more, she is being tried for one crime.

THE COURT: It is too well settled.

MR. CAMPBELL: It is elementary.

THE COURT: Where a witness takes the stand in her own behalf she is just the same as any other witness and can be asked any question as to previous convictions, the same as any other witness.

MR. CAMPBELL: Your Honor will understand my position in this case.

THE COURT: I will allow the question.

MR. CAMPBELL: I except.

BY MR. TOWNSEND:

Q Two years ago you were convicted for doing what?

A For larceny.

Q Stealing a horse, or stealing what? A No, I didn't steal a horse.

Q What did you steal? A They claimed I stole a ring.

Q It was claimed? A Yes.

Q A ring from a place where you worked? A Yes.

Q And how long were you sentenced for and did you serve?

A For one year.

Q And under what name were you convicted then? A Mary L. Wright.

Q How about another conviction; were you ever convicted after that? A No; I was not.

Q How about the other day here; were you not convicted here the other day? A Yes.

Q Under what name were you convicted the other day?

A Mary Davits.

Q Where did you get the name Mary Davis? A It is my marriage name.

Q Is your husband living? A No.

Q How long is he dead? A He has been dead five years.

Q You have been married how many times? A I haven't been married but once.

Q That is two convictions for stealing-- larceny-- is it? A Yes.

Q Now Mary Demorest, where did you get that name?

A I never have been by the name of Mary Demorest.

Q Of Mary Noble? A I don't know anyone by the name of Mary Noble.

Q Never did? A No, sir; I did not.

Q How about the name of Victoria Stokes? A Well, nobody ever knowed me by the name of Victoria Stokes.

Q How about Mary Brooks? A That is not my name. There is plenty of people knows me, and never knew me to go by other names.

Q Did you ever work for a lady by the name of O'Connor?

A No, sir; I did not.

Q Never did? A No, sir.

MR. TOWNSEND: Now, Mrs. Johnson, stand up!

THE CLERK: She went out of the room.

Q Did you ever work for a lady by the name of Johnson?

MR. CAMPBELL: May it please your Honor, I object.

THE COURT: I will allow it. It goes to the credibility of the witness.

MR. CAMPBELL: I except.

BY MR. TOWNSEND:

Q Did you ever work for a lady by the name of Johnson at 116th street and 7th avenue, Graham Court? A No, sir, I did not.

Q Never was there in the position of cook? A No, sir.

Q Do you know Mr. M. R. Johnson? A I know him when I see him.

Q Where did you become acquainted with him? A I saw him down in the country.

Q Whereabouts? A In Asbury Park.

Q He came down after you, didn't he? A Yes.

Q You didn't recognize him, then? A No, I did not.

Q Never had seen him before? A Yes, I had seen him before.

Q Where had you seen him? A I saw him in 123rd street.

Q In a house? A Yes, in a house.

Q And you worked for him? A Yes.

Q Then you did work for Mr. M. R. Johnson? A I didn't say I didn't work for Mr. Johnson. You asked me if I worked for Mrs. R. S. Johnson at Graham Court, and I said I did not.

Q Well where did you work for Mr. Johnson? A In 123rd

street.

Q Did he have a wife? A I suppose so.

Q Didn't you work for her-- wasn't she there at the time? A Yes, sir.

Q And you know her, do you not? A Yes, sir; I know her.

Q They lived at what street? A At 123rd street.

Q How long were you there, working? A I don't remember how long.

Q And when did you work there? A I went there July 1st.

Q Last year? A July 1st, 1901.

Q Did you ever go under the name of Hawthorne? A No, sir.

Q Never gave that name? A No, sir; I didn't give that name.

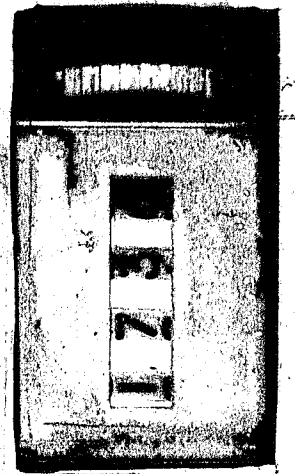
Q You say that on the 7th of April you were at Mrs. Green's-- the 7th of April 1903; is that so? A Yes.

Q Where were you on the 1st of April? A I was at home.

Q Where is your home? A At that time I was in 61st street.

Q What number in 61st street? A 232.

Q West or east? A West.



Q What floor did you live on? A On the second floor.

Q How many rooms did you have? A I had three rooms.

Q Did anybody live there with you? A Yes.

Q Who? A Mrs. Pearson.

Q And who besides her? A And her husband.

Q What was her husband's name? A John Pearson, I think.

Q What did she do for a living? A I couldn't tell you.

Q How long had you lived with them prior to the 1st of April? A In January they came with me.

Q They came with you in January? A Yes.

Q 1903? A Yes.

Q And lived there? A They came with me in January.

Q Did you hire the flat? A Yes.

Q You hired it when? A The 4th day of December.

Q The 4th day of December, 1902? A Yes.

Q And lived there until the last day of April 1903; is that it? A Until the 3th of April.

Q continuously? A Yes, sir.

Q What rent did you pay there? A Paid ten dollars a month.

Q Now during that time you always slept in that apartment, did you not? A Why, I was in there all the time. I was my

home.

Q But you only slept there; you went out to service?

A No, I did not go out to service.

Q Didn't you go out to service during that time at all?

A I did not; to any place at all I did not.

Q What did you do to make a living? A I rented one of my rooms to a man and his wife and I had washing to do home. Besides sewing that I had.

Q Whom did you rent that room to? A I told you.

Q To Pearson? A Yes.

Q Anybody else? A No.

Q What washing did you have? A I had washing from a lady in 33rd street.

Q One lady? A Yes, one lady.

Q What was her name? A Mrs. Earl.

Q What number in 33rd street? A 18 West.

Q Do you know where she is now? A I don't know; she may be there.

Q Where were you on the 1st of April? A I was at home on the 1st of April.

Q All through the day? A I was at home all through the day.

Q Where were you on the 2nd of April? A I was home also.

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Q On the 3rd of April? A I was at home also.

Q The 4th of April? A I was at home all the time, because I was packing things up to get ready to go away to the country.

Q To go away to what country-- to what place? A To Asbury Park.

Q Whom did you go to see down there; whom did you visit at Asbury Park? A why, I visited several people in Asbury Park.

Q That colored house-- who were they? A The who?

Q Where were you when you were arrested? A I was in my own home.

Q Do you swear that you did not work for the complainant in this case, Miss Driscoll and her sister? A Yes, I do.

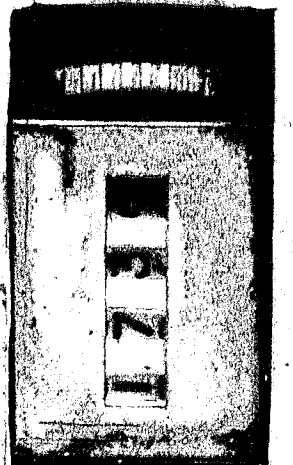
Q From the 1st day of April to the 7th day of April? A I did not work for anybody of her name. I never saw the people.

Q You never saw these people in your life? A No, sir. Not till they came to the Tombs.

Q Not till they came to the Tombs? A No, sir; I did not.

Q Where did you go after the 7th of April? A I was at home until I moved to the country.

Q Until the 13th? A Yes, sir.



Q And then on the 13th you went where? A I went to Asbury Park.

Q And you stayed there until you were arrested? A Yes; I was there until I was arrested.

BY THE COURT:

Q You say you were convicted of grand larceny in the second degree about two years ago? A Yes, sir.

Q 1900? A Yes.

Q In what court? A I guess it was in here.

Q Before what judge? A I couldn't tell you.

Q Do you know Mrs. Turner? A Do I know Mrs. Turner?

Q Yes. A I know her when I see her, yes.

Q Did you ever work for her? A Yes.

Q When? A Well that was the same time I worked for Mrs. Johnson. They were both living together then.

Q Mrs. Turner was living with Mrs. Johnson? A Yes.

Q In what street? A In 123rd street.

Q What? A In 123rd street.

THE FIRST JUROR: Your Honor, do you wish the jury to hear this?

THE COURT: Certainly.

THE FIRST JUROR: Well, we can't hear her.

THE COURT: The stenographer may read my examination of the witness.

(The stenographer complied.)

BY THE COURT:

Q Well, for whom were you working, for Mrs. Turner, or for Mrs. Johnson at that time? A Mrs. Turner hired me.

Q I thought you said you were working for Mrs. Johnson.
A But Mrs. Turner hired me but she was away and Mrs. Johnson had possession of the flat.

Q What did you say you were sentenced for on June 16th?
A For larceny.

Q From whom? A Mrs. Slate.

Q Well, of what? A A ring.

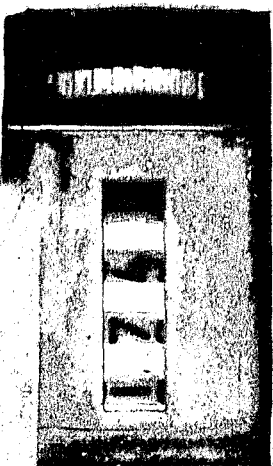
Q Were you not charged with the larceny of a waist and some \$50 from Mrs. Turner? A That was the charge against me but I didn't know anything about it.

Q Why did you plead guilty the other day on that indictment? A Well, wasn't Mrs. Johnson--

Q No. A Well, I thought it was Mrs. Johnson's charge that she had against me.

Q The record is that you pleaded guilty to stealing a waist and \$50 from Mrs. Turner. On that you were sentenced to one year in the penitentiary.

MR. CAMPBELL: It may easily be, your Honor, that the prison misunderstood this matter. You know the two matters came up the same time and were before your Honor.



THE COURT: It was very well understood at the time. If she had pleaded to nothing it might have been a different affair.

MR. CAMPBELL: I understood it the way it turned out. Still, she might not have understood it.

THE COURT: she understands everything very well.

BY THE FIRST JUROR:

Q Didn't you say the other day that you were a dressmaker? A Yes, I did.

Q You said today sewing. What sort of sewing? A Yes, I do sewing.

Q Is that the work you did? A Yes, mostly it is.

LUCY GREEN, called as a witness on behalf of the defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. CAMPBELL:

Q Do you know this lady (indicating the defendant)?

A Yes, sir.

Q Where were you on the 7th day of last April? A I was home, sir.

Q Did you or did you not leave the house during that day? A Pardon me, what did you say?

Q Did you or did you not leave your house during that

day? A No, sir.

Q What? A On the 7th I hadn't any call to leave the house, because I wasn't well and I did not leave.

Q You were not well? A No, sir.

Q Was any person present at your house during that day attending to you while you were sick? A Yes, sir.

Q Who was it? A Mary Davis.

Q Do you mean this person (indicating the defendant)?

A Yes, sir; I mean that person sitting there.

CROSS EXAMINATION BY MR. TOWNSEND:

Q Do you know what it is to commit perjury? A (No answer.)

Q Do you know what perjury is? A Stealing, isn't it, sir?

Q Do you know what lying is? A Yes, sir; I do.

Q What is a lie? A A lie is speaking something that is not true.

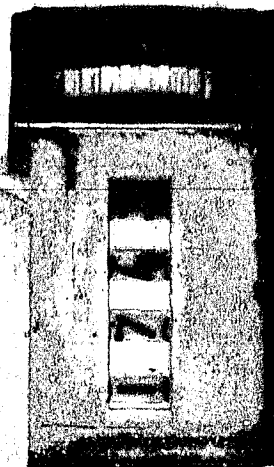
Q Well, that is what perjury is? A Yes, sir.

Q Only it is to swear to something that is not true?

A Yes, sir.

Q Do you know that you can be punished for swearing to something that is not true-- A Yes, sir; I do.

Q --as true? A Pardon me, what is that?



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Q Do you know that, if you swear to something that is not true, as being true, that that is perjury, and that you can be punished for it? A Yes, sir.

Q You understand that? A Yes, sir; I do.

Q You are married? A Yes, sir; I am.

Q What is your husband's name? A My husband's name is George Henry Green, sir.

Q And you live where? A 242 West 60th street.

Q And what does your husband do for a living? A My husband is a porter, sir.

Q Where did you say you were on the 7th of April? A I was at home, sir.

Q Do you hire a room of this defendant-- did you hire a room there? A I have an apartment there, yes.

Q How long have you had an apartment there? A I have had an apartment there five years the 12th of this coming August.

Q You did not have rooms of this defendant? A No, sir; I did not.

Q You lived in the same house? A Your Honor, I did not live in the same house. That woman at that time lived in 61st street.

Q Oh, she lived in 61st street? A Yes.

Q And you lived where? A I lived in 60th street,

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242, sir.

Q And you say that you were where on the 7th of April?

A I was there at home, sir.

Q Was she sick at your home? A No, sir; she was not sick. I was not well. I was not confined home, but still I was not well.

Q But did you see her there on that day? A I positively did see her.

Q What time? A To tell you exactly the time in the morning I sent George, it was after seven.

Q Where was she? A At her home. I didn't go to her home. I sent my boy.

Q Then you did not see her at her home? A Pardon me; I did not say I saw her at her home. I saw her at my house.

Q When? A Well she came to my house somewhere along about half past eight.

Q How long had you seen her before the 7th of April; when had you seen her before that? A Now, just give me a few minutes and I will tell you when. I seen Mary before that-- I seen Mary on a Friday, the day that school broke up. I am janitor of a kindergarten in 242 60th street, and that is the day I seen Mary.

Q And where was she then? A I met her on the street.

Q Where? A On 10th avenue.

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Q What time? A In the afternoon.

Q You don't know how late? A Yes, I do. It was after five o'clock when I met her.

Q You don't know where she had been that day or where she was going? A No, sir. I can't say where she was going or where she had been, because I didn't ask her.

Q What did she go to your house for on this day? A On the 7th?

Q Yes. A I sent my little boy George for her.

Q What for? A Because I was getting my children ready for Easter and I was not well.

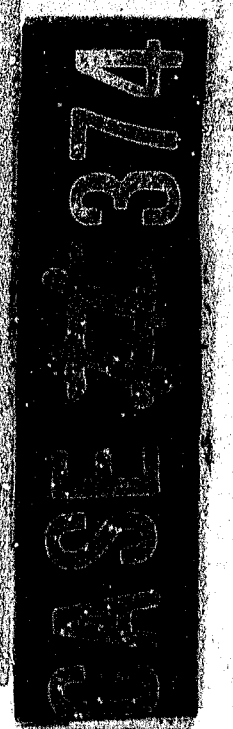
Q What day of the week was the 7th? A On a Tuesday, sir.

Q How long did she stay at your house? A She stayed to my house, till something after six o'clock, and I can't tell you how long it was.

Q All during the day? A Yes, sir; went out once during the day.

Q Where? A To the meat market, right across the street from me. Now the butcher lives up the street near 10th avenue, sir.

Q When did you first learn of the trouble she was in, that she was arrested? A That was a Monday night, the subpoena was brought to me.



Q This last Monday night? A Yes, sir.

Q That is the first time that you were a witness?

A Yes, sir.

Q And that was here the 22nd day of June? A The 22nd of June, yes, sir.

Q And when were you asked to recollect or to recall whether you had seen her on the 7th of April? A That was the 24th the lawyer asked me.

Q The 24th? A Yes, sir.

Q The lawyer asked you if you could recollect having seen her about the 7th of April? A He asked me when was the last time I seen Mary. That is what he asked me, sir.

Q And you said on the 7th of April? A Yes, sir. That is just what I said.

Q What happened particularly to fix the day? A What happened with me to fix it?

Q Yes; why did you fix the day as the 7th of April?

A Because it was the last time that I seen her.

Q Why couldn't it have been the 8th of April? A Well--

Q Why couldn't you have been mistaken? A I don't think I have made any mistake.

Q You don't think? A I know I have not.

Q How do you know? A How do I know?

Q Do you understand my question? Why does the day of the

7th of April impress it upon you and not the 8th or 9th of April? A Simply for the reason that I have told you, that it was the 7th. That is the reason, because I have a child eleven years old, George.

Q Eleven years old? A Yes; his birthday came a Sunday, which was the 5th, was it not?

Q I don't know. Was it the 5th? A Yes, it was; and Monday was the 5th, which the lady that I worked for in the kindergarten gave me money to go and see Barnum and Bailey's circus; that was the 6th, and the 7th was Tuesday. Monday I went to the circus, and Tuesday was the 7th, and that was the day that I sent for Mary.

Q That was the day that you sent for Mary? A Yes.

Q Why was it particularly that day and not the day after? A It was not the day after.

Q How do you know? A Simply because the day after was Tuesday.

Q But why do you fix Tuesday as the day? A Because simply it was the day. That is why I fix it.

Q But do you say that nothing happened; you did not write a letter on that day? A I didn't write any letter; no, sir; none whatever.

Q And nothing happened in your family that would fix the day of the week on your mind? A No, sir.



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Q You could have gone to the circus any day as well as Tuesday? A I didn't go Tuesday. I went Monday to the circus.

Q Well, even Monday? A The money was given to me to go on Monday.

Q That may be. A It was gave to me Friday, when school broke up, to go on Monday, and I went on Monday.

Q Now you are so accurate as to dates, take the 14th of April, what did you do on that day? A What did I do on the 14th of April?

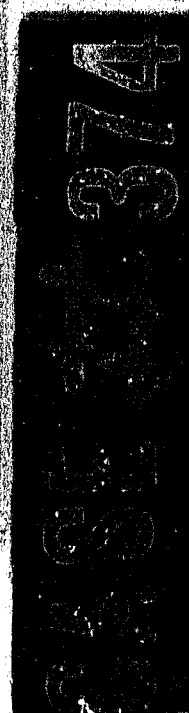
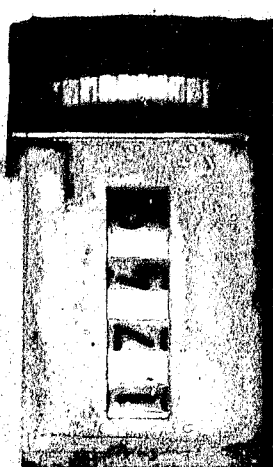
Q Yes. Who called at your house on the 14th? A Who called at my house on the 14th? I will tell you in a minute, if I can get it that soon. School opened on the 13th, which was a Monday. The 14th of April a man by the name of--

Q Smith? A No, sir; his name is not Smith. A man by the name of Frank Farrell called to see me concerning the kindergarten, concerning some work that had to be done there on the 14th of April.

Q Who besides him called? A I don't remember anyone calling at my house but him, sir.

Q You fix that date because the kindergarten you were superintendent of? A I am janitress there, sir.

Q And that happened the day before? A Yes, sir; it



happened the 13th.

Q So you knew it was the next day because it was connected with the kindergarten? A Yes, sir.

Q That is the way you fix that? A That is the way I fix it, sir.

Q But there was nothing that happened between you and this defendant on the 7th of April that makes you fix that date? A Nothing that happened so particularly. Simply I sent for her to come and help me with my children's clothes for Easter, and because I was not well with my baby.

Q But you could have sent for her on the 8th or 9th of April, could you not? A I could, but then I would have been late for what I wanted done.

Q You can't swear it was not Wednesday, the 8th of April? A I can't swear it was not Wednesday, the 8th of April?

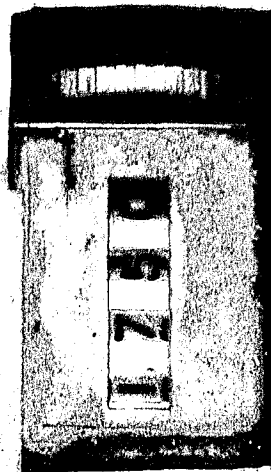
Q Yes. A Yes, sir; I can swear it was not a Wednesday.

Q How do you swear it was not a Wednesday? A Simply because it was Tuesday.

Q That is the only reason? A That is a very good reason.

Q Because you think it was Tuesday? A I don't think; I know it.

Q So now, why wasn't it Wednesday? A Simply because



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it was not, your Honor.

Q Well, what happened on Wednesday? A What happened on Wednesday?

Q Yes, on the 8th. A I can tell you what happened with me.

Q Yes. A I sewed the whole day.

Q Couldn't you have sent for her on that day? A No.

Q Wasn't it the day? A No, sir; it was not.

Q You sewed the whole day Wednesday? A Yes, sir.

Q What about on Thursday; did you sew all that day?
A No, sir; I did not.

Q Who called on Wednesday? A Who called on Wednesday on me?

Q Yes; Wednesday the 8th? A There wasn't anyone called on me except one woman in the house.

Q Except one woman in the house? A Yes; her name is Mary Mitchell; she lives upstairs.

Q How long did this defendant stay at your house?
A On a Tuesday?

Q Yes. A Well she stayed there all day long until about six; I can't tell you exactly the very minute she left; that I can't tell you.

Q Did she tell you what she was doing at that time?
A She did not.

Q Did you ask? A I didn't ask her what she was doing.

Q You didn't ask you where she was at work? A To tell you the truth, I don't know where Mary worked.

Q Did you ask her? A I didn't ask her that question.

Q And she didn't tell you? A She did not.

Q And how long were you with her? A I was with her until after six.

Q And yet you did not find out? A I did not, no, not to ask.

Q That doesn't answer it. What did you talk about with Mary all this time? A What did I talk about with Mary?

Q Yes. A Well, one thing I talked about was my baby.

Q All day long? A No, sir.

Q How old was the baby? A It is six months old now.

Q What made you talk about the baby? A Well, particularly one reason is I think Mary thought it was a nice baby.

Q It is your baby, is it? A It is mine, sir.

Q Well, what did she say about the baby? A Well--

Q Well, did she think it was a nice baby? A I suppose so from what she said.

Q What did she say? Tell us what she said? A Well, your Honor, I can't tell you exactly just the very words.

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Q No, but as near as you can recollect? A I can speak one thing that Mary said.

Q Yes? A Of course you will start to laugh. she said she would like to be the mother of the baby. That was one thing.

Q What did you say to that? A Well, I didn't make her any answer at all, sir.

Q You did not make any answer to that? A No, sir.

Q What next did she say? A There wasn't anything more said about the baby.

Q That was the end of the baby? A That was the end of the baby at the present time?

Q That took how long? A I didn't exactly take the time by the clock.

Q What time of day was that that you talked about the baby? A That was after lunch, sir.

Q After lunch? A Yes.

Q What did you do before lunch? A What did I do before lunch?

Q Yes. A Well, one part of the morning I have lied down for a headache, sir.

Q What did you talk about? A I didn't talk about anything at that time, sir.

Q What did you talk about after lunch? A One part I

just told you; that was about the baby.

Q Now, during the rest of the day? A During the rest of the day I was speaking about making Catherine's dress, how I was going to make it.

Q Now what did you send for her for? A What did I send for her for?

Q Yes. A To help me with my baby and my sewing, sir.

Q Did she help you? A Yes.

Q What did she sew? A Why, she helped me with a coat that I was making Catherine, whilst I fixed the dress.

Q Was that the baby? A No, sir; that was for my little boy, Davy, nine years old, Catherine.

Q Did you have to send for her to help you to make coats for Catherine? A Yes.

Q And not for the baby? A No, sir; we sewed nothing for the baby.

Q Had you ever sent for her to go and sew for you before? A I didn't send for her particularly to sew, but to help me and to sew; not to sew alone.

Q Had you ever sent for her to help you before?
A I did.

Q How long before? A I sent for Mary-- now if you will give me time I will tell you exactly when I sent for Mary



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before.

Q Yes. A I sent for Mary before that when she lived downtown some time ago, and that has been over two years ago.

Q You had not sent for her for two years? A You asked me when and I named the time.

Q How long before that had you seen her? A How long before what, sir, had I seen her?

Q Before the 7th of April? A What is that?

Q How long before the 7th of April? A I seen her on the 3rd.

Q On the 3rd? A Yes, sir; on Friday.

BY THE SECOND JUROR:

Q Is this defendant any relation to you? A No, sir; she is not.

Q How long do you know her? A I knew her about six years.

BY THE FIRST JUROR:

Q Are you acquainted with her husband? A Yes, sir; I was acquainted with her husband.

BY MR. TOWNSEND:

Q What was her husband's name? A Her husband's name was Jake Davis.

Q How many names did you know her under? A I never



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knew she had but one name until I heard the names called off yesterday.

Q That was the name of what? A Mary Davis.

BY THE COURT:

Q What was her name before she was married? A Well now, your Honor, I think her name was Mary Wright before.

Q You heard that called out? A Yes, sir; I heard that called out.

Q You heard her testify this morning? A I did not; no, sir.

MR. CAMPBELL: No, she was out of the room.

BY THE COURT:

Q Did you ever visit her at Asbury Park? A No, sir; I have never been at Asbury Park.

Q Did you know that she had a house there? A No, sir; I didn't know that they had a house there.

Q Did you know that she went down there in April?
A No, sir; I didn't know that Mary went down there in April last. I haven't seen her since that time till I seen her brought here in court.

Q And before that when had you seen her? A Before that?

Q Yes. A Oh, I seen her on the 3rd of April.

Q And where did you see her? A I seen her in the meat



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market on 10th avenue between 60th and 61st streets.

Q Do you know where she lived then? A Yes, sir, I did.
She lived in 61st street.

Q Do you know whether she has ever been out at service? A Out at work, sir?

Q Service? A Well, your Honor, when Mary four years ago lived where I was janitor, at that time in 229, she used to go to work sometimes.

Q To go to work where? A I couldn't tell you, sir, for I don't know; I was janitor there and sometimes she would leave the key with me for my husband.

Q Did you ever know her to work for Mrs. Johnson?
A I never knew who she worked for, sir; that I couldn't say.
BY MR. TOWNSEND:

Q Did you ever know that she had been to prison?
A No, sir; I didn't know that Mary had been to prison before.

Q Never heard that? A I never heard it, sir.

Q So you didn't know much about her? A So far as that is concerned, I can't really say that Mary is a sworn friend of mine. I never met her till I met her in 229, where I was janitress, before I had the kindergarten, sir.

DEFENDANT RESTS.



MR. CAMPBELL: We rest, your Honor, shall I proceed?

THE COURT: If you wish.

MR. CAMPBELL: I will not take very much time.

Defendant's counsel summing up.

MR. CAMPBELL: May it please your Honor, and gentlemen of the jury: This is a very peculiar case. I was under the impression that it was not at all necessary to bring before you the matter of previous indictments or pleadings thereunder, for that matter has been brought to your attention legally, and I am glad that it has, because it opens the door for a full and complete and absolute explanation as I understand it of the trouble in this case. Here is a colored woman. Yonder, in a few feet from here is an assembly of chinamen, and I challenge any ordinary American citizen who does not live among chinamen, have dealings with them and know them, that they cannot distinguish between the color of their hair and the slant of their or distinguish them in some such way. I challenge every citizen to go through Chinatown one day or two days or a dozen days and see some Chinaman, and



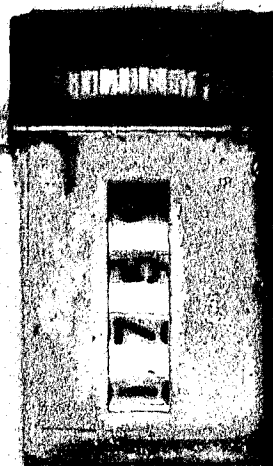
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then come back at the end of three months and be able to swear positively that that is the identical Chinaman that he saw.

And the same with the colored race.

Speaking about voice, these people would have you believe that they can identify this woman by her voice, people who have come here from San Francisco, where there are not many colored women and where the Southern accent is a thing unheard of, practically. They, coming here and meeting with one colored woman and meeting with one peculiar accent that is common to all the colored race, naturally supposed that that colored woman had a peculiar accent; so that, as far as identity goes, there is grave doubt, because we are dealing with people who are not experts in the detecting line.

Now, then, I offer this explanation: There is no doubt that some woman worked for Miss Driscoll and her sister. They claim that some articles of jewelry were taken in a peculiar and particular way. I will come to that later. They further say that



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some persons was here at the Tombs, and that they came down and immediately picket out a person, and that that person was this defendant; and I might say that that has been done from time to time, because it has been noised abroad that there is a woman or was a woman in the Tombs who had been convicted in one or two cases, and that in all probability she was the right one in every case -- a dangerous and an improper proceeding; highly so.

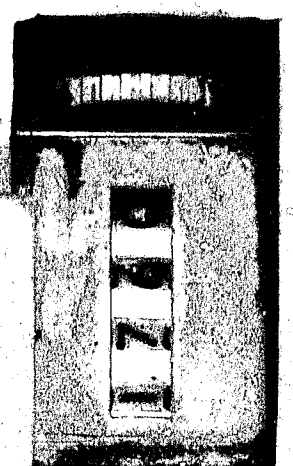
And note this: The matter of these indictments having been before you, you will recollect that the name in those indictments were in both cases different, and absolutely different, from the names by which these people knew this woman.

How, then, could they go to the Tombs and pick out a person because they merely believed that she was the right one?

There was nothing; no record of any Court; no name in any newspaper, filled in the newspapers, or anything to distinguish this woman; nothing but the bare fact that there was some woman in the Tombs; and they went down and picked out this woman.

And what more natural than that they should pick out the same woman whom others had picked out in similar offences.

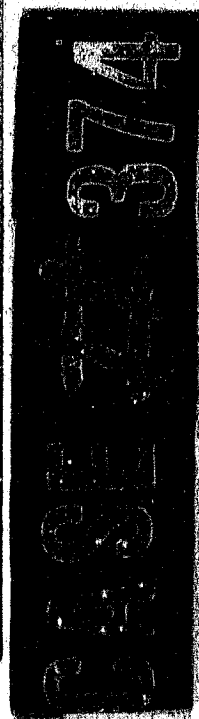
This may be a laughing matter to some people,



and I may have given occasion for criticism by my zeal, in season and out of season, in this case; but you gentlemen of the jury understand that it is a matter of grave import to you and a matter that concerns your own welfare and your own inner beings; and I claim to you that my explanation is a clear one, is a reasonable one; and no matter if this woman had been indicted and tried-- which she never was tried in any case, but believed, for reasons personal to herself, that certain cases, possibly to avoid trouble, and possibly not; but that being the case, having pleaded, she does not stand before you as having been convicted on trial.

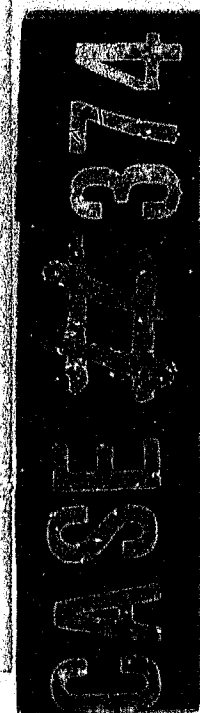
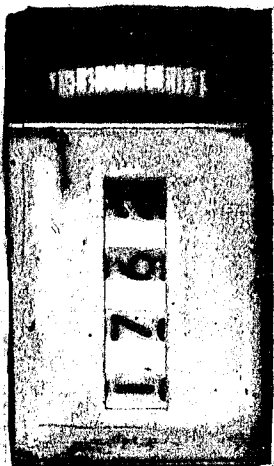
It means nothing to you, and if she had been guilty in certain cases, there is reason why she was in the Tombs, brought here on requisition from New Jersey not in this case but in other cases; and these people have come in here, without any warrants as far as I can discover, and gone to the Tombs to look at some person under another name, an absolutely different name; no ~~mut~~ similarity to the one under which they knew her, and they took her out.

So much as to their identification. And now



we will get to the evidence. I will ask the court to instruct you that there are two kinds of evidence, direct and circumstantial. On our side we have the unshaken testimony of two people to exactly the same thing, direct, positive, unqualified and irreputable, that on a certain day this woman was at a certain place, and that not the place from which these goods were taken. Now that is direct and positive evidence as to a certain fact; and we have the evidence of a witness, moreover, who cannot be mistaken and who is not at all likely to be mistaken.

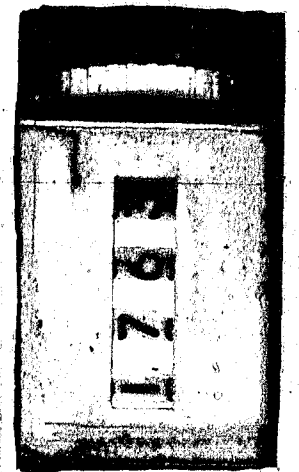
We have circumstantial evidence on the other side, and not even under the District Attorney's able manipulations can it be made to appear as anything else. Admitting that he can show superficially apparently these facts. He will of course call your attention to the fact that these two sisters, living in the same house claim that they saw these articles put inside a certain bracelet, that they then left the room, and that in five minutes they came back and they were gone. They went out together, leaving the girl that they had employed there; and of course, positively, unqualifiedly, with any mistake, that girl took them. Now that is circumstantial evidence;



and I will ask the court to instruct you that, when circumstantial evidence is all the evidence in the case, you must be convinced beyond a reasonable doubt that the supposition that this defendant is guilty is the only supposition that can be drawn rationally from those facts; and if you admit any other proposition reasonably and rationally, and know that any other proposition can come in, and that those facts can explain themselves in any other way, unless you are convinced beyond a reasonable doubt that the only solution of the problem is that this person took those goods, you must find that she is innocent.

I want to say right here, taking the chain as it started, that is the best that they can do; absolutely the best. But ~~the~~ take that, what little there is of it. Admit that this woman was once in a certain room. So far they agreed-- or do they? Right from the very beginning they commenced to deviate.

The second witness, Mrs. Forrest, said she was in the room and saw those articles placed there. The first witness said she was in the room and placed those articles there, then went to the tele-

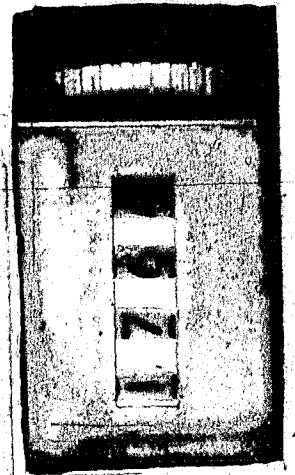


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phone, and then went back and looked. She was asked by the District Attorney where her sister was at that time, and she said in the bath-room; and her sister says she was in the room at the time and saw the articles put there, then left after her sister left; and she was corrected and asked, was it after, and then she said "About that time; I can't say whether it was after or not." There is your circumstantial evidence!

And if it be true that she went to the bathroom as she said she did, she also said that she finished her bath and came out, and was ready, as I understood the testimony, at the time her sister called on her to look for the jewelry, four or five minutes after the jewels had been put there. It was a case of one sister going to the telephone on one side, and one taking a bath on the other side, but both ready to pursue the thief in five minutes.

Now, gentlemen, there is one other point that I did not object to, although I had a right to; but in this case. You will remember the testimony about the back door being open when they went to look. The front door was closed, they say, and the District Attorney said something about "Did anybody see them



go, or did they see them go?" "No, but the elevator boy told me."-- Right there the District Attorney said "Never mind." Now what would the elevator boy be doing out in the back yard instead of at his post at the front door, or where the elevator was?

THE COURT: There is no testimony about the elevator boy being in the back yard.

MR. CAMPBELL: I know there is not.

THE COURT: But you asked What would he be doing in the back yard? I say there is no testimony that he was in the back yard.

MR. CAMPBELL: I don't say there was. I say, What would he be doing there? because the statement is made that the defendant went out by the back way.

THE COURT: And must a man be out in the back yard in order to see somebody go out the back door?

MR. CAMPBELL: I never knew a man to see through an apartment.

THE COURT: I have known people in a hall to see people at both ends of the hall.

MR. CAMPBELL: There is no proof of that in



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this case.

THE COURT: It did not require it.

MR. CAMPBELL: We can easily understand for ourselves, without going deeply into the question, that there was some reason in all this thing; and that looked to me to be a very particular point. I know what the District Attorney will say. I tried to rule it out because it was not proper evidence. The District Attorney has been very kind and in many ways has done all he could for us. Instead of letting us serve our time in other matters, he has brought us here to let us clear up ourselves in this case, and in divers and sundry ways, and if he states to us that he did this for that reason, of course I must stay with him and be grateful to him. But there is the evidence, and it is clear and distinct, that that back door was open when they went there; that they employed some woman that day; that somewhere along later in the afternoon, and that afternoon a rainy afternoon, and presumably a dark afternoon, the woman went away; and what more natural could there be than for her to walk out of the house at the usual hour of an afternoon?

Leave her things behind her? Why, certainly. Wasn't that customary? Would she pick up her apron and everything else? If there is anything in that proposition, it is merely that if she had taken the goods, it would have been bigger proof that she had taken them, because she did not intend to go back. The next day the testimony shows was a very rainy day. Now people do get sick. People do fall down. People get colds, and are afraid of pneumonia on rainy days. Is there anything unnatural, or anything making out a crime, for a person not to turn up at a place where he had worked the previous day?

They say she never came back. Do any of you employ servants, and if so, do you know that servants who are not satisfied with places leave in that summary way and never come back, and especially so when they have only been in a place a short time?

THE COURT: We will take the usual recess now; and, gentlemen, you will remember the usual statutory caution, that I am required to give you at each adjournment, not to converse with each other nor with anyone else in regard to the case, and of

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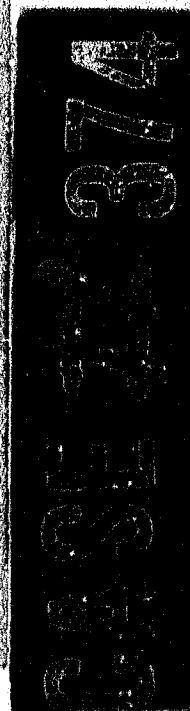
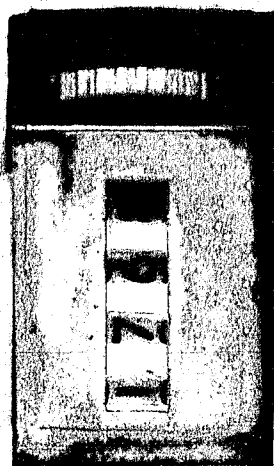
course to come to no conclusion regarding it until it is finally submitted to you.

Recess until 2:15 p. m.

After recess.

MR. CAMPBELL: May it please your Honor, and gentlemen of the jury:

Continuing for a few brief minutes where we left off about circumstantial evidence, about the seeming discrepancy, I will only state further that it was distinctly said that whoever worked in this house was not seen to go into the room, nor seen to leave the room; that the space from the time the diamonds were put upon the bureau until the complainant was back in that room hunting for them, was said according to the sworn testimony to be less than five minutes; and I ask you if that is a reasonable thing, that any person in that flat could have gone into that room, passed two people, one of whom was in one room and another one in the bath room, with the door open, according to the testimony-- could have passed deliberately by that



door and then have taken those things and come back by that door, by any possible means unless she actually flew, and in running by there was all the more likelihood that somebody would have seen or heard her-- if it is probable that that happened, if there is not a doubt about it.

Now I am not saying these things, may it please you gentlemen, to impute falsehood to anybody. I don't intend to do that; I don't mean that. I only mean that in an endeavor to state this thing exactly as they recollect it happened it seems to me probable that they have misrepresented certain to a degree.

You might argue, What difference does it make? The goods were there and are missing. You might argue that way; and you might think that, in some little matter, both being present in court and hearing the testimony, might have got a notion in their minds that certain things were facts; being flustered, of course, to a certain extent.

But if we admit the possibility of anything like that and get right down to the solid proposition and admit that there is doubt; that each item in the chain is not proven beyond a reasonable doubt;

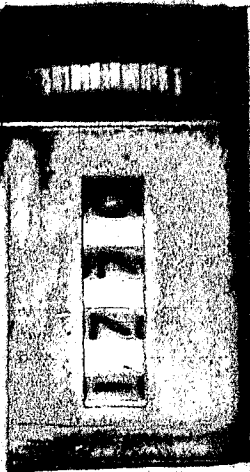


and if they could have been mistaken about the time; if it might have been more than five minutes-- and I presume that if given an opportunity they would have been perfectly willing to say the time was longer; if we admit that it might have been a longer time, there was plenty of opportunity for somebody to have come in from the street.

Now there are sneaks in New York City. We are not living in the land of the blessed quite yet, and we are surrounded with a great many queer things, and from a stoop to an entrance, upon some person going out and negligently leaving the door unlatched or unlocked, there was plenty of opportunity for some person to go in and take those goods.

There is a very reasonable and rational doubt as to who did this, and there is a very reasonable and rational doubt as to the identity of the person of this person. Very clearly so. It is not incompatible with any other argument here than the guilt of this prisoner.

You must, before you can find a verdict of guilty, be convinced beyond a reasonable doubt that no other thing could be possible under those circum-



stances except that she did do this thing herself

Now if this chain of facts in itself is compatible with the circumstance that anybody else took these things, or that it was possible for any other person than this one to have taken them, it is for you to take notice of it, and in taking notice of it to find a verdict of not guilty for this defendant.

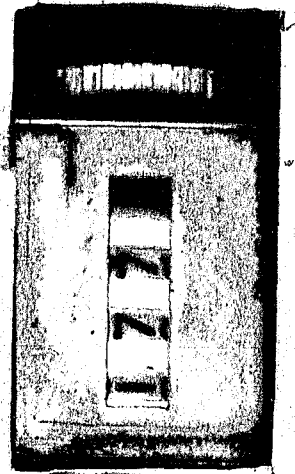
THE COURT: How much longer time do you require? You stated that you would only require two or three minutes after recess.

MR CAMPBELL: I said only a few minutes.

THE COURT: But I cannot allow this case to go on indefinitely.

MR. CAMPBELL: Your Honor will notice that I have still two points: The credibility of witnesses and value, and I will get through very quickly.

The jury will notice that there is no evidence of any value except as to one article, and that article is said to be worth \$160. I will ask the court to instruct you that you must be convinced beyond a reasonable doubt that the article was then worth \$160 before--



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THE COURT: The court will give no such instructions.

MR. CAMPBELL: Does your Honor mean to say that, if the goods are not proved to be worth \$500, that a conviction of grand larceny in the first degree can be had?

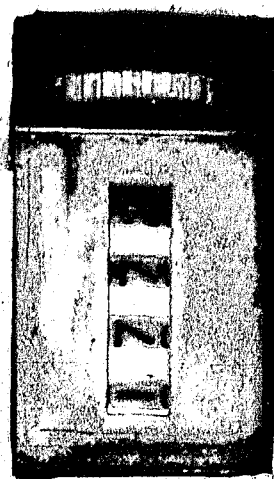
THE COURT: There is no charge of grand larceny in the first degree in this case.

MR. CAMPBELL: I understood so. Is it second degree?

THE COURT: Yes.

MR. CAMPBELL: Then I got the two cases mixed up. As to the value of the goods there is no proof of any except as to this one article. I know that the District Attorney is a very shrewd man. I know that he will say that it is a very easy matter to take a witness and have her swear to something concocted beforehand. I did not imagine that he will say that has been done here, but he might say that it would be an easy thing to do. He may attempt to have that injected into the case.

But I want to have you understand that the woman was withdrawn from the court room, and that she withstood a very strenuous and acute cross ex-



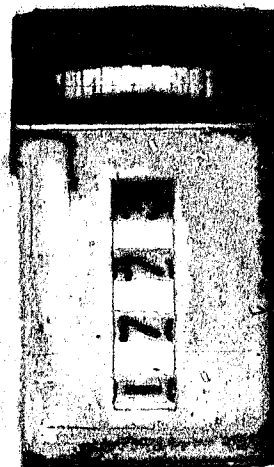
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amination; that she stood firm and exact about the matters ranging over a wide scope and was not shaken in any particle, and I want to say, gentlemen, that it is my earnest conviction that, although this woman (indicating defendant) conscientiously or unconscientiously, or for whatever reason it may have been, admitted some misdeeds in some cases, this seems to be to be a very strong, positive case for acquittal of this particular matter.

There is the question of identity. There is the question of the credibility of witnesses; and in any event you have the evidence of two against two, two on the prosecuting side, and two for the defense; one direct and positive evidence and the other circumstantial evidence only; and I ask you if there is not a very reasonable doubt in this case.

Do not allow the District Attorney to confuse you-- and this is my last point-- about any question of "Why should they try to prove that she could not have done it, and that she was not there?"

Because I have a right to make use of any legal means and present this case according to law.



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You are to decide whether or not there is any reasonable doubt in this case that should prevent you from finding for the prosecution; and we claim on both points-- on the first point we claim that she was not there, and on the second point we claim that there is a reasonable doubt as to the circumstantial evidence; and if that be true I ask at your hands what is due to any citizen, good or bad-- for there always is an opportunity, no matter what crime has been committed, for people to have the benefit of mercy or to have the benefit of justice and to have the feeling and the thought that justice has been done them, enter into their minds and souls and help them to do better; while, if you put the heel of the law or anything else upon them in such a way that they feel that justice has not been done them, it hardens them all the more and sends them farther from repentance than the other course.

People's counsel summing up:

MR. TOWNSEND: With the permission of the court, and you, gentlemen of the jury:

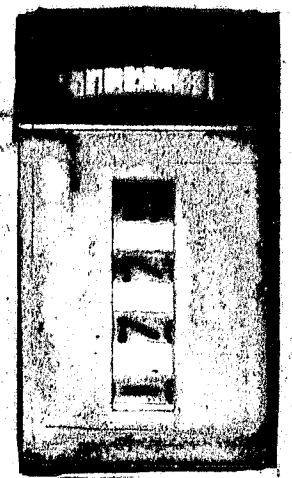
The defendant is charged as you know with the crime of grand larceny in the first degree; also there is a count for grand larceny in the second



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degree. It will be necessary for us to satisfy you, gentlemen, beyond a reasonable doubt, in order to obtain or ask for a conviction of grand larceny in the first degree, that this property was feloniously taken, and in the second instance that it was of the value of \$500 or more; and in order to ask for a conviction upon the testimony of grand larceny in the second degree we will have to satisfy you that this defendant feloniously took the property and that it was of the value of more than \$25.

Now we have introduced on the part of the People two women that have testified to you that this defendant came into their employ on or about the 2nd day of April, 1903, and remained with them constantly until the 7th day of April, 1903. That on the 7th day of April, in the afternoon of that day, they had certain property in their possession. That is, they had the care and custody of it. It need not have been actually in their possession. In other words, at the time, in order to satisfy the law; but it was in their possession; they had the control of it; it was in their house and on their bureau, they say; and one of the witnesses testified that one of the articles that was there



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was of the value of more than \$25.

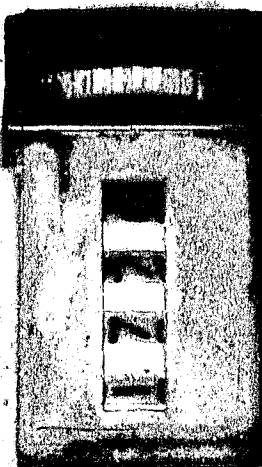
In addition to her testimony we offered a witness who testified that he had sold this woman, the complainant, one of the pieces of property some six months before. That he was familiar with the values of such property at that time, and that it was of more than the value of \$25.

Now there is no dispute on the part of the defense contradicting in any way or attacking the value of the property. The evidence before you therefore is uncontradicted as to the value of a portion of the property being more than \$25.

The next question is, and the serious question of course involved in all these cases is, Is this defendant at the bar the person who feloniously took this property on the day in question?

We have presented two witnesses of distinction, whose reputation for veracity and honesty has not been impeached in any way, not been attacked. They have taken their solemn oath and told you that this defendant was in their employ for a period of time, six or seven days, only two months ago.

Now the question of identification comes right up here. Are they right? Is that the truth? Is



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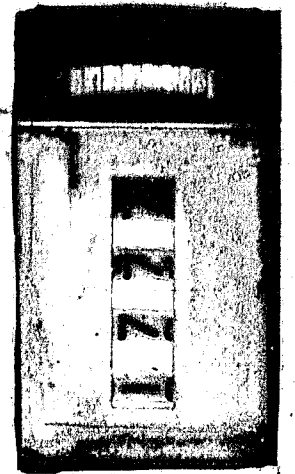
that the fact? Was this woman in their employ at that time? They have sworn to it. Are they correct?

We claim on the part of the People that they had every opportunity for becoming acquainted with the form and features of this defendant. She was taken into their household in a capacity that suggested to them that she must be an honest, straightforward woman. Naturally they would observe carefully her form and her features. Do you believe that a woman could work in your house two months ago for six or seven days, as these complainants testify this woman did, and you not remember her features and her face two months afterwards?

Do you believe that possible, that any person of sane mind and of fair judgment would not be able to tell two months afterwards whether or not this person was employed by them in the manner in which they claim?

It comes right down to a question that each man must determine for himself, how far the features and form and voice of this woman made an impression upon these complainants in this case.

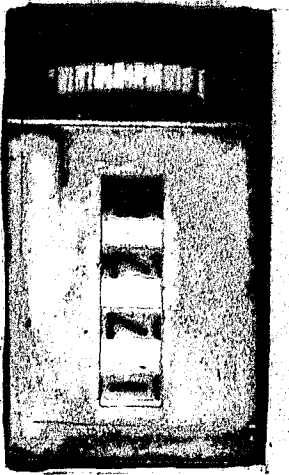
Now as I say the identification therefore is not an idle identification. The opportunity of



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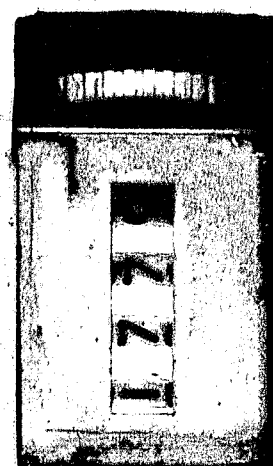
identifying and becoming acquainted with her was not only upon one occasion. It was not as though they simply passed her in the street and maybe had been introduced to her, or that they had met her for just a moment. But, you see they had entered into a contract with her. They had taken her into their household. They had put her in a position where she was to look after their property. And they realized also-- although it may not have occurred to them just at that time, yet instinctively they knew that the property that they had was property of value, and therefore they could not afford to have with them any person concerning whom there was any question as to honesty.

Therefore I say that all these things entered into their minds at the time they employed this woman, and also during the time that they were in daily association with her. We submit as a matter of common knowledge and judgment among men and among people that that opportunity that was given to these women to observe her and to become acquainted with her was such that they could not forget in that short time one who had been with them in the manner in which she had.



Now they say that upon this same question this property was placed upon the bureau in one of their rooms and that at this time this defendant was the only one except themselves that had access and was there practically in that room at that time or in the adjoining room, in those premises; and they say that there was occasion for both of them to be away from that room after having placed the property in there in the manner in which they have described, for a few minutes; that they were in a position to be able to swear to you that nobody entered the front door, because that door was locked, and they tell you that nobody did enter those rooms other than the defendant in this case. Miss Driscoll says that about five minutes after she had left the property in the manner in which she has described, she returned to this room and she found that her property was gone, and likewise this defendant.

Now they claim that this defendant's week was not up or month was not up; that they had had no words with her; that they were still owing her some wages for services rendered, and that she had no reason to leave other than the reason that we claim



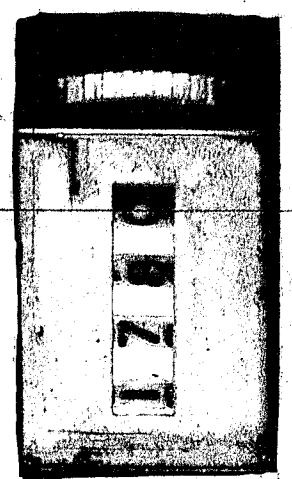
that she had to leave, and that was to flee from justice.

They claim that from that moment of time, having seen her just a few minutes before they placed the property there, they never saw her again until a very recent time, and then she was locked up in the City Prison.

Now the question comes to you, "Did this woman take this property?" We claim that she had exclusive opportunity for doing it. We claim that, in addition to that fact, she left; that she left without any reason that we can give, other than that she had stolen it. Is that a reasonable proposition to submit to you?

Where are you going to go to find the person who took this property unless it was the defendant? Are you going out into this great country, with millions of people, and hunt for some other person, who does not appear in this case in any way? Is that the way we interpret propositions and questions that are submitted to us in our daily business lives?

Do we not take facts as they are presented to us and determine them upon the facts that are sworn to, or that are presented by reliable witnesses,



or do we go out and speculate and guess and say
"Oh, it might have been somebody else!"

That I claim, gentlemen, you have no right
to do. Then the doubt becomes a speculative doubt.
It does not become what the law says it should
be, "beyond a reasonable doubt."

Now in these cases and in criminal cases generally we are not able to reduce the cases to a mathematical certainty. We are not asked to do that. We are not required to do it. We are required simply to present a matter in such a way and in such a form as all other questions, especially the serious questions of life, come to you; and you are asked to determine them in that manner, and in that way, with the same judgment that you would apply in your ordinary business lives, in determining serious questions that are presented.

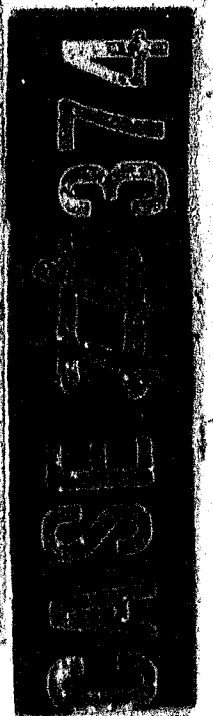
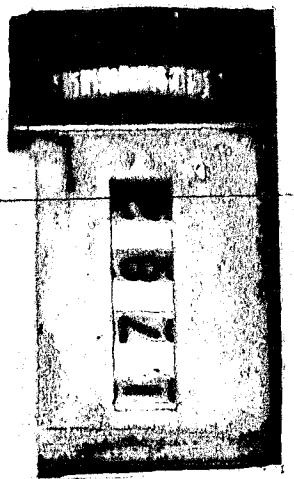
Now she takes the stand. It is only within the last fifteen years that the Legislature permitted a person charged with a crime to testify in his own behalf. Why? Because the Legislature believed that a person charged with an offense had such a strong motive and so many reasons and such good reasons to tell an untruth about it, that they

did not consider that their testimony would be of any value. But the law, looking more mercifully towards the interests of defendants, has been changed with reference to that, and they have permitted a defendant to take the stand and testify, as any other witness, submit themselves to the same examination and cross examination that is permitted in the case of any ordinary witness.

Now she takes the stand, and in the first instance the People, by way of impeaching her veracity, and her honesty, offer the fact that she has been twice before convicted of an offense.

Now we do not offer that for the purpose of asking you to believe that, because this defendant has before been convicted of a crime, that she therefore is guilty of this crime. We do it for the purpose-- which we have a right to do-- of attacking her veracity, of impeaching her testimony as a witness, upon the theory that we claim that an ex-convict, that one who is guilty, has been found guilty in the past of stealing and of breaking our law, ^{as} is not worthy of belief as one who comes before you with an unimpeached record.

She denies that she ever was in the employ of



these complainants. If she had denied simply that she stole this property there might be some reason, some justice, in her testimony.

But she takes that witness stand and swears before her God that she never worked for Miss Driscoll and her sister two months ago, but that Miss Driscoll and her sister not only are wrong, but have testified falsely. That is the situation in which she comes before you.

Do you believe it, that one who is an ex-convict, one who has admitted that she has another name than the one that was given her at her birth, one that has gone back upon the name that she was baptized in, and that she grew up into childhood and into womanhood with-- I ask you, do you believe the testimony of such a person as against that of the two reputable ladies who have appeared here?

Let me put the question to you. Has there been an occasion in the lives of you gentlemen, or an occasion in the life of any honest man, to change his name?

An alias! Why, gentlemen, that of itself must suggest to you gentlemen and business men and men of intelligence enough to condemn a person upon those

facts alone. Why the change of her name? Is it an honest change? Is it done for honest purposes, or is it done to deceive and escape from a wrongdoing?

Those are questions, those are thoughts and facts that you have a right to consider and that you should consider when you weigh up her testimony in this case.

And then we are offered another defense, that she not only did not take this property, but that she could not have taken the property because she was not there. She has offered what in law we term an alibi; that she was elsewhere at the time. Well, that is a good defense if honestly proven. We all know that that is a defense that every honest person is entitled to, if it is an honest defense; and you should acquit her if you believe it to be true.

If she was somewhere else at the time that these complainants claim that she was in their household and took their property, then she could not have been the person who took that property in the manner described.

But is it an honest defense? She has introduced a woman by the name of Green and she has given

us her reasons for knowing and she says that the reason that she was at the place claimed on this day was because she was with her at the time; and she has given us a lot of baby talk on that subject.

Now, gentlemen, you know in our experience in life that it is wonderfully hard to go back two months and to have your attention suddenly called to the fact that you are asked what you did upon a certain date, and for you to be able to swear that it was a Tuesday and that it was on the 7th day of April and that it was in this year; because the fact that this woman may have been at Mrs. Green's house sometime about that time I do not question particularly; but the fact that this woman was there upon the date in question that Mrs. Green swears to and which this woman swears to I do question, because Mrs. Green has not given us any reason to satisfy intelligent men that on that day anything happened by which that day itself, being a Tuesday and being the 7th day of April, should of itself have been impressed upon her mind.

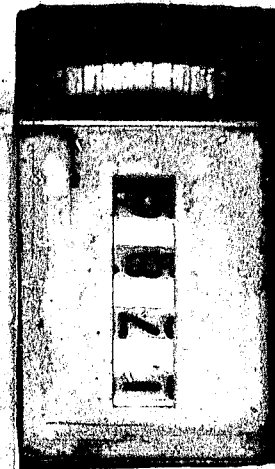
You catch my idea-- that the fact that she was there at some time may be true, and she can swear to it, maybe two or three months previous to the



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day itself; but as to what day it was she says that nothing happened to fix it upon her mind.

Now in this way: I can go back over twenty years. If you ask me the day of the date of my father's death for instance, I could tell you the day of the week, the day of the month, and the hour it occurred. Why? Because while that fact was fastened, while that event took place, my attention was riveted to the fact that it was on a Tuesday and that it was at the hour of the evening and that it was a certain day of the year, because that is an important fact in that circumstance. But you ask me about some other person calling about that time, maybe some prominent gentleman calling, and I can recollect that he called upon us, but as to the day and the hour and the year that he called, or that he visited us, that fact was not riveted or brought to my attention by the mere fact of his calling. It had nothing to do with it. The fact that the gentleman called there is all that I can remember. But he did not call upon a day or for a purpose that called my attention to the day of the week or to the day of the month or the day of the year. That had nothing to do with it; it was immaterial-- entirely



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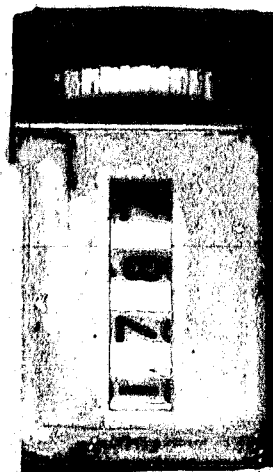
immaterial.

Therefore I claim that, in order to fix a day and a date and the time of day upon one's memory, it must be fixed indelibly by some circumstance which happens at the time, that calls your attention to the importance of the day and the hour and the year.

We can go back and say "Why, I recollect that I went down to Long Branch two weeks ago, but I can't tell whether it was the 7th of June or the 10th of June, or I can't tell whether it was a Tuesday or a Wednesday." That fact did not make any impression. The only fact that made an impression was going to the beach. But the day or the date or the hour, they had nothing to do with it; only the fact of going you remember.

Therefore Mrs. Green may be right-- give her that justice. She may be right that this woman did call. But suppose this woman did call on the 8th-- which we believe she did-- she could have talked about her baby just as well on the 8th.

She said that she sewed all that day. She could have sewed for her on the 8th as well as the 7th. So that nothing happened in Mrs. Green's house



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to call her attention to the fact that it was the 7th and that it was Tuesday. There was no writing done and there was no necessity of looking at the day of the week or the day of the month; merely the fact that that woman was in her house on that day. That is in my judgment the way we should look at the question of alibi and the testimony of Mrs. Green.

I asked her, "How do you know it was a Tuesday?" "Well, I know it was a Tuesday." "Well, how do you know it?" "Because the next day was Wednesday."

What does that amount to? It amounts to nothing.

As against that you have the sworn, positive testimony of these ladies, whose thoughts had been upon this question, who knew just when they were robbed. It was a matter of importance to them; that day came in again again, that hour came in again. The fact that they had lost this jewelry made an impression upon them. The telephoning to the police and the sounding of an alarm and the loss of the property were events in their lives which made an impression on them, and the day and the date.

Therefore I say, as reasonable and intelligent people, the testimony of these women as to the fact that this woman (indicating defendant) was there three days, that they said she was there on the 7th day of April, and that she disappeared in the manner in which they said she did, should be taken against the testimony of this woman (indicating defendant), an ex-convict with an alias, and with other names, and that we should have at your hands a verdict of grand larceny in the second degree.



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THE PEOPLE
vs.
MARY L. WRIGHT.

June 26th, 1903.

THE COURT'S CHARGE.

McMAHON, J.:

Gentlemen of the jury:

I will detain you but a few minutes before you will be at liberty to retire for the consideration of this case.

I notice that the District Attorney properly abandons the count of grand larceny in the first degree, because of the failure of proof as to the value of the property alleged to have been stolen. But there is proof of the value of one article, which would, if it was feloniously taken under the circumstances claimed by the State, constitute grand larceny in the second degree.

Now, if you are satisfied from the testimony produced by the People that this property, amounting to over \$25 in value, was feloniously and unlawfully taken by this defendant for the purpose of converting it to ~~your~~ her own use, your verdict must naturally be, Guilty of grand larceny in the second degree.

The defense have offered proof, first, of an alibi. That is the completest defense, when properly established, that is known to the law, because it goes without saying that when a person is at a considerable distance from where some act is committed, at the time of its commission, he could not have committed that act.

Then, secondly, the other defense is that, if she was there and this property was taken at that particular time, and from that particular place, and from those particular owners, she did not do it, and that the People could not establish the fact that she did it because there was opportunity for someone else to do it.

Now you have the testimony of the two complainants in this case, that this property disappeared at a certain particular hour, which they fix within a few minutes; that this defendant, who had been in their employ for several days, was in the apartment where the property was laid out; that she had been engaged in their service, and that ~~was~~ within one, two or three minutes, up to five, while Miss Driscoll was engaged at the telephone to which she was called, she being absent not more than five minutes, she says, from the dressing table where this jewelry had been laid out, she returned and it had disappeared.

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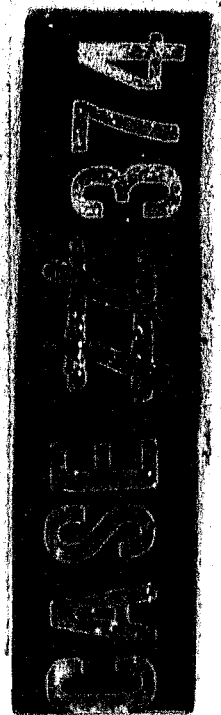
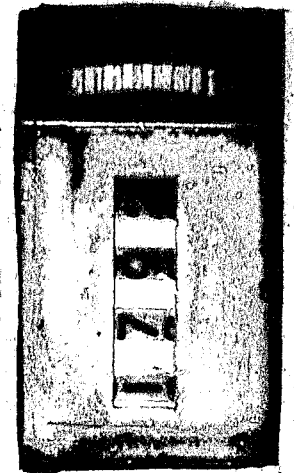
She notified her sister, Mrs. Forrest, who was in the bath room, and they at once made search, and naturally, for the servant, who was the only other person, according to their undisputed testimony, that was in those apartments at that time.

The servant also was missing, and they never saw her afterwards until they found this woman in the Tombs and identified her as the person who was their servant in those apartments, so employed by them, and who disappeared at this time with some money still due her, leaving all her clothing behind her except her hat, and she never came back.

Now when a crime is committed and the person who is accused of that crime takes flight immediately after the commission of the crime, it suggests an inference and raises a presumption against such person, which the person is bound to overthrow by explanation.

The defendant here took the stand in her own behalf, but I do not remember that she offered any explanation of her departure, other than the fact that she was not the woman, and was not there and had nothing to do with it.

Now then it comes down to one fact in the case for you to determine, and that determines all others:



Is this the woman?

On the question of identification these two ladies swear most positively that when they came to the Tombs, after they had learned of her arrest, brought there by the detective officer, in fact, they each went in separately, but at once identified her. They give you the reason why they identified her: First, her appearance, features, size, voice, and everything else. Now if they are mistaken in their identification, and if you have a reasonable doubt on that subject, or on any other material or essential facts of the case, the defendant is entitled to the benefit of that doubt and to an acquittal.

If, however, you believe from the testimony given that this defendant was the person employed by those ladies, and that she disappeared at the time this property was taken and on her subsequent arrest was properly identified, then of course you need not regard the testimony as to the alibi.

On the other hand, if you are satisfied from the testimony that she was at another place on that particular day, and at that particular hour, and at that particular minute-- if that has been established by even a preponderance of evidence, she is entitled to



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an acquittal.

As I said before, an alibi is the completest defense known to the law.

The People of course are obliged to make out their case beyond a reasonable doubt. If they have failed to do so the defendant in every case is entitled to the benefit of that doubt and to an acquittal; and where there is a conflict of evidence in any case, as there is in all similar cases, it is for the jury to determine which of the witnesses tells the truth; and in coming to a conclusion upon that point they have the right to consider the antecedents of each of the witnesses, the motives which they may have for swearing falsely, and the animus which may influence them.

It is needless to remind you that ^{when} a defendant, ~~where~~ charged with so serious a crime, as one known to the law as a felony, is put upon the stand, that she has a very great interest in the result of your deliberations. It is for you to ask yourselves how far that may affect her testimony. And you have a right to ask yourselves, as to persons of undoubted character and standing, What interest could they have in selecting one particular person out of the millions of people in this city, to charge her with so serious a crime and to go



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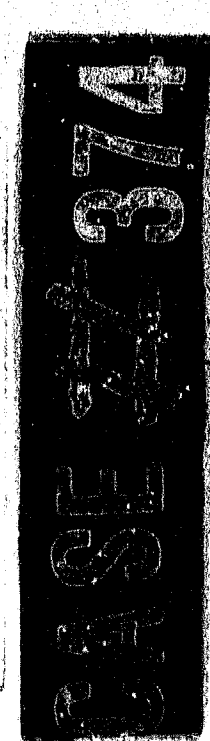
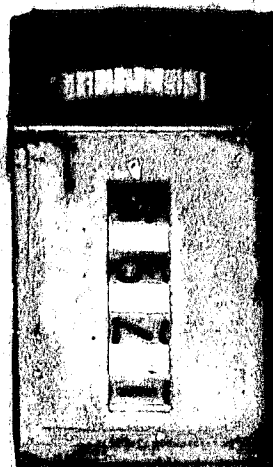
before the Grand Jury, obtain her indictment, and appear here, at inconvenience undoubtedly to themselves, to testify?

Those are questions that you have a right to consider in determining the veracity of witnesses; and if you are to set aside that any witnesses called on either side has wilfully and deliberately sworn falsely in any one particular, you are at liberty to disregard the entire testimony given by such witnesses.

If therefore, gentlemen, you find that this defendant is the person who was engaged by these ladies as their servant and who disappeared on this occasion without returning or furnishing any explanation for her disappearance, you will have a right to infer that she was the person who took this property, unless there is some testimony to show that it might have been taken by another person.

Now all the testimony that you have on this point is the testimony of two witnesses, called by the People, that there was no other person present at that time and place except themselves and this defendant. That is the testimony.

Your oath, gentlemen, is to decide the case according to the testimony, and a surmise that some other



person might have come in by the window or chimney is not to be considered at all, unless there is some testimony to sustain the suggestion.

The case is in your hands, gentlemen.

MR. CAMPBELL: If your Honor please, I will ask you to charge one or two or three things. First, that the defendant is presumed to be innocent until proven to be guilty beyond a reasonable doubt; and also that your Honor make an addition to your charge of the words "no matter whether she was ever proved to have been or pleaded guilty to any other crime".

THE COURT: I certainly charge that, for the defendant is surrounded by the presumption of innocence-- every defendant is-- until the verdict of the jury removes it; and the fact that she has been convicted of previous crime has nothing to do with her guilt or innocence of this one for which you are trying her, but it is to be considered in connection with her veracity as a witness on the stand.

MR. CAMPBELL: And also, in order to justify the inference of guilt, the inculpatory facts must be incompatible of explanation upon any other reasonable hypothesis than that of the defendant's guilt.

THE COURT: That I would charge in a case where

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there was only circumstantial evidence, that the circumstances must be such as to be incompatible with any other reasonable hypothesis; but it is not applicable to a case where there is, as in this case, both circumstantial and direct evidence.

MR. CAMPBELL: Exception. I ask your Honor to charge that, when the evidence against the defendant is made up wholly of a chain of circumstances, and there is a reasonable doubt as to one of the facts essential to establish guilt, it is the duty of the jury to acquit.

THE COURT: The first part of it I will not charge, as to the chain of circumstances. All evidence is based upon a chain of circumstances. But I will charge that the evidence in this case is both circumstantial and direct. Now the last clause?

MR. CAMPBELL: And if there is reasonable doubt as to one of the facts essential to establish guilt, it is the duty of the jury to acquit.

THE COURT: I have charged that practically, but I will charge it again. If there is a reasonable doubt upon any of the circumstances of the crime, gentlemen, the defendant is entitled to the benefit of it. In other words, if there is a reasonable doubt as to that property having been taken, that is one of the essential elements of the crime. If there is a reasonable

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essential elements of the crime. If there is a reasonable doubt on the point of whether some other person took it, that is an essential element of the crime. If there is a reasonable doubt that the defendant took it, that is an essential element of the crime; and if a reasonable doubt exists as to any other essential element of the crime the defendant is entitled to the benefit of it.

MR. CAMPBELL: Will your Honor charge that, if there is a reasonable doubt as to any single fact necessary to establish the defendant's guilt--

THE COURT: I have just charged it as clearly as possible.

MR. CAMPBELL: --in the chain of circumstances made up of both circumstantial and direct evidence--

THE COURT: Oh, I have charged enough about reasonable doubt.

MR. CAMPBELL: That every circumstance material in a case must be proved beyond a rational doubt or it is the duty of the jury to acquit.

THE COURT: I have charged that.

The jury then at 12:13 p. m. retired.

The jury returned to court at 3:38 p. m.

THE COURT: Your question, gentlemen, presented through
your foreman, is "The jury desires to know whether



other colored women were in line at the time of identification?"

THE FOREMAN: Yes, sir.

THE COURT: In response to that all I can do is to read to you all that appears in the minutes upon that subject. The testimony of Miss Driscoll was:

"Q I want you to be as fair to justice as you are to yourself. I want to question you a little definitely as to whether you might perhaps be mistaken as to this person (indicating defendant). There were several other people alongside of her at the time of the alleged identification. Could you readily and in an instant identify her? A I did, in the Tombs. I picked her out from several other people. Q Did you see anybody in there that looked anything like her? A No. I could remember her wherever I saw her. Q What characteristics are there about her that leads you to say you could identify her wherever you saw her? A I remember her appearance and characteristics very distinctly; and then her face. She has a very unusual face. Q Did she talk to you in the Tombs? A She said she had never seen me before, and also spoke to the detective who took me there. Q Was that said loud enough for you to hear? A Yes."

Now Mrs. Forrest's testimony was as follows:

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