

START

16/5

CASE

1015

1015

1015

-: I N D E X :-

	Direct.	Cross.	Re-D.	Re-C.
H. Nelson McLernan	2	18	27	
Hugh McLernan	28	35		
Emma Jakob	36	50		
Joseph H. Fink	51	59	61	62
Albert Thomas	67	74		
Farsfield H. Lavelle	77	90		

CASE 21615

INDEX

	Direct.	Gross.	Re-D.	Re-C.
Sarsfield H. Lavelle		97	107	116
William H. Abbott	129	136	146	147
Albert E. Schwartz	149	152		

CASE 271615

-: I N D E X :-

	Direct.	Cross.	Re-D.	Re-C.
Frank L. Dowling	158.			
Thomas F. Farley	159	159		
Andrew L. Mollenelli	242	244		
Paul S. Bolger	251			
Edward Cody	254			
John J. Taggart	254	255		
Hugh McLernan, reold.,	257			
Emma Jakob, reold.,	258	260		
Albert Thomas, reold.,	262	265		
William H. Abbott, Jr., reold.	267			

1591
CASE 1615

SESSIONS OF THE PEACE,
CITY AND COUNTY OF NEW YORK. PART IV.

THE PEOPLE

: Before:

-vs-

HON. JOSEPH F. MULQUENN, J.,

THOMAS F. FARLEY.

and a Jury.

1791

Tried, New York, October 16th, 1912.

Indicted for Violation of Section 1344 F of New York
Charter.

Indictment filed May 24th, 1912.

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

ASSISTANT DISTRICT ATTORNEY ROBERT W. MANLEY, for the
People.

MESSRS. CHARLES L. CRAIG and ANDREW R. McLEAN, for the
Defense.

TRANSCRIPT OF STENOGRAPHER'S MINUTES.

Frank S. Beard,
Official Stenographer.

1912

CASE 77 1615

THE PEOPLE'S TESTIMONY.

H. N. E L S O N M c L E R N A N, of 143 West 188th Street,
a witness called on behalf of the People, being duly
sworn, testified as follows:

MR. CRAIG: I move that the other witnesses for
the prosecution be excluded from the courtroom while
this witness is testifying.

THE COURT: It has already been done.

MR. MANLEY: And that applies to the
defendant's witnesses also; does it not?

THE COURT: Yes, to all the witnesses.

DIRECT EXAMINATION BY MR. MANLEY:

Q Mr. McLernan, what is your business? A Real estate
and insurance.

Q And how long have you been in that business? A I've
had my own office for three years. I was employed before.

Q And where is your place of business? A 128 West
Fordham Road, Bronx.

Q Now, on the 26th day of April of this year and for
some time prior thereto, had you been agent in behalf of the
owner of the premises 540 East 96th Street?

MR. CRAIG: One moment. I object to that, as
assuming a fact not proven, the ownership of the
building; and also upon the ground that it is leading,
and as involving a legal conclusion as to whether this man

was or was not the agent of those premises.

MR. MANLEY: Well, he ought to be able to tell whether he is the agent or not.

MR. CRAIG: But you should also ask him as to the ownership of the place, first.

MR. MANLEY: Well, I will withdraw that part of the question.

BY MR. MANLEY:

Q Were you the agent of the premises?

MR. CRAIG: And I object to that, on the same grounds.

THE COURT: Objection overruled.

MR. CRAIG: Exception.

BY THE COURT:

Q Were you in charge of the premises 340 East 96th Street? A Yes, sir.

Q Do you own that building? A No, sir, I don't.

Q But you ~~were~~ were in charge of that building on that date? A Yes, sir.

BY MR. MANLEY:

Q And in what capacity were you in charge of the building? A As agent.

MR. CRAIG: I object to that on the same grounds.

THE COURT: Overruled.

MR. CRAIG: Exception.

BY MR. MANLEY:

Q Well, who, at that time ----

BY THE COURT:

Q Well, you can state what your duties were in connection with that building. A I was appointed to put the apartments in rentable condition, and then rent them, and then with a view of selling them. And the building then had two tenants, out of ten apartments.

Q When was that? A February, 1912. The owner took back the ownership of the building at that time.

MR. CRAIG: I object to that last statement as a volunteered statement, which is immaterial, irrelevant and incompetent.

MR. MANLEY: I consent to have it stricken out.

THE COURT: Strike it out.

BY THE COURT:

Q You were not the owner of the building; were you?"

A No, sir.

BY MR. MANLEY:

Q And did you act as the agent of that building between February and the 26th of April? A Yes, sir.

Q Now, at that time who was the owner of the premises, if you know?

MR. CRAIG: I object to that, as not the proper method of proving ownership, and as immaterial, irrelevant

and incompetent.

BY THE COURT:

Q Well, who employed you as the agent of the building?

A The owner.

THE COURT: Strike that out.

BY THE COURT:

Q What was the name of the person who employed you?

A Claude S. Stevens.

BY MR. MANLEY:

Q And did you act under the direction of Claude S. Stevens in regard to those premises?

MR. CRAIG: Objected to.

THE COURT: Allowed.

MR. CRAIG: Exception.

A I did.

BY MR. MANLEY:

Q And, as far as you know, was he the owner of the premises?

MR. CRAIG: I object to that on the same grounds.

THE COURT: Objection sustained.

BY MR. MANLEY:

Q Now, what kind of a building were those premises at that time? A The building is a five story brick building, 28 by 78, and containing four five room apartments, and baths, and four four room apartments and baths, and two stores.

Q Was it a tenement house? A It was a tenement house.

6

MR. CRAIG: Now, I object to that, if your Honor please. He answered before I could get on my feet. I object to his statement as to whether this is a tenement house or not.

MR. MANLEY: Why, don't you concede that it is a tenement house?

MR. CRAIG: I don't know whether it is or not, and I want to hear the witness testify to it, if he can.

THE COURT: Objection sustained. Strike out the answer.

BY MR. MANLEY:

Q Well, describe this house.

THE COURT: He has described it.

BY MR. MANLEY:

Q Had you fully described the house? A Yes, sir.

BY THE COURT:

Q How many stories was it? A Five stories.

Q And how were those stories laid out? A On the ground floor there were two stores, occupying the entire ground floor, with the exception of the hallway, and above that, on the next floor, was a four room apartment and a five room apartment.

Q Well, what kind of rooms were they? A I don't understand the question.

Q You do not? And you are an agent? A Kitchen, dining

room, parlor, and bedroom in the rear.

Q. Now, then, describe the kitchen? A. It contained a range, and a hot water boiler and tubs.

Q. And that description applies to all the floors, does it? A. Yes, sir.

Q. There were kitchens on all the floors, the upper floors? A. Yes, sir.

Q. How many? A. Eight kitchens.

Q. One for each apartment? A. Yes, sir, one for each apartment.

BY MR. MANLEY:

Q. Now, during this time, February, March, and April, was there a janitor or janitress on the premises? A. There was.

Q. And who was that? A. Mrs. Jakob.

Q. And did she live in the premises? A. Yes, sir.

BY THE COURT:

Q. Well, in what part of the premises? A. In February, on the fourth floor, rear.

Q. She occupied one of the apartments there? A. Yes, sir.

Q. And were any of the other apartments occupied?

A. There was one other apartment occupied at the time.

Q. Do you know that floor that was on? A. Well, I think it was the third floor.

BY MR. MANLEY:

Q Now, did you at any time during the period we have spoken of, meet the defendant, Thomas F. Farley? A I did.

Q Do you recall about the date when you first met him? A On or about the 10th of April, 1912.

Q Now, just answer the question that I am about to put to you by yes or no. Had your attention been called to this defendant prior to that time?

MR. CRAIG: I object to that as hearsay and incompetent, and not binding on the defendant.

THE COURT: Overruled.

MR. CRAIG: Exception.

A It had.

BY MR. MANLEY:

Q By whom? A By the janitress of the building.

Q Mrs. Jakob? A Yes, sir.

MR. CRAIG: I object to that and move to strike it out.

THE COURT: Well, that I will strike out, the last answer I will strike out. By whom it was called is not material.

BY MR. MANLEY:

Q Well, had you had any talks with Mrs. Jakob before meeting the defendant? Yes or no. A Yes.

Q Now, you say you first met the defendant on or about

51015

the 10th day of April. Where was it you met him? A I met him on the 4th floor of the building, in the front part of the building.

BY THE COURT:

Q You met him in an apartment of this building?

A Yes, sir.

BY MR. MANLEY:

Q Did you have a conversation with him? A I did.

Q Now, before that time, Mr. McLernan, were there any repairs of any kind made, had there been any repairs of any kind going on in that building? A Yes, sir.

Q When were those repairs made?

MR. CRAIG: I object to that, unless he shows what repairs they were. It may have been a complete reconstruction of the building.

THE COURT: Overruled.

MR. CRAIG: Exception.

BY THE COURT:

Q When did the repairs begin? A In February.

BY MR. MANLEY:

Q And for how long did they continue, that is, when were they completed? A For at least six weeks they continued.

Q Now, what were the repairs that you speak of? A The repairs consisted of taking out the old toilets in every

bathroom, and putting in new ones, and putting in new floors and new tubs, and new pipes; and putting hot water plants in the cellar, and a steam plant in the cellar; repainting and decorating; patching the cornice, and patching the roof; cleaning out the cellar, cementing it, and repairing the drains; and new hardware throughout the building, new gas fixtures. One or two new coal ranges in the apartments. New or wash tubs in the apartments and new faucets ~~and~~ fixtures of that character where they needed replacing. New drying frames on the roof. The roof chimneys repaired. That's all I can recall at the present moment. Q Do you recall anything about any toilets on the ground floor? A In the corner shop there had been a urinal there only, and I put in a toilet.

BY THE COURT:

Q What do you mean by a toilet? A Well, a regular seat arrangement.

Q A water closet? A Yes, sir.

BY MR. MANLY:

Q That is, a basin? A Yes, sir.

BY THE COURT:

Q And a bowl? A Yes, sir.

Q A regular water closet? A Yes, sir.

BY MR. MANLY:

Q Now, can you say anything else as to the urinal that you replaced by a toilet? What part of the building

CASE 1615

was it in? A In the rear of the corner store on the ground floor.

Q Was ~~it~~ that inside of the premises themselves?

A Yes, sir.

Q Inside of the store? A Yes, sir.

Q Was that cut off in any way from the store itself by any partitions? A I had partitions built around it.

Q Had there been partitions at that point before?

A I don't recall.

Q But you had partitions made around that toilet, within the store; is that so? A Yes, sir.

Q Were those new partitions that were made there?

A Yes, sir.

Q Now, had this work all been finished before you had this talk with the defendant Farley in this house, on or about the 10th of April? A Yes, sir.

Q Now, tell us all the conversation you had with the defendant in this house, in the City and County of New York, on or about the 10th of April last? A Mr. Farley asked if I was the agent of the premises, and I said yes, and he said, "I want to talk to you. Come downstairs." I walked down --- I went down to the vestibule with him, and there I asked, "What have you done with those violations on this building, the old ones. We made an application to have them dismissed."

1615
CASE 1615

Q. What old violations did you speak of? A. Old violations that were still existing.

MR. CRAIG: And I object to that. I think we are entitled to have that evidence come in properly.

THE COURT: Overruled.

MR. CRAIG: Exception.

BY MR. MANLEY:

Q. Now, go on and state the conversation. A. And he said, "Why, those violations have been dismissed down below, I've taken care of those." And I said, "Well, that's good, I'm glad to hear it. It's about time, and they have been running long enough."

And he says, "Well, there is another one that I may have to put on. You fellows have gone and changed all those bath rooms and changed the fixtures, and put partitions around a toilet, and that shouldn't be done without a plan to cover it, and is a violation," and I said, "I don't feel that way about it, and I don't know whether it is so or not."

And he said, "Now, I tell you. Who has got charge of this work here?" And I said, "I have, subject to the owner's orders."

And he said, "Well, I am not going to put this violation on for a few days, I will leave it open. You see the owner and I think we can fix it up."

And so I said, "Well, all right, Chief. I'll do that. I'll see the owner in a few days."

And then, prior to that, we went upstairs to a bathroom on the first floor, and he showed me what he meant by the work we had done there, which would have required a plan. He pointed out the platforms that I had built there, and tried to show me what he meant. That was in the bathroom on the first floor.

Q. Go ahead. A. That's all the conversation I recall now as having had with him at the time.

Q. Do you remember his saying anything to you about those platforms? A. Oh, yes. He said that those platforms would have to be all torn out, and that work exposed, and the fixtures uncoupled, so that the Department could make an inspection of them. And he said, "Of course, you understand that this will cost you a few hundred dollars, anyway." He mentioned the number of hundreds, but I can't recall it now.

Q. And do you recall anything else that was said on that occasion? A. (No answer)

Q. And what was it that he referred to when he said it would cost you a few hundred dollars? A. These new toilets, and the platforms and the connections that had been made. He said that they would have to be ripped open, and exposed, so that the Department could inspect them, and the work done

all over again.

Q Did he say how long he would hold this violation?

A A few days.

Q And what did you say to him about seeing the owner?

A I said that I would see the owner and see him again in a few days.

Q Now, did you ever afterwards, prior to the arrest of the defendant, see him? A No, not after that.

Q What is the business of your father, Mr. McLernan?

A My father is a builder.

Q And what is his name? A Hugh McLernan.

Q Now, did he, some time after the 10th of April, do any work at your direction on this building? A Yes, he patched the corner store up.

Q The store on the ground floor? A Yes, sir.

Q Can you tell me when he went down to the premises to do that job? A It was after the 10th of April.

Q Can you recall more definitely the time than that?

A On Monday of the week beginning on the ---- the week in which Friday was the 26th.

Q Well, do I understand then that you refer to the week where Friday was the 26th? A Yes, sir.

MR. HANNY: Then can I agree with you as to the date of that Monday, counsel?

MR. CRAIG: Well, I will agree with you that it was

the 22nd, if you say so, but I don't agree with you that the witness was right as to the date.

BY MR. MANLEY:

Q. Now, between the time that you had the conversation with the defendant and the time your father did this work, did you have any conversation with Mrs. Jakob, the janitress?

MR. CRAIG: I object to that as immaterial, irrelevant and incompetent, and not binding on the defendant.

THE COURT: Overruled.

MR. CRAIG: Exception.

A. Yes, I did.

BY MR. MANLEY:

Q. Now, when your father had gone down there, on the first day, we will say, of the week of the 22nd, that being Monday, to do those repairs, did you have any talk with him? Just yes or no.

MR. CRAIG: Objected to, on the same grounds as to the prior question.

THE COURT: Overruled.

MR. CRAIG: Exception.

A. Yes.

BY MR. MANLEY:

Q. Did your father return after the first day, did he return to the premises on Tuesday of the same week?

MR. CRAIG: I object to that on the same ground,

CASE 1615

and as leading, as to the question of time, where the witness has shown a fault of memory already.

THE COURT: Overruled.

MR. CRAIG: Exception.

A He ~~remains~~ returned on Tuesday.

BY MR. MANLEY:

Q Now, when you saw your father when he returned on Tuesday, did you have another talk with him?

MR. CRAIG: Objected to.

THE COURT: Overruled.

MR. CRAIG: Exception.

BY MR. MANLEY:

Q Now, after that, after you had had the second talk with your father, after he had been there the second time, did you go anywhere?

MR. CRAIG: The same objection.

THE COURT: Overruled.

MR. CRAIG: Exception.

A Yes, sir.

BY MR. MANLEY:

Q Where did you go? A I went to the office of the Tenement House Department.

Q And did you have any talk with any one in the office of the Tenement House Department?

MR. CRAIG: The same objection.

THE COURT: Overruled.

MR. CRAIG: Exception.

A Yes, sir.

BY MR. MANLEY:

Q Whom did you see there? A The Third Deputy Commissioner, Mr. Abbott.

Q Do you recall the day when you went there to see Mr. Abbott? A Yes, sir.

Q When was it? A It was a Wednesday.

Q Did you see Mr. Abbott more than once that week?

A I saw him Wednesday and Thursday.

Q Where did you see him on Thursday? A At the premises, 96th Street and First Avenue, 340 East 96th Street.

Q And to what part of the premises did you go with Mr. Abbott? A I went through the entire house with him.

Q Did you go into these rooms where you have described these repairs as having been made? A Yes, sir.

Q That is, into the store where the toilet was, and into the bathrooms above? A Yes, sir.

Q At the time when these repairs were made, which you have described, Mr. McLernan, in February and up to April, did you have an architect? A Yes, sir.

Q Was the architect in the building? A In the early part of the work he was there every day.

Q Did he prepare the work or prepare for it? A Yes, sir.

MR. MANLEY: You may examine.

CROSS EXAMINATION BY MR. CRAIG:

Q Where did you say you reside now, Mr. McLernan?

A 143 West 188th Street, in the Bronx.

Q And I understand you to say that you were one who acted in the direction of making the repairs and re-construction ~~of~~ this building? A Yes, sir.

Q In February, March and the early part of April?

A Yes, sir.

Q And do I understand you to say that you did that, knowing that no plans had been filed with the Tenement House Department for those alterations and repairs? A Yes, sir.

Q And you knew at that time that you were committing a misdemeanor; did you not? A No, sir.

Q Didn't you know that the Tenement House Law at that time provided as follows (reads)? A I didn't know that.

Q But you did know that it was a tenement house?

A Yes, sir.

Q And so you did know that it was a misdemeanor to make alterations, without plans being filed in the Tenement House Department? A Yes.

Q And so, is there anything that you didn't do, knowing

the statute, and in violation of that which I have just read? A I don't understand the question.

Q Well, you knew that you were making these repairs and alterations; didn't you? A Yes.

Q And that you hadn't filed plans for them in the Tenement House Department? A Yes.

Q And then you claim that what you did was a violation of the Tenement House Act? A Yes.

Q But you were the agent in charge of that work? A Yes, sir.

Q Who did the particular things that you have testified to in your direct examination? A Yes, sir.

Q Now, who was this architect? A Andrew J. Thomas, Fordham Road and West Avenue, Bronx.

Q Where does he live? A Washington Heights, somewhere in the 180's, but I don't know his residence address.

Q How long have you known him? A These last four years.

Q And when did ~~xx~~ he first go on that job? A In February.

Q Was he in charge from the beginning? A He was in charge of laying out the work.

Q Was he employed in the same way you were, by somebody else? A No, he was employed by me.

Q He was employed by you? A Yes, sir.

Q And when did you employ him? A 1st February.

Q Did you direct him to make these plans, and consult with him about making the plans for this work? A No, sir.

Q Who did? A I don't know. There were no plans ordered at all.

Q That is, you were going to do the work without plans? A It was put up to him to prepare contracts for the work, and take care of all that end of it. If plans were needed, he was to do it.

Q Was it put up to him to get permission from the Tenement House Department to do the work? A If it was necessary to be done it was put up to him.

Q Did he ever do that? A I know that he went to the Tenement House Department, and got the existing violation and included those in the new work.

Q Did you go there with him? A No, sir, I did not.

Q How do you know that he went there? A Because he brought back the Tenement House violations.

Q And when was that? A In February.

Q Well, those were not violations for this work that he was doing? A They were existing violations. They were already there before the work was begun.

Q Yes. In other words, the building was existing there with violations on it at the time that you and this architect

began these changes and alterations? A Yes.

Q Now, what use was being made of the building at the time you and the architect were there first, when you began to make the alterations and changes and at the time you say there were violations on it? A There was an office and a little store on the 96th Street side, and there were but two tenants living in the rest of the house.

Q Were you collecting the rents from those tenants?

A No, sir.

Q Who was? A No one. We put them out.

Q Do you mean to say that you tried to collect and couldn't? A No, sir. The building was untenable, and I put them out; at least, I put one out and kept the janitress there.

Q Was this always a tenement house? A Yes, sir.

Q With stores on the ground floor? A Yes, sir.

Q And what do you mean by tenement house? A building unfit for occupancy? A No, sir, no, indeed.

Q Then what do you mean? A I meant that the apartments at that time that I took it were not fit to live in, and to get a chance to fix it up properly, I put the tenants out. It was an old, rundown building.

Q And did it ever become a tenement house until you did this work in it? A That I couldn't tell you. As far as I know it has always been a tenementhouse.

Q Well, what do you know about it, further than you have told about it, about the house? A Nothing at all.

Q Now, when did you first collect rent for the occupation of that building, or any part of it? A In April, I think.

Q When in April? A Between the 1st and 15th.

Q And from whom did you collect that? A From a family named Schwartz.

Q What premises did they occupy? A The fourth floor on the First Avenue side of the house.

Q Is that front or rear? A Front.

Q And who was the next tenant that you collected rent from? A I don't recall that.

Q Now, can you fix the date when you did this?

A When I collected this rent?

Q Yes. A Not other than ~~that~~ it was either the 1st or 15th of April.

Q What did your father do on the first Monday he was doing work there? A He was tearing the paper off the store. He was patching the corner store.

Q And was that more important to you than collecting rent from the tenants of that building? A Equally important, yes.

Q And how do you fix the date when you first received the rent, and yet you can't fix the time when he was re-

pairing the store there? A Because I recollect that it was in the same week that this inspector was arrested.

Q Now, how is it that you fix the time that you first began to collect rent in this building? A Because I was fixing that apartment up for the Schwartzs when I first met the inspector and I know I met him around the 10th of the month.

Q How do you know that? A Because I just remember it.

Q But how do you tie up for that particular date, the 10th of the month? A I said around the tenth of the month.

Q How long have you known Jakob? A Jakob?

Q Yes. A Since February.

Q Did she live in this building at the time you went there? A Yes.

Q And did she continue to live in this building and throughout the period that it was untenable, as you say? A Yes.

Q And continue to live in that building, of which you were agent, down to the time when you got it into a condition to rent to tenants? A Yes.

Q And she knew that the repairs were being made? A Yes, sir.

Q Did she know that there was an architect on the building? A She knew Thomas was an architect.

Q And did she receive any compensation during the period that the building was untenable? A Yes, sir.

Q When did the compensation begin? A It began at the time I took the building there.

Q Well, I didn't ask you that. I asked you for a date. A It began in February, when the operations began.

Q Was it paid by money or check? A By money.

Q Did you pay it? A Yes, sir.

Q Yourself? A Yes, sir.

Q How much did you pay her? A \$5. a week.

Q Now, I want you to describe in detail the second floor of this building.

MR. MANIFY: As it existed when?

MR. CRAIG: At the time about which he has been talking.

A On or about the time of the alterations? Or do you mean as it is now?

Q Well, as it was on the 10th of April, 1912. A Do you want the layout of the rooms and all that, too?

Q Yes. A The apartments fronting on First Avenue consisted of five rooms, and there were two apartments on a floor; and there were four rooms in the apartments fronting on 96th Street. And the five rooms were kitchen, dining room, parlor and two bedrooms.

Q And how were they laid out? A As you entered, you

1615
1911
CASE 1615

entered the kitchen.

Q Now, start on the street, or wherever you gain access to these rooms. A You enter the public hall of the building, and enter the apartment from that hall, through a private apartment door into the private hall. Off that private hall was a kitchen. Next to the kitchen, running along the private hall, was a dining room.

Q Now, at which side of the private hall are the kitchen and dining room? A On the 96th Street side.

Q Well, is that north or south, east or west? A That is the north side of the private ~~xxx~~ hall.

Q And which way is the kitchen from the dining room?

A West.

Q No, go ahead and tell us where the other rooms are?

A The parlor in the five room apartments is on the corner, on the southwest corner of 96th Street and First Avenue. Those three rooms are on the north side of the private hall, and on the north side of the private hall were two bedrooms, in the five room apartments, and in the four room apartments, as you entered, the first room is the bath room, that is, on the north side; and then dining room --- no, then the bedroom and then the living room, and the kitchen was on the south side of the private hall.

Q And who occupied that five room apartment on the 10th of April? A The five apartment was occupied by Mrs. Jakob,

the janitress.

Q And who occupied the four room apartment on the 10th of April? A I don't recall.

Q Do you recall whether or not it was occupied?

A I couldn't say at this time, no.

Q That is, because you don't recollect? A I don't recollect, no.

Q Now, do you remember that in your direct examination you stated that the defendant said to you it would cost some hundred dollars to do something which you described. Did that make any impression on you at the time? A Yes.

Q And how is it that you are enable to recall what this some hundred dollars was? A I don't just recall.

Q Well, you don't recall? Weren't you sufficiently interested to take note of the fact that you ~~would~~^{might} be subjected to an expense of that kind there? A At that time, yes.

Q And did you have any impression as to what expense you would be subjected to? A Only what he said at that time.

Q Well, what did he say? A I tried to tell you. I don't know the amount of money he said. He said a certain number of hundred dollars.

Q Well, what certain number was it? A I don't recall.

Q Well, you want to wriggle out of it, out of any pay-

542-1015

ment of any kind; didn't you? A No.

Q You didn't like the idea of having the Department come down on you; did you? A No, sir.

Q And you knew, in addition to the misdemeanor provision, there is also a penalty of \$250 for a violation; didn't you? A No, sir.

Q Have you found that out since? A No, sir.

Q Have you been the agent of any other property?

A Yes. 2237 Andrews Avenue, Borough of the Bronx. 212 West 184th Street. Those are two tenement houses.

Q Have you made any alterations in them? A No, sir.

Q Now, did you regard this as a curious conversation?

A I did.

Q And yet you dismissed it with, "All right, Chief."

A Yes.

RE DIRECT EXAMINATION BY MR. MANLEY:

Q Now, how many floors are there in the house, again?

I think you have answered it, but tell me again? A Five.

Q And how many apartments on a floor, at that time?

A Two on a floor.

1615
CASE 1615

HUGH McLERNA N, of 143 West 188th Street; a witness
called on behalf of the People, being duly sworn, tes-
tified as follows:

DIRECT EXAMINATION BY MR. MANTLEY:

Q Mr. McLernan, are you the father of the last witness,
Mr. H. N. McLernan? A Yes, sir.

Q Where do you live, sir? A 143 West 188th Street.

Q And you have lived there how long? A Five years.

Q What is your business, Mr. McLernan? A Builder.

Q And how long have you been in the building business?

A About 30 years.

Q Now, some time during April of this year, did you do
some work on the premises 340 East 96th Street? A Yes,
sir.

Q Do you remember when it was that you began to do that
work? A I think it was about the 23rd of April.

Q You think it was about the 23rd of April? A Yes, the
22nd or 23rd.

Q Do you recall what day of the week it was? A I think
it was Tuesday.

Q Are you very definite as to your recollection as to
the day of the week? A That's the best of my recollection.

Q Now, what kind of work did you do down there, Mr.
McLernan, and in what part of the building? A In the store.
Taking off some paper and doing some patching.

1615
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Q When you say store, upon what floor was it? A On the first floor.

BY THE COURT:

Q Do you mean the street or ground floor? A Yes, sir, the street or ground floor?

BY MR. MANLEY:

Q At the time you were doing that work did you see the defendant Farley? A Yes, sir.

Q How many days were you there, sir, during that work? A Two.

Q And did you see him on the first or second day? A The first day.

Q Did you see him more than once? A Yes, the next day.

Q No, what conversation, if any, did you have with this defendant Farley at the time you saw him, the first day, down there? A Well, Farley come into the store and he asked me was the owner around, and I told him no.

Q Keep your voice up loud, please. A And he said, "I've been wanting to see him lately, and I can't run across him." And so I said, "If you want to see him, I will let my son know, but he isn't around here now, but I will take him a message to-night." And then he said they had done the plumbing without any plan being filed for it, and it was a violation of the law, and they would have to do it over ----

51311615
CASE 1015

to make it right --- they would have to take the platforms away under the water closets, and expose all the works, on account of having no plans for it.

Q What was that? Please raise your voice. The jury can't hear you. A He said that they had done this plumbing in violation of law, because they had no plan for it, and they had to take up the work again and expose the plumbing again, and it would cost a good deal of money for to do it; and so, if they would make it right with him, why, he would see that no violation was put on to it, and he would fix it up at the Department, and nobody would know anything about it, and I said, "Would \$10. satisfy you in this thing?" And he said, "Oh, no, it would cost \$50. The thing has been going on so long that they have got onto it in the Department, and I've got to see others above me."

Q Now, do you recall anything else? A Well, I said to him, "Then I will let my son know, to-night, when I get home," and he says, "I'll be back to-morrow, at half past eleven, for the \$50.", and I says, "All right."

Q Now, then, did you see Mrs. Jakob there at about the time that you had the talk with the defendant Farley? And when I say "there", I mean in the premises? A Yes, Mrs. Jakob was cleaning, out in the hall.

Q And when you say "hall", you mean the hall on what floor? A The first floor.

Q Do you mean the ground floor or one flight up?

A The ground floor.

Q Now, do you recall that the language of the defendant was, "I will have to see them," referring to others in the Department? Can you give me his words on that point, as nearly as possible?

MR. CRAIG: I object to that as leading and improper, and as an utterly improper question in the presence of this jury.

THE COURT: Overruled.

MR. CRAIG: Exception.

MR. MANLEY: I am merely quoting his testimony, if your Honor please, as I understood it, and calling his attention to a certain part of it, and asking him to give me the defendant's exact words.

THE COURT: Repeat the question, Mr. Stenographer.

(It is repeated by the stenographer).

THE COURT: Yes, strike out the words, "referring to others in the Department". I did not catch that, at first, until the question was repeated by the stenographer. I think I will sustain the objection to the whole question.

BY MR. MANLEY:

Q Now, do you recall anything else that the defendant said at that time?

BY THE COURT:

Q Do you recall the exact words that the defendant used to you, Mr. McLernan? A To the best of my knowledge.

Q Well, now, to the best of your knowledge and recollection, give the exact words he used. That is the question you are asked. A The defendant said he would have to take care of others above him in the Department.

BY MR. MANLEY:

Q Now, do you recall anything else that was said, besides what you have told us? A That's about all, I think.

Q And did you see your son, that night, Mr. H. N. McLernan, when you got home?

MR. CRAIG: Objected to as immaterial, irrelevant and incompetent, and not binding on the defendant.

THE COURT: Overruled.

MR. CRAIG: Exception.

A Yes.

BY MR. MANLEY:

Q And had the defendant told you to tell these things to your son?

MR. CRAIG: I object to that as utterly improper, and I think the District Attorney should be reprimanded for asking such a question in the presence of the jury.

THE COURT: No, I do not think that he should be

reposed. He has the right to refresh the witness' recollection, and I think the question is a proper one for that purpose.

MR. CRAIG: And I except to the ruling.

(The question is repeated by the stenographer)

A Yes.

BY MR. MANLEY:

Q And did you tell those things to your son? A Yes, sir.

MR. CRAIG: Now, I object to that as hearsay and improper, and not binding on the defendant and move to strike out the answer.

THE COURT: I will sustain the objection. Strike out the answer.

BY THE COURT:

Q You did have a talk with your son? A Yes, sir.

BY MR. MANLEY:

Q Now, upon the following day, you have already testified that you again saw the defendant Farley; is that so? A Yes, sir.

Q Now, tell us what conversation you had with him at that time, if any? A He came in, and I said, ~~xx~~ I saw my son and he would see him on Friday.

Q What was that? I can't hear you. A He came in, the next morning, about half past eleven o'clock, according to

appointment --- he said he would be back the next morning, for the money, at half past eleven --- and he came in to me about half past eleven next morning.

BY THE COURT:

Q He came into where? A In the store of this building that we have been talking about. And I went over to him and said I had seen my son and my son had told me to tell him that he would see him on Friday. And Mr. Farley then spoke up and said, "I'll be around about half past eleven, on Friday, to see your son."

Q Was anything else said then? A No, sir, that's about all.

Q Now, did you have any further talk with the defendant after that, before he was arrested? A No, sir.

MR. MANLEY: That's all.

BY THE COURT:

Q Did you have another talk with your son after that? A No, not that I remember of.

MR. MANLEY: I don't know whether the witness understands that question or not.

BY MR. MANLEY:

Q Did you have a talk with your son after the second time you saw the defendant? A Oh, yes. I told my son ---

MR. CRAIG: Objected to.

THE COURT: Sustained.

(The question is repeated by the stenographer).

A Yes, I had a talk with my son.

CROSS EXAMINATION BY MR. CRAIG:

Q Did you say that you have been a builder for 30 years? A Yes, sir.

Q In New York City? A No, sir.

Q Where? A In Newburgh, part of the time.

Q And how long have you followed your avocation as a builder in New York City? A Seven years.

Q And were you aware of the fact that there exists in New York City a Tenement House Department? A Yes, sir.

Q And have you had relations with that Department? A Yes, sir.

Q And you were participating in making these alterations up there? A No, sir.

Q Well, what were you doing then? A I merely went there to do some work.

Q Well, you were doing some work in this building, to make these alterations? A Yes.

BY THE COURT:

Q Well, what work were you doing? A Taking out some paper, and doing some patching.

BY MR. CRAIG:

Q Did you make any inquiry as to whether any plans had

been filed with the Tenement House Department? A No, sir.

Q It is customary with you in following your avocation as a builder to ignore entirely the question as to whether plans had been filed with the Tenement House Department where you are doing work? A No, I'm not supposed to do that, I'm not supposed to ignore it.

Q And you are aware, are you not, that it is a misdemeanor for a builder to make alterations in a building when no plans have been filed? A Yes.

THE COURT: He does not say that he was making any alterations. He says that he was taking some paper off a wall and patching the wall.

MR. CRAIG: Well, those were alterations, I submit.

MR. MANLEY: No, not at all. The alterations were completed at that time. Those were simply repairs.

MR. CRAIG: That is all.

E M M A J A K O B, of 340 East 96th Street, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MANLEY:

Q How long have you lived at 340 East 96th Street?

A I have lived there now two years and four months.
there

Q Did you live/during February, March and April of
this year? A Yes, sir.

Q And what position do you have up there? A Janitor.

Q And were you janitor during that time that I have
just spoken of? A No, I got the janitor place from the
1st of January.

Q From the 1st of January? A Yes, sir.

Q Then you were janitress there in February, March
and April of this year? A I was.

BY THE COURT:

Q You say you have lived in that building how long?

A Two years and four months.

Q What rooms did you occupy? A I lived on the top
floor.

Q How many rooms did you have? A Five rooms and
bath.

Q And what kind of rooms were they? A A parlor,
dining room, kitchen and two bedrooms and the private hall,

Q There was a range in the kitchen; was there?

A Yes, sir.

Q And you used that for preparing food for your family?

A Yes, sir.

Q Have you a family? A Yes, sir; two sons and a
daughter, and a baby and my husband.

5131235

Q You have a husband and four children? A Yes, sir.

Q Now, did any other people live in that house when you lived there? A Oh, yes, the house was full of people.

Q Well, how were they living? A There was five rooms in the front and four in the back.

Q They were not all living there together; were they? It wasn't all one family; was it? A No, sir; eight families in the house.

Q Occupying separate rooms? A Yes, sir.

Q And doing their own cooking? A Yes, sir.

Q And living there? A Yes, sir.

BY MR. MANTLEY:

Q How many different apartments were there in the entire house? A Eight.

Q And were there common, outside halls used by all the tenants? A Yes, small little halls.

MR. MANTLEY: Will you concede that it was a tenement house?

MR. CRAIG: No, I think it was an uninhabited structure, from all the evidence so far, until this gentleman got in there and tried to collect some rents in there. I certainly will not make the concession that it was a tenement house.

BY MR. MANTLEY:

Q Now, you say that you became janitor in
january of

this year? A Yes, sir.

Q Now, was there any difference in the arrangement of the rooms and apartments during February, March and April, from what they were during January?

MR. CRAIG: I object to that as immaterial, irrelevant and incompetent.

THE COURT: Overruled.

MR. CRAIG: Exception.
no

A It was/different in the rooms, only the plumbing is fixed over, and new bath tubs put in.

BY THE COURT:

Q But the same number of rooms were there? A Yes, sir.

Q And the same number of apartments on each floor?

A Yes, sir. And I moved from the top floor to the first floor.

BY MR. MANTLEY:

Q And were the same arrangements there for cooking in the various apartments during all those months? A Yes, sir.

Q And were the same public halls there that might be used by tenants during those months?

MR. CRAIG: I object to that.

MR. MANTLEY: I will withdraw the question.

BY MR. MANTLEY:

Q Were the public halls there, the ones that you have

described, during all those months?

MR. CRAIG: I object to that as an assumption that they were public halls, in the face of the fact that there were there/no occupants in the building.

BY THE COURT:

Q Well, were there halls there on the different floors? A Yes, sir.

BY MR. MANLEY:

Q when did you first become acquainted with Mr. H. N. McLernan? A About the 15th of January. The date I can't tell you exactly, but it was some time in January. Mr. McLernan looked at the rooms and he asked me ----

MR. CRAIG: Objected to.

THE COURT: Sustained.

BY MR. MANLEY:

Q Well, who engaged you to act as janitor? A The agent before Mr. McLernan was there. There was no tenant in there then.

Q And after Mr. McLernan ~~is~~ began to be the agent there, did you continue to act as janitor? A Yes, sir.

Q Now, do you remember that, in February and March, certain work was being done there upon toilets and the bath tubs? A Yes, sir.

Q Had you seen this defendant upon those premises, the Defendant Farley? A Yes, sir.

Q Did you see him upon the premises during the time that they were fixing some bath tubs on the second floor, one flight up, and a toilet down in the store on the ground floor?

A Yes, sir.

Q During the time those things were being fixed?

A Yes, sir.

Q Did he have any talk with you about those things?

A No, sir, he had no talk.

Q Now, after all those things had been fixed that I have spoken of, that is, the bathrooms on the second floor, and the toilet down in the store, did you again see Mr. Farley on those premises? A Yes, sir.

MR. CRAIG: One minute. I object to the assumption, "After all these things were finished".

THE COURT: Overruled. You mean the work referred to Mr. McLernan, Jr.?

MR. MANLY: Yes.

BY THE COURT:

Q After the workmen had left the premises, the plumbers and carpenters and painter, did you see the defendant there? A Yes, sir, and he said ----

Q Well, what did he say to you, if anything? A "Is the agent or landlord around?" And I said, "No, sir."

Q Well, did he say anything else? A Then he came back again, and asked if the landlord or agent was there, and

51915

I said, "No, sir." And then I said, "Can I say something to the landlord or agent, what you want?" And he said, "No, I'll see the agent or landlord myself. Tell him that I want to see him."

Q And did he say who he was? A He had his badge and he had his uniform on, and I know who he is.

Q He was in uniform and had a badge on? A Yes, sir.

BY MR. MANIFY:

Q Now, were you there, Mrs. Jakob, at any time when any talk took place between Mr. McLernan and Mr. Farley?

A No, not the young Mr. McLernan, no. Mr. Farley only hollered "Janitor", and I ----

Q You mean the defendant Farley? A Yes, that's the inspector. And he came up on the third floor and then he was talking to Mr. McLernan, the agent.

Q Is that the man you refer to (indicating H. Nelson McLernan)? A Yes.

Q Now, did you see the father of young Mr. McLernan doing work on the first ~~xxx~~ floor at any time? A Yes; he take off paper, and wash the ceiling, and plaster some.

Q And when was that? A The same week that that gentleman was arrested (indicating the defendant). On the Monday and Tuesday he came there.

Q Who came there? A That gentleman, the inspector (indicating the defendant).

15
10
5

Q Do you mean the defendant? A Yes, sir.

Q And were those the days on which Mr. Hugh McLernan, the older McLernan, was working in the store? A Yes, sir.

Q And in what part of the premises did you see the inspector, Farley? A Right between the door and the toilet.

Q And how near to where Mr. McLernan was working?

A Right in the place where that man was standing.

Q Right in the place where Mr. McLernan was standing?

A Yes, sir. I was scrubbing the hall, and there is the door, and one step goes down into the store (illustrating). Right there was the door from the store (indicating), and there I was laying on the floor, scrubbing (illustrating).

Q And you were scrubbing the hall? A Yes, sir.

Q And that is right next to the hall? A Yes, sir.

Q And did you hear any of their conversation at the time? A No, sir.

BY THE COURT:

Q How do you get up from the ground floor to the other floors of that building? A Here is the hall, and you go up this way, and the stairs goes this way (illustrating).

Q You go upstairs, do you? A Yes, sir.

Q And how many flights do you go up? A One.

Q One for each floor? A Yes, sir. The first stairs is one, and the second and third and fourth is two halves.

CASE 1015

Q Yes, but there is only one stairway? A Yes.

Q EVerybody goes up and down on those stairs? -A Yes, sir.

BY MR. MANLEY:

Q Now, after Mr. Farley got through talking with Mr. McLernan, on the day you are talking about, which you say was Monday, did Farley say anything to you? A No, sir.

Q Now, do you recall whether or not he came out and said anything to you? Just think. A Well, yes. I was there, and I said, "Hello," and I said, "You here? Will you see the landlord?" And he said, "No, I told the old gentleman all about it." And then Mr. McLernan came out ---

Q No, just try to think of anything else that Farley said at the time, if he said anything else? A No, he didn't say no more, that day, only that same day when he came out, I said, "Hello. Do you want to see the landlord?" And he said, "No, it isn't necessary. I was talking to the old man." And then I went into Mr. McLernan ---

Q Just a minute. After Farley had gone away, that day, did you have any talk with Mr. McLernan? A Yes, sir.

MR. CRAIG: I object to that as incompetent, and hearsay, and not binding on the defendant in this case.

THE COURT: Overruled.

MR. CRAIG: Exception.

THE COURT: The mere fact that she had a conversation is all that is testified to.

BY MR. MANTLEY:

Q. Now, when I speak of Mr. McLernan, after that conversation, I mean Mr. Hugh McLernan? A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. And did you see Marley the next day, on Tuesday? Do I understand you to say that? A. No, sir, I didn't.

Q. But you saw Mr. Hugh McLernan on the next day?

A. Yes, sir.

Q. Now, coming down to the 26th of April, Friday, did anybody come to those premises, to that building, and go through the building, on that day, Friday?

MR. CRAIG: Objected to, as immaterial, irrelevant and incompetent, and hearsay, and not binding on the defendant.

THE COURT: Allowed.

MR. CRAIG: Exception.

A. Yes, sir.

BY MR. MANTLEY:

Q. Now, did you find out what their names were, or who they were?

MR. CRAIG: Objected to.

THE COURT: Overruled.

MR. CRAIG: Exception.

A Yes, sir.

BY MR. MANLEY:

Q Did you find out who they were? A Yes, sir.

Q Who were they?

MR. CRAIG: Objected to as immaterial, irrelevant and incompetent, and not binding on ~~the~~ the defendant.

THE COURT: objection sustained.

MR. MANLEY: Well, may I have Mr. Schwartz, Mr. Fink and Officer Thomas brought in?

THE COURT: yes, you may.

BY MR. MANLEY:

Q Now, do you see anywhere in court anyone that you saw up at your house on that Friday, the 26th of April?

A I see the three gentlemen what was in my house. (Indicating Albery Schwartz, Joseph H. Fink and Officer Albert Thomas).

Q Now, about what time did these three gentlemen get up to the house, Mr. Jakob? A It was 11 o'clock.

Q In the forenoon? A It was in the morning.

Q Now, just answer the quest on that I am going to put to you next either yes or no. Did these three gentlemen say something to you?

MR. CRAIG: I object to it as immaterial, irrelevant, and incompetent, and hearsay, and not binding on ~~the~~ the defendant.

THE COURT: Overruled.

MR. CRAIG: Exception.

A Yes, sir.

BY MR. MANLEY:

Q After they had said something to you, did they give you anything? A Yes, sir.

Q What did they give you?

MR. CRAIG: Objected to, as immaterial, irrelevant and incompetent, and hearsay, and not binding on the defendant.

THE COURT: Overruled.

MR. CRAIG: Exception.

A Eight five dollar bills.

BY MR. MANLEY:

Q After they gave you the eight five dollar bills, where did these three gentlemen go? A They were sitting in the dining room, speaking together.

Q In whose apartment? A In my apartment.

Q Now, as you come into your apartment from the outside hall, into what room do you first come? A Kitchen.

Q And from the kitchen into what room next? A Dining room.

Q And what is beyond the dining room? A The parlor.

Q Well, now, what happened after these three men had gone into this other room? A I excused myself---

MR. CRAIG: Objected to.

THE COURT: Sustained.

BY MR. MANLEY:

Q Well, now, what was the next thing that happened? A It happened that that gentleman---

Q The defendant Farley, you mean? A Yes, sir. He knocked on the door and I said, "Come in", and, when he come in, he said, "Was the landlord around?" And I said, "Yes. He left you forty dollars." And he said, "Is that all?" And then he walked in and sat down in the dining room, and asked, "Is somebody around?" And I said, "No, sir." And then he said, "Bring the money down in the store, and take the key down too, and open the door and I will measure the toilets", and so I said, "All right, Sir."

And he went in the store, and he didn't measure anything, but he took the money, and he walked out in the vestibule, and I said, "Will you please tell me something, what you will do with the forty dollars, because I am not janitor here long, and the landlord he will think may be I keep the forty dollars," and he said, "Oh, that's all right. Tell him I'll fix up the violation, and everything will be all right, and tell him not

48
to forget to leave the other ten dollars for me, next week, and tell him to fix up that stone, and it will be all right." And then the detective comes, and he says to me---

MR. CRAIG: Objected to.

THE COURT: Objection sustained.

BY MR. MANLEY:

Q What stone did he speak of, if you know? A Right at the vestibule there. (Illustrating).

Q Where you and Farley were standing? A Yes, sir.

Q And how soon after did the Police Officer come to you? A About a minute. That middle man there (Indicating).

Q Mr. Fink, you mean? A Yes.

Q It was the Police Officer who came to you, you mean, don't you, about a minute after you parted with the defendant? A Yes.

BY THE COURT:

Q How was this money given to you? A Right in my hand, eight five dollar bills.

Q And were they in an envelope? A No, they was open, just rolled together.

Q You counted them, did you? A No, I didn't count them when I got it from the detective. I put it

50
in the sideboard, in the drawer, and he said, "Don't
mix the money up with your money" and I said, "I have
no money in the house." And when that man came up, I
took it out, the money.

Q Which man? A That man. (Indicating the de-
fendant). I took it from the drawer, and put it in
his hand, and he put it in his pocket.

CROSS EXAMINATION BY MR. CRAIG:

Q What did you say that Hugh McLernan was doing
there? A Plastering and scraping the paper on the
wall.

Q What do you mean by plastering? A Plastering
the holes what was in the wall.

Q Putting plaster on the wall? A Yes, sir.

Q And he was also taking old paper off the wall?

A Yes, sir.

Q At the time you were living in this house in
January, there was no other family living there, was
there? A No, sir.

Q And how soon after that did the first family
come in? A Well, it was in April.

Q What time in April? A Well, I can't tell
you the day.

Q Was it after you saw Mr. McLernan putting the
plaster on the walls? A Oh yes, it was after.

1615
CASE 1015

MR. CRAIG: That's all.

J O S E P H H . F I N K , of 240 West 122nd Street,
a witness called on behalf of the People, and being
duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MANLEY:

Q Mr. Fink, what is your business? A Private
Secretary to the Tenement House Commissioner.

Q Now, talk up as loud as you can. And you have
been secretary for the Tenement House Commissioner how
long? A Since the Commissioner's appointment, in
January, 1909---or, 1910, rather.

Q And you were acting as such secretary in April
of this year, were you? A Yes, sir.

Q Now, some time during the week before the 26th
of April, that being Saturday, did you have some talk
with one of the deputy commissioners, one of the Deputy
Tenement House Department Commissioners, Mr. Abbott,
about the premises 340 East 96th Street? Just yes
or no to that question.

MR. CRAIG: I object.

THE COURT: I sustain the objection.

BY MR. MANLEY:

Q Did you, on or about the 26th day of April go
to the premises I have just spoken of? A Yes, sir.

Q. And what time of day did you go there? A. I got there about eleven o'clock in the morning.

Q. Did anybody go there with you? A. Yes. Mr. Thomas, of the District Attorney's Office, and Mr. Schwartz, also of the District Attorney's Office. At least they told me they were from the District Attorney's office. I had never seen either man before.

Q. Had you been to the District Attorney's office prior to going up there? A. No, sir.

Q. Now, when you three gentlemen got there, did you see Mrs. Jakob? A. Yes, sir.

Q. Did you have a talk with her? Just yes or no.

MR. CRAIG: I object to that as hearsay, and not binding on the defendant, and immaterial, irrelevant and incompetent.

THE COURT: Overruled.

MR. CRAIG: Exception.

A. Yes, sir.

BY MR. MANLEY:

Q. Did you, or anyone in your presence, give her anything when you got there?

MR. CRAIG: Objected to as before.

THE COURT: Overruled.

MR. CRAIG: Exception.

A. Mr. Thomas did.

1911
CASE 77 1615

BY MR. MANLEY:

Q What did he give her? A He gave her a roll of money, with forty dollars in it.

Q Have you told me what time it was when you got there? A About eleven o'clock in the morning.

Q When you got there, into what part of the premises did you go? A Went into the dining room.

Q On what floor? A Second floor.

Q How many flights up? A Just one flight of stairs up.

Q Was that the apartment in which you had seen Mrs. Jakob? A Yes, sir.

Q Now, do you remember, when you went into the apartment, going into a certain room in her apartment, from the outside hall? A Yes, sir.

Q And after the money had been given to her, where did you go? A We went right out of the dining room through an opening where there were portieres hung, and went into what she called the parlor.

Q Now, you go from the outside hall into a room of that apartment, do you? A Yes, sir.

Q And how many rooms from the first room that you entered did you go, as you have just said? A We walked from the dining room into the parlor, and across the private hall into a bedroom.

Q But into which room, according to numbers, did you go, after you had given the money to the lady? A Number two from the room we first entered.

Q And what did you do there? A We sat there, looking out of the window, behind the lace curtains, and Mrs. Jacob said, "Here he comes now" and we stayed in that room that you designated as number two; and, after a while, we heard someone coming upstairs, and, as there was only a pair of portieres between the two rooms, we then walked across the hall, and into a room that had a door on it, which Mrs. Thomas closed.

And then I heard a man's voice saying, "Well, have you got that for me?" And she said, "Yes", and he said, "Anyone in the rooms?" And she said, "No." I heard a woman's voice say "No". Then I heard a man's voice say, "Are you sure of that?" And she said, "Yes". And he asked where was the bathroom, and then I heard a door bang, and then he said, "All right". Come on down to the store. I want to look at the toilet in the store. And then I heard someone walking down the stairs, and it is a winding and a rickety stairs, and you could hear someone walking down heavily, and then Mr. Thomas said, "Come on".

No. Pardon me. Just before he got upstairs, Mr. Thomas got out of that room across the hall, and se-

1911

51911615

creted himself in some part of the apartment--I don't know where.

And then Mr. Thomas pushed the door of that room open, and said, "Come on".

And he went down first, and after him Mr. Schwartz and I was behind them, and we went down.

Q Down to where? A Down the stairs from the second floor to the street level. And there I heard someone say, "Well, all right. I'll take this, and you get the balance for me in a couple of days, and, in the meantime, don't worry, everything will be all right. But fix that, and, in case another Inspector comes around, he won't see anything wrong." And then I heard a woman's voice say, "All right".

And then I heard a woman's voice say, "He's got it, he's got it."

And then I went out on the sidewalk, and I saw a man walking up the street, and Mr. Thomas grabbed him, and it was only about forty feet from the entrance to the house.

Q And who was grabbed in the street? A That gentleman there, in the uniform of a Tenement House Inspector.

Q Did you know his name at the time? A No, sir; not at that time.

1915

CASE 1615

BY THE COURT:

Q Was he in uniform? A Yes, sir; that day he was in uniform.

BY MR. MANLEY:

Q Now, what took place between the defendant and Thomas, or you and the defendant, on the street there?

A Thomas said, "You are under arrest. What have you got in your pocket?" And he had it in his left hand pocket. And he said, "What have you got there?" And he said, "Forty dollars." And he said, "Where did you get it?" And he said, "I got it from that woman," pointing to the house. Then he turned to me and he said, "Fink, can't we fix this? If it is necessary to fix it, I'll get all the money that is necessary to fix it," and I said, "Well, you are in custody now, in the District Attorney's custody, and you had better say nothing about it".

And at the corner he said to Mr. Thomas, "Now, I don't want to doubt you, but will you please show me if you are an officer, and Thomas put his hand in his trousers pocket, and showed him a badge." And Thomas advised him not to say anything, because it could be used against him. And, going down on the car, he asked me if I couldn't make an appointment to see the Commissioner, and I told him no, that the Commissioner would not see him un-

der any circumstances. And I had to turn my back on him, at last, riding down in the open car, because he persisted in that kind of talk. And we went to the 88th Street Station House, and he kept up practically the same talk, and saying it was tough.

Q Now, did he say why he got the money, or anything about that? A Yes, sir. Thomas said, "What did you get this money for? What did they do there?" And he said, "They did a lot of roughing." And then he said, "I knew I would get into trouble if I kept around that woman long enough.

Q Now, he used the word "roughing", you say. What did you understand that to mean? Did you understand it to mean plastering?

MR. CRAIG: I object to that, and ask that it be stricken out, and I move that a juror be withdrawn, and that the trial be declared a mistrial, because of the absolute impropriety of that question.

THE COURT: The objection is sustained. The motion to withdraw a juror is denied.

MR. CRAIG: Exception.

BY MR. MANLEY:

Q Is that a term used at all in the Tenement House Department, roughing?

MR. CRAIG: I object to that.

THE COURT: Allowed.

MR. CRAIG: Exception.

A Yes.

BY MR. MANLEY:

Q Is that a term that is used by plumbers? A Yes, sir.

Q Now, I ask you what it means?

MR. CRAIG: Objected to.

THE COURT: Objection sustained.

BY MR. MANLEY:

Q Well, what did the defendant say on that point?

A Well, Mr. Thomas said, "What did they do in there?" "What did you get this for?" And he said, "They did a lot of roughing in there."

Q Did he say anything else about roughing? A No, sir.

Q Now, just think. A He said they did some roughing, and they had done the roughing without filing any plans.

Q Now, when you got out there, and had this conversation with the defendant---I will withdraw that. After talking with the defendant, and having this conversation with him on the street, could you then state whose voice it was, the man's voice, that you heard have the conver-

sation in the hallway and up in the rooms? A Well,
that's hard for me to say, for this reason---

MR. CRAIG: Objected to.

THE COURT: Sustained.

BY MR. MANLEY:

Q Well, you hadn't talked to the defendant before
that day, had you? A No, sir.

Q At the time when you went into the apartment,
was there anybody else in there, besides Mrs. Jakob and
these other two gentlemen who accompanied you there? A
No, sir; the only person that I saw was Mrs. Jakob, and
I think she had a little baby around.

CROSS EXAMINATION: BY MR. CRAIG:

Q Mr. Fink, you were not in the room when Mrs.
Jakob testified, were you? A No, sir.

Q Now, you say that at the time this man came there
that he said to her, "Have you got that money for me?" Do
you so testify? A Yes.

Q Is that your recollection? A Yes, sir.

Q And is your recollection clear as to that? A
That's my recollection.

Q Well, how clear is your recollection? A Whether
he asked her whether she had that money?

Q Yes, whether that particular statement was made?
A Yes.

Q How clear is your recollection? A Well, as near as I can recollect, that's what he said.

Q Well, I want to know how clear your recollection is on that proposition? A Well, you will have to pardon me and explain what you mean. That is as near as I recollect what he said.

Q Well, do you recollect clearly and unquestionably what you heard said? A Yes, sir.

Q Now, then, were you in the Court room when Mrs. Jakob testified that he came in there and said, "Is the landlord around?" A No, I didn't hear that.

Q Did you hear any such statement in the conversation that you overheard between this individual and Mrs. Jakob? A No, sir, I didn't.

Q And did you hear Mrs. Jakob say---were you in the room when she testified that she said to him, "The landlord left me forty dollars for you?" A Yes.

Q Did you hear her testify to that? A No; I haven't heard her testify at all.

Q Oh, you didn't hear the testimony? A No; I haven't been in the room.

Q Well, did you hear her make that statement? A Yes.

Q Now, was that the first thing that you heard said about forty dollars? A No.

1915

CASE 1015

Q What was the first thing on that occasion that you say, now, that you heard said about forty dollars?

A I heard a man's voice say, "Have you got that money for me"? And I heard a woman's voice say, "Yes, the landlord left forty dollars."

Q And you rest your testimony on that proposition, that the man said, "Have you got that money for me? A Yes, sir.

MR. CRAIG: That is all.

RE-DIRECT EXAMINATION BY MR. MANLEY:

Q About how far were you from the man and the woman at the time they had the conversation in Mrs. Jakob's apartment? How far in feet, if you can tell me? A Well, I should judge that the distance from the entrance door in feet---of course, I didn't see him in the house at all.

Q No, I understand that. A And I can't testify to that. I am only saying from the voices.

Q I understand? A It was the difference between the entrance hall and the dining room, and the entrance hall to the room that I was in---I should judge the average room is about twelve feet, probably not more than twelve feet away. I should judge that was the distance, because the average room is twelve feet, even figuring the full length of that room.

Q Well, that is your judgment, isn't it? A Yes, sir.

Q And can you give me an idea of how far away you were, in feet, at the time when you heard the voice of the man and woman, the second time, after you had gotten out into the hall? A Why, just the height of the ceiling, and ordinarily on the first floor that is thirteen or fourteen feet.

Q Was it at all dark in the hallway, between the first and second floors at that time? A No, I didn't think so, because the doors---

MR. MANLEY: No, I am not asking for the reason. That is all.

RE-CROSS EXAMINATION BY MR. CRAIG:

Q Did you observe what street this building was located on? A Ninety-sixth Street and First Avenue.

Q And what kind of traffic goes along First Avenue? A At that point there is very little, I guess.

Q Well, why do you guess? A Because it is the termination of Ninety-sixth Street. That street runs right to the river. It is only that short block east of First Avenue.

Q Now, I asked you why you guessed? A No, I don't guess; there was scarcely any traffic at all.

Q When had you been there before? Just one minute.

91015

When had you been there prior to that occasion? A I don't think I have ever been at that point before in all my life.

Q Well, then, why do you guess? A Well, then, I'll be positive.

Q Did you go there to make actual observation of the traffic? A No, sir; but I sat at the window, looking out of the window, between the time we arrived in the room and the time that Mrs. Jakob said, "Here he comes".

Q And how long was that? A About fifteen minutes. And I looked out on Ninety-sixth Street, and I didn't see many people, and not much traffic.

Q Is there a car line of First Avenue? A Yes, sir.

Q And you don't call street cars traffic, in making your guesses? A Yes, it is traffic.

Q Well then, why did you say that you guessed there was little or no traffic on this street? A Well, because I wouldn't call it a traffic, like on lower Broadway.

Q Well, nobody asked you that. But, of course, there is a traffic, is there not? A Yes. But what I meant by traffic was the general rushing up and down all the time in the way of traffic; that's what I meant.

ORIGINAL

1911

1615

1815

Q Now, did you notice the plant of the Bradley Construction Company there? A No, sir.

Q You didn't observe whether or not they had a large number of wagons passing back and forth there, through Ninety-sixth Street? A No, sir; I didn't.

Q Did you make any observations, as to Ninety-sixth Street? A I know it is a wide street.

Q And you know that on those wide streets uptown, they do very heavy trucking, don't you? A No, I don't know that. I don't know what they do in all the wide streets, in New York City, but I know I didn't see any heavy traffic there.

Q Did you observe a car barn there? A There is a very large building opposite the First Avenue side of this house.

Q But you didn't observe whether it was a car barn or not? A No, sir.

Q Well, what did you think it was, what did you guess it was? A I am not guessing.

MR. MANLEY: Oh, I object to this as utterly incompetent.

THE COURT: I do not see the force of it, but I will allow it.

A No, I didn't take notice of car barns. I was sent to 340 East 96th Street.

1991

1015

BY THE COURT:

Q Well, what did you think that building was, that large building, if you gave it any thought at all? A Why, I imagined it was a power house.

BY MR. CRAIG:

Q Now, how far were you from the place where this conversation took place, if any took place, how far do you say now that you were away from the spot where this conversation took place, at the time the conversation did take place? A I couldn't say, because I didn't see where anyone was standing, because I was secreted.

Q How far away were you from---well, did you observe whether or not the noise of this conversation was of greater volume than the traffic of the street?

A Well, I don't think I heard any noises from the street at all, because the windows were closed.

BY MR. MANLEY:

Q Well, was there anything to prevent you hearing what you heard? A No, sir; because he spoke very, very loud. It was surprising to me that he spoke so loud.

BY MR. CRAIG:

Q Well, you had a glass door between you; hadn't you? A No, sir, no glass door. And the door of the room in which we were secreted was just slightly ajar.

CASE 1615

It was left ajar by Mr. Thomas.

Q Well, did you see him leave it ajar? A Yes, I did. He walked into the room with us, and walked out, and left it ajar.

Q No, I asked you if you saw Thomas leave it ajar? A Yes, when he went out he left it partly open.

Q Now, you said, a moment ago, that you didn't observe when Thomas secreted himself, didn't you? A No. I said I didn't know where he secreted himself.

Q Then you didn't know that he had secreted himself until you observed his absence? A Yes, I did. I saw him go out of the room.

Q Now, have you participated in any other case where an attempt was made to catch some person in a violation of the law? A No, sir.

Q And so you don't know whether they do it usually in loud, shouting tones of voice, or speak easy, or proclaim it from the housetops? A No, sir; I haven't the slightest idea about that.

Q And you don't want to guess about it? A No, sir.

EXHIBIT
1911

Case 1015
1911

A L B E R T T H O M A S, of the District Attorney's Office, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION:

BY MR. MANLEY:

Q You are a member of the Police Force of the City of New York, and have been detailed by the Police Commissioner for some time to the district attorney's office; is that right? A Yes, sir.

Q And now, on Friday, April 26th, did you go with some other persons to the premises in question, 340 East 96th Street? A Yes, sir.

Q And when did you get there? A About 10:30 .
A. . .

Q And how long did you stay there? A About thirty or forty minutes.

Q And do you recall in what part of the premises you were? A Yes; in the apartment of the janitress, Mrs. Jakob.

Q And who went there with you? A Mr. Fink---

Q The last witness? A Yes, sir. And Albert E. Schwartz.

Q Now, while you were in her apartment, during the time you have mentioned, was anybody else there; that is, when you first got there, besides yourself and

Mr. Schwartz and Mr. Fink and Mrs. Jakob? A Mrs. Jakob's baby.

Q Anybody else at all? A No, sir; only the baby.

Q Now, did anyone---did you do anything when you were there; that is, did you give anything to Mrs. Jakob? A I gave her eight five dollar bills.

Q Now, did you make any note of those five dollar bills before you gave them to her? A I did. I took the serial numbers of them.

Q And did you write the serial numbers down on any memorandum? A I did.

Q And after you had given that money to Mrs. Jakob, do you recall into what room you went? That is, we will start, and call the first room from the hall number one? A Yes. That's the kitchen.

Q And the next room number two, and so on. Now, where did you go after you had given her the money? A Into room Number 2, the dining room, and then I went into the parlor, which is number 3.

Q And how long had you been there, Officer, before anything happened at all; how long would you say? A About twenty minutes or so.

Q Now, go right ahead, and tell what happened. A The defendant entered the apartment of Mrs. Jakob,

1991

CASE 1615

and I was in room 3, the parlor.

Q That is the third room beyond the door that enters from the hallway into her apartments? A Yes, sir.

Q Now, go ahead: A I heard the defendant say, "Let's go down into the store. I want to examine the toilets."

Q Now, where were you when you heard that?

MR. CRAIG: Now, I object to the District Attorney interrupting the witness in the answer. The question is broad enough to call for the entire transaction, without interruption, and I think we are entitled to that.

BY THE COURT:

Q Well, where were you when you heard that? A I was in room number 4, which is a bed room, directly opposite the dining room. There is a hall separates them.

BY MR. MANLEY:

Q Now, in order to get it right, I will ask you this question. As you go into the apartment from the outside hall, you go into a room which we have designated number 1? A Yes; that's the kitchen.

Q That's the kitchen, is it? A That's the kit-

then, yes, sir.

Q And is there an entrance from that room into another room, Number 2, as we will designate it? A Yes, the dining room.

Q Now, is there an entrance from the dining room, room number 2, to a third room, number 3? A Yes, the parlor.

Q Now, are these three rooms right in a line with each other? A Yes, sir.

Q Now, the fourth room that you have spoken of, where is that with reference to the other three rooms that were in a line with each other? A That's on the other side of the private hall.

Q And does that private hall run---where does it run with reference to rooms 1, 2 and 3? A That is, from room number 3 to room number 1.

Q Now, when you say that fourth room is opposite in the private hall, what room is it opposite? A The dining room, room number 2.

Q Now, go right ahead and tell us what you heard, and where were you at the time? A I was in room number 4, and I heard the defendant say, "Let's go down into the store. I want~~ed~~ to examine the toilet. Bring the key and that money along." And they left the apartment,

1961

CASE 1615

Mrs. Jakob and the defendant.

Q And was anybody in that apartment with you at the time? A Mr. Fink and Mr. Schwartz.

Q Did they go into the room before or after you did? A Before I did.

578-1615

Q Now, what else happened? A And Schwartz and I stood on the stairs leading from the second floor down --- that is, from the apartments of Mrs. Jakob down to the hallway on the ground floor. Her rooms are on the floor above the ground floor. And, while on the stairs, I heard the defendant say, "You can tell him that this will be all right. There will be no trouble about this now. You can tell him to leave that with you, and I'll come around some time next week and get it."

A few minutes later I heard the vestibule door close, and I went down the remainder of the steps, of this flights of stairs, and asked Mrs. Jakob, "Which way did he go, to the left or right?" And she said, "To the left."

And I went out on the street and saw the defendant about 50 or 75 feet away, and I went up to him, and touched his right arm (illustrating). He had his right hand in his outside coat pocket.

And he said, "What do you want?" And I said, "I want you. Take your hand out of your pocket." And he took his hand out of his pocket, and in his hand he had the eight \$5. bills, and he said, "I've got \$40. there. I'll admit it."

And I said, "Where did you get it?" And he said, "From that woman there," pointing to the premises of 340 East 96th Street.

BY THE COURT:

Q How was he dressed? A In the uniform of a Building Inspector.

BY MR. MANLEY:

Q And did you have any further conversation with him at that time? A He said, "Can't I fix this thing up?" And I said, "No, you are arrested, charged with a felony. Anything that you say will be used against you, and you had better say nothing," and he said, "For Heaven's sake, can't we do something about this?"

Q Did he say anything else? A Not at that time. Going down on the ~~xxxx~~ car --- I took him to the East 88th Street station house --- he was talking to Mr. Pink, but I didn't hear what he said to Mr. Pink.

Q Have you got the money here? A Yes, sir.

Q And did you afterwards compare the numbers of the bills with the memorandum you had made of the bills that you gave to Mrs. Jakob? A Yes, sir.

Q And how did they compare? A They are the same numbers.

Q And these are the bills (indicating)? A Yes, sir.

MR. MANLEY: I offer them in evidence.

MR. CRAIG: I object to them on the ground that it is not good money, because it shows on its face that it is not good money.

5191615
CASE 21615

Q When did you write that?

MR. CRAIG: I object. He has finished the examination of the witness, as I understand, and I have the right to ask whether these bills are affected by his writing his name on the back of the bills.

THE COURT: I will allow it.

MR. CRAIG: Exception.

A After the arrest and detention of the prisoner, in the 88th Street station house.

Q And who has had the custody of the money since that time? A It has been in the custody of Mr. Sayre, the Chief Clerk of the District Attorney's office.

CROSS EXAMINATION BY MR. CRAIG:

Q And do you say that you wrote the name "A. Thomas" on this bill, B44302804? A Yes, sir.

Q And at whose direction did you write it there?

A I wrote it myself.

Q Without the direction of anybody? A Yes, sir.

Q Did anybody participate with you in the writing of it? A No, sir.

Q With whose pen did you write it? A My own --- no, I borrowed a pen from a butcher. It was written in the butcher shop on First Avenue near 88th Street.

Q Did the butcher see you write your name on it? A I

1911

51011615

don't know.

MR. MANLEY: Now, I will save time by admitting that he wrote his name on the back of each of the bills.

MR. CRAIG: No, I prefer to have his answer as to each of the bills.

BY MR. CRAIG:

Q Did you write it on this bill ~~xxxx~~ also, the next one, B4430280? A Yes, sir.

Q And did you write your name on the back of the bill B44302803? A Yes, sir.

THE COURT: Well, you had better look at them each of them, before you answer, officer.

A Yes, sir, I will. Yes, I did.

BY MR. CRAIG:

Q And on the back of the bill B44302795? A Yes, sir.

Q Did you write your name "A. Thomas" on the back of bill B44302796? A Yes, sir.

Q Did you write your name "A. Thomas" on the back of the bill B44302797? A I did.

Q And did you write your name on the back of the bill B44302798? A I did.

Q Did you write your name on back of bill B44302804?
A Yes, I did.

Q Do you know anything about the Act of Congress relating to defacing currency of the United States?

MR. NANTLEY: I object to that as immaterial, irrelevant and incompetent, and frivolous.

THE COURT: Objection sustained.

MR. CRAIG: Exception.

BY MR. CRAIG:

Q Have you stated all that transpired ~~at~~ on this occasion at First Avenue and 96th Street? A As to what? Before or after the arrest? Which?

Q Before the arrest? A Yes; outside of I spoke to Mrs. Jakob about the weather and her baby.

Q Now, you had a conversation with Mrs. Jakob?

A Yes.

MR. CRAIG: That's all. Just one more question.

BY MR. CRAIG:

Q Is there any correction or modification or alteration that you desire to make in your narrative as to what took place at 96th Street there before the arrest? A No, sir.

Q Or after the arrest? A No, sir.

F A R S F I E L D H. L A V E L L E, of 121 Lexington Avenue, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MANLEY:

Q Mr. Lavelle, what is your business? A Chief Inspector, Tenement House Department, Borough of Manhattan, City of New York.

Q And you have been Chief Inspector for how long?

A Over six years and a half.

Q Are you acquainted with this defendant, Thomas F. Farley? A Yes, sir.

Q And you have known him for how long? A About three years.

Q And was he on the 26th day of April last, and for some time prior thereto, an Inspector in the Tenement House Department of this city? A Yes, sir.

Q Can you state how long he had been an Inspector?

A From about January 1st, 1909, the records of the Department show, I think.

Q ~~Was~~ Was he under your direction on the 26th of April? A Yes, sir.

Q And had you at that time assigned him to a certain district, or for some time prior to that date, in which he was to act as an inspector of the Tenement House Department?

A Yes, sir.

1911
CASE 1015

Q And did that district include the premises in question here, 340 East 96th Street? A Yes, sir.

Q Now, was there in April of last year, including the 26th day of April a rule in the Tenement House Department with regard to inspectors, before leaving the office, making out a route card, as they call it?

MR. CRAIG: I object. The rules of the Department must be in writing and are the best evidence.

THE COURT: Overruled, if he knows the rules, as Chief Inspector.

MR. CRAIG: And I object on the ground that the we are entitled to ~~xxxx~~ best evidence, the rules themselves should be produced.

BY MR. MANLY:

Q Are there rules of the Department which inspectors have? A Yes.

Q Will you produce them? A Yes, this is a copy of the rules and regulations of the Tenement House Department, in this book (the witness hands a book to the District Attorney).

MR. CRAIG: Let me see that book. Go ahead.

BY MR. MANLY:

Q Now, I ask you if there is any rule with regard to inspectors making or filling out any route card before they go out on their work in the morning?

MR. CRAIG: I object. The rules are the best evidence and they are in court.

THE COURT: I will allow the question. He is not trying to prove what the rule is now, but he has asked if there is a rule relative to that subject.

BY THE COURT:

Q Do you know of any rule to that effect? A Yes, sir, there is a rule.

Q Can you point out that rule? A Yes, sir.

BY MR. MANLEY:

Q Then point it out. A Rule 37.

Q Now, this book which I hold in my hand, and which, when you handed it to me, you said were the rules of the Department, do all the inspectors have --- are they all furnished with books like this? A Yes, on appointment.

BY THE COURT:

Q You mean when they are appointed? A Yes, sir, when appointed into the Department, they are handed a book or a copy of the rules and regulations of the Department.

BY MR. MANLEY:

Q And are they required to be familiar with the contents of this book of rules?

MR. CRAIG: Objected to.

THE COURT: Sustained.

BY THE COURT:

CASE 7-1615

Q They are supplied with a copy of those rules?

A Yes, sir.

MR. MANLEY: Now, I offer in evidence Rule 37.

MR. CRAIG: And I object to Rule 37, but I will not object to the whole book going in.

THE COURT: Overruled.

MR. CRAIG: Exception.

(It is marked People's Exhibit 2).

MR. MANLEY: Now, I ask permission to read this rule into the record:

"Rule 37. Routine of work---Inspectors are required to enter accurately upon their daily card the order in which they will visit the premises in their district. They are also required to adhere strictly to such program or order of procedure, and at the expiration of the day's work, they are to report promptly to their supervisor at the appointed meeting place, at the closing hour, or not later than five minutes thereafter. Violation of the above rule will be punishable---" by so and so.

Mr. Craig
~~THE COURT~~: Punishable by what? Read the whole of it.

MR. MANLEY: "By the imposition of a fine of not less than one day's pay."

EXHIBIT

1951

CASE 1615

BY MR. MANLEY:

Q Now, in accordance with that rule, have you a form of daily card, on which inspectors must write down what they are to do, on that day? A Yes, sir.

Q Now, have you here the daily card of the defendant Farley for April 26th, 1912? A Yes, sir.

Q Have you produced it? A Yes, sir; here it is.

Q And are you familiar with the handwriting of the defendant by having seen a good many of these, and seeing reports made by him, on various occasions? A Yes, sir.

Q Now, do all the inspectors make out these cards themselves? A Yes, sir, in their own handwriting.

Q And that is Farley's handwriting? A Yes.

Q Now, are they required to put down the premises, all the premises, that they are to visit that day?

MR. CRAIG: I object to that, as calling for a construction of the rules.

MR. MANLEY: Well, I'll withdraw it.

Q Now, it states here in the rule---

MR. CRAIG: I object to that, as a summing up of the contents of the rule, and I object to the reading of the rule again.

THE COURT: I overrule the objection.

MR. CRAIG: Exception.

BY MR. MANLEY:

Q At the beginning of rule 37, I find this: "Inspectors are required to enter accurately upon their daily card the order in which they will visit the premises in their district. They are also required to adhere strictly to such program or order of procedure." Now, I ask you, calling your attention to that portion of Rule 37, if you have had occasion to construe that rule for the men under your charge, the Inspectors? A I have, yes, sir.

Q Does that require that they shall enter on the sheet or card, not merely the order in which they are going to visit, but all the places that they had to visit, in the course of their official duty on that day?

MR. CRAIG: I object on the ground that his construction is not binding on the defendant in this Court.

THE COURT: Well, he can testify to a rule of the Department. I will overrule the objection.

MR. CRAIG: Exception.

A Yes. An inspector must enter upon that card every premises that he intends to visit that day.

MR. CRAIG: I object to that answer, and move to strike it out.

CASE 1615

THE COURT: Motion denied.

MR. CRAIG: Exception.

MR. MANLEY: Now, I offer in evidence this sheet or card.

MR. CRAIG: No objection.

(It is admitted in evidence and marked People's Exhibit 3).

MR. MANLEY: I don't deem it necessary, if your Honor please, at this time, to display it to the jury, and I will pass on to something else.

BY MR. MANLEY:

Q Now, I call your attention to page 136 of these rules and regulations, and to a paragraph numbered 44, and I ask you what that is? A It is a rule by which Inspectors are directed to promptly report all violations of law in regard to tenement houses, called to their attention, or which come under their observation. All reports made by inspectors must be from personal investigation, and they must be personally acquainted with the facts in each case, and not rely upon information given by others. Inspectors are required to note all tenements in their districts, undergoing alterations, and to promptly report such fact on form 1008, describing the house by street and number, and state how the building is occupied, and also giving a brief statement

as to the general nature of the alterations, and how far they have progressed.

MR. CRAIG: Now, I move to strike out the answer, on the ground that the question didn't call for a reading of the rule, and, if it had, I would have had a right to object to it.

THE COURT: Yes, I will strike out the rule, the answer.

MR. CRAIG: And I move now, to save time, that the whole book of rules should go in evidence.

MR. MANLEY: All right. I will offer it in evidence very cheerfully, the whole thing, the whole book.

(The whole book is marked People's Exhibit 2 in evidence).

BY MR. MANLEY:

Q I call your attention to some papers---and ask you what they are? A Department Papers, regarding this case.

BY THE COURT:

Q One minute. Yes or no is the proper answer to that question. A Yes.

Q Well, what are they?

MR. CRAIG: I object to that as calling for a characterization of the papers.

THE COURT: Objection overruled.

MR. CRAIG: Exception.

BY MR. MANLEY:

Q What are they? A Violations against the premises.

THE COURT: No, strike that out. I did not mean to have you characterize the papers.

BY THE COURT:

Q They are records, are they not, of your Department? A Yes, sir.

BY MR. MANLEY:

Q Are they records of the Tenement House Department? A Yes, sir.

Q And do they relate to any particular premises?

MR. CRAIG: I object, as the papers themselves will show what they relate to.

THE COURT: Do you wish to offer them in evidence, Mr. Manley?

MR. MANLEY: Not all of them.

MR. CRAIG: And I move to strike out the witness's statement that they refer to violations.

MR. MANLEY: I consent.

THE COURT: Yes, strike that out.

BY THE COURT:

Q They are records of the Department, taken from

1916

1615

the files of the Department? A Yes, sir.

Q That is what I meant when I asked you the question, "What are they?" A Yes, sir.

BY MR. MANLEY:

Q To what do they relate?

MR. CRAIG: I object. They show for themselves what they are.

MR. MANLEY: I will withdraw the question, to save time, and start over again.

BY MR. MANLEY:

Q Now, I call your attention to this sheet (indicating) a white sheet, and ask you to tell me the technical name of it in the Department?

MR. CRAIG: No, I object. They speak for themselves. These papers have not been even so far marked for identification, and they may not be put in evidence.

MR. MANLEY: Well, then, I will ask that this paper be marked for identification, first.

MR. CRAIG: I object to its being offered in evidence.

MR. MANLEY: I am not offering it in evidence, only for identification.

(It is marked People's Exhibit 4 for Identification.).

BY MR. MANLEY:

Q Now, what is that, People's Exhibit 4 for identification?

MR. CRAIG: Objected to.

THE COURT: Overruled.

MR. CRAIG: Exception.

A This is called Form No. 167.

BY THE COURT:

Q Well, what is it, is it a record of the War Department or your Department? A Of the Tenement House Department, what we call---

BY MR. MANLEY:

Q Well, what do you call it, as a part of the records of the Tenement House Department? A A re-inspection slip, Form No. 167.

Q And whose handwriting is that, that part of it. (Indicating) A Thomas F. Farley.

BY THE COURT:

Q Are you the custodian of those records? A No, sir; I am not.

MR. CRAIG: I don't make any objection on that ground.

BY THE COURT:

Q Well, what relation have you to them? Are they filed with you before they are placed on record? A No,

1915

1915

88
sir; but they pass through my bureau.

Q Well, have you charge of the Bureau? A Yes, sir; I am Chief Inspector of the Old Inspection Bureau, but there is a Bureau of Records in our Department now; but they pass through my bureau first.

BY MR. MANLEY:

Q Now, has People's Exhibit 4 for Identification been through your Bureau? A Yes, sir.

Q And your bureau received it from whom? A Inspector Farley.

Q From the defendant? A Yes, sir.

Q And what was done with this paper, People's Exhibit 4, after it was given to your department by the defendant? A Forwarded to the Executive Division of the Tenement House Department.

Q Now, does it indicate anything to you as to the premises at 340 East 96th Street? Look at the top there (Indicating).

MR. CRAIG: I object to what it indicates; it speaks for itself.

MR. MANLEY: Then I offer it in evidence.

MR. CRAIG: It appears, from an inspection of the document offered, that it is part of another document, and refers to and is coupled with the document immediately preceding it. Now, if the District

Attorney offers the two together, I have no objection, and, unless he does, I object, because it is immaterial, irrelevant and incompetent, and not binding on the defendant.

MR. MANLEY: Counsel desires that I offer--

MR. CRAIG: No. I object to that statement. I am not asking for the putting of the papers in the record, but I have said, if he will offer the whole lot of papers, I will not object.

THE COURT: Well, he is not obliged to do that.

MR. CRAIG: But I am not obliged to be put in the position by the District Attorney, of offering only part of the record.

THE COURT: Well, what do you want, Mr. Manley?

MR. MANLEY: I offer sheets Nos. 2 and 3.

(They are admitted without objection, and marked People's Exhibits 4-a and 4-b.)

MR. CRAIG: And I have no objection to that at all.

BY MR. MANLEY:

Q Now, I see that People's Exhibit 4, in evidence reads: "340 East 96th Street. Number 1, 2, 3, 4, 5" written on the right hand side, and "G. W." What does that mean? A "Complied with".

Q And down here written in ink, above the words "Thomas Farley" "No add. items are reported." What does that mean? A "No additional items reported."

Q And I see down in the lower left hand corner: "4-4-1912". A That's the date "April 4th, 1912".

Q Well, what does that mean, "People's Exhibit 4"? A This is a notification to the Department that all pending violations against those premises are complied with.

Q Pending on what date? A April 4th, 1912. And that no additional items were reported.

Q And that is in the handwriting of the defendant, "No add. items reported"? A Yes, sir.

Q And does that mean that upon the fourth day of April of this year the defendant Farley had reported no additional items of violations on this house? A Yes, sir.

MR. CRAIG: I object to that.

THE COURT: Objection sustained. Strike out the answer.

BY THE COURT:

Q That was Inspector Farley's report on that building? A Yes, sir.

CROSS EXAMINATION BY MR. CRAIG:

Q Now, this paper that you have just been inter-

rogated about by the District Attorney, which has been marked People's Exhibit 4-b, relates to the violations or information contained in the preceding paper, which has been marked 4-a, does it not? A Let me see the paper.

Q Here it is. A Yes; this paper that is marked 4-a was sent out in conjunction with this paper marked 4-b; the two were sent out together; given to the Inspector to make a report on both.

Q Now, please explain to the jury what those two papers are, and the purpose that they serve in the work of the Department? A This form, marked 4-a, is a copy of a violation pending against these premises, which is on file in the Tenement House Department. It is what we may call an Inspector's Copy. It is given to the inspector when he is sent out to make an inspection, to see whether those violations are complied with or not, or to make a report on them. He is sent out to make a report on those premises. He has to make a report on the back of this form whether or not those items are complied with, as well as on this form No. 167, the white slip, because this white slip is kept in the case, as we call it. When we put all the papers together, this form goes in the case, and this form goes in our records; the Bureau of records.

EXHIBIT

167

5

167

BY THE COURT:

Q 4-a goes into the Bureau of Records? A Yes, sir; and 4-b goes in the case. But it is required that the same report be made on both forms, both this form, 4-a and this form, 4-b. And if an Inspector, upon his inspection, finds that any of these items are complied with, he must so report, and, if not, he must so report.

Q Well, is there any report on the back of 4-a?

A Yes, sir; there is.

Q The same that is on 4-b? A No, sir; it isn't the same.

BY MR. CRAIG:

Q Well, will you read it for us? A On the back of 4-a it says, "Items 1, 2, 3, 4 not complied with." But that is under a different **date**. There is ~~another~~ report for this date.

BY MR. MANLEY:

Q For what date? A "4-4-12". There is no report of that date on this form, 4-a.

MR. CRAIG: Will you let me see that for just a moment, Mr. Inspector?

THE WITNESS: Yes, sir; there it is.

MR. CRAIG: I ask the stenographer to mark with some number for identification, this yellow sheet, which I now expose.

BY MR. CRAIG:

Q Now, Mr. Lavelle, will you tell me, will you explain what this Defendant's Exhibit A for Identification is? A This is a copy, a carbon copy, of a letter forwarded by the Department to the recorded owner of these premises, 340 East 96th Street.

Q Who was the letter sent to? A It is addressed to H. Nelson McLernan, 128 West Fordham Road, City.

MR. CRAIG: I offer it in evidence.

MR. MANLEY: I have no objection.

(It is admitted in evidence and marked Defendant's Exhibit A.)

MR. CRAIG: Now, the witness H. Nelson McLernan, being still in the Court Room, I ask him to produce the original of this letter.

THE COURT: Well, where is he? Stand up. What is the date of the letter?

MR. CRAIG: The letter is dated March 29th, 1912. I ask that he be required to bring into Court, tomorrow morning.

THE COURT: Yes, he may bring it into Court, tomorrow morning.

BY MR. CRAIG:

Q Now, Mr. Lavelle, will you explain how, in a general way, the work of the Tenement House Department

is organized, or so much of it as relates to the instructions that are received by the Inspectors, and through whom those instructions are received, and the manner of making their reports? A Well, I can relate only in so far as the conduct of my bureau is concerned. That is, I receive---

THE COURT: Well, you have charge of the Inspectors, have you not?

THE WITNESS: Yes, sir.

BY THE COURT:

Q You are Chief Inspector? A Yes, sir.

Q Then you may state the operations of the Department, so far as the Inspectors are concerned. That is the question, as I understand it. A I receive orders from the Commissioner's office.

BY MR. CRAIG:

Q The Commissioner of the Department? A Yes, sir.

Q Orally or in writing? A Orally and in writing. And I transmit those orders to the inspectors, orally and in writing also, at times.

Q Now, is a record kept of the orders that you receive from the Commissioners? A Yes.

Q And is a record kept of the orders transmitted by you to the inspectors? A Yes, sir; in a ---

Q And how is the record of the oral orders kept?

A Well, there is a record kept.

Q Is it taken stenographically? A They are taken stenographically, if the stenographer is on time in the morning, but if he is not, unfortunately, we miss those.

Q Is there any regulation of the Department requiring the Department's Stenographer to be on time?

A Yes.

Q And is any violation filed when he is late?

MR. MANLEY: I object to that as incompetent.

The stenographer is not on trial.

THE COURT: Overruled.

MR. MANLEY: Exception.

BY MR. CRAIG:

Q You do **permit** some violations of rules, then? Is there not a rule that she is required to be on time; isn't that the Statute under which she draws her salary?

MR. MANLEY: I object to that as immaterial, irrelevant and incompetent.

THE COURT: I will exclude the question.

MR. CRAIG: Exception.

BY MR. CRAIG:

Q By whom are these rules which have been offered in evidence, promulgated? A By the Tenement House

1915

CASE 1015

Commissioner.

Q And the Commissioner gives, from time to time, orders or instructions? A Yes, sir.

Q And sometimes orally and sometimes in writing? A Yes, sir.

Q Now, which controls, when such instructions are given, the rules or the special instructions? A They both control. One isn't supposed to interfere with the other.

Q Have you got these instructions that were given on the eleventh of March, 1912? A I think so, yes, sir.

Q Or the twenty-first of March? A I will look in my bag.

THE COURT: How long will the cross examination last?

MR. CRAIG: At least half an hour longer, Sir.

THE COURT: Then I think we had better adjourn now for the day.

MR. CRAIG: I have no objection to that action on the Court's part.

(The Court then admonished the jury in accordance with Section 415 of the Code of Criminal Procedure, and adjourned the further trial of the case until Thursday Morning, October 17th, 1912, at 10:30 o'clock A. M.)

1912

CASE 21615

TRIAL RESUMED.

New York, October 17th, 1912.

S A R S F I E L D H. L A V E L L E, his cross examination being continued, testified as follows:

CROSS EXAMINATION CONTINUED BY MR. CRAIG:

Q Mr. Farley, I believe --- Mr. Lavelle, I mean --- I believe when we left off, last night, you were explaining the process or manner of giving instructions to the inspectors, and as I recollect, and you will correct me if I misunderstood you, you said that the inspectors are first supplied with this book of rules when they become inspectors, and then, from time to time, the Tenement House Commissioner gives instructions to you, as the Chief Inspector, which instructions were given sometimes orally and sometimes in writing, and then you repeated or relayed these instructions, as it were, to the inspectors, which was sometimes done orally and sometimes in writing; and, when it was done orally, ^{and} the stenographer was on time, ~~the~~ a record was taken of the oral instructions; is that correct?

A Yes, sir.

Q Now, those instructions were given with the expectation that the inspectors should comply with them; were they not? A Yes, sir.

Q It was just as much their duty to comply with the

1912

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1912

written or oral instructions, as the rules themselves?

A Yes, sir.

Q And those instructions were just as binding as though they had been printed in the rule book? A Yes, sir.

Q Now, I show you a letter, dated the 23rd --- that purports to be a letter, dated the 23rd of February, 1912, and ask you whether that was sent to the addressee, about that date? A Yes, I would say that this is a carbon copy of a letter sent to this addressee.

MR. CRAIG: I offer it in evidence.

MR. MANLEY: Let me see it. I object to it as being incompetent, as having no relation to the charge in question. If counsel will show me in what manner he thinks it to be important, then I will know whether to object or not.

MR. CRAIG: I will tell you quietly or in the presence of the jury, as you may desire.

THE COURT: You had better mark it for identification, perhaps, first.

MR. CRAIG: Very well.

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

THE COURT: And the letter, if admissible, will be received when offered.

MR. CRAIG: I offer it now.

MR. MANLEY: I object to it as incompetent.

THE COURT: I suggested that it be marked for identification, so that its connection with the case may be shown and then it may be offered in evidence.

MR. CRAIG: And I offer it in evidence at this time.

MR. MANLEY: I object to it as immaterial, irrelevant and incompetent.

THE COURT: I will sustain the objection to it at this time. From what you have said of it, I do not see how it can be connected with the criminal charge against the defendant.

MR. CRAIG: And I except to the ruling. And I ask your Honor to look at the paper.

THE COURT: Yes, I will look at the paper, certainly.

MR. MANLEY: You see it relates to something away back in February.

THE COURT: I will exclude the letter.

MR. CRAIG: I except.

THE COURT: No connection with the defendant has been shown in any way.

BY MR. CRAIG:

Q Mr. Lavelle, were you the Chief Inspector on the

101

1615
CASE - 1615

23rd of February, 1912? A Yes, sir.

Q Well, will you state to the jury what the practice of the Tenement House Department in the months of January, February and March and April, 1912, was with respect to enforcing penalties against persons found in violation of the Act, in the particular respect of whether or not the penalties were imposed immediately upon the filing of the violations, or whether or not time was given for owners to comply with the Act before the penalties were enforced by the Department?

MR. MANLEY: I object to that, as to the time when penalties were enforced.

THE COURT: I will allow the question.

A I cannot testify as to the enforcement of penalties. That lies entirely in the hands of the Commissioner and the Corporation Counsel. I don't have anything to do with that class of work, the enforcement of penalties.

Q Will you state whether or not it was the practice of the Department to afford another opportunity to owners to comply, before submitting the case to the Corporation Counsel, for the collection of the penalty prescribed by law?

MR. MANLEY: You mean after the report of the violation to the Department?

MR. CRAIG: Yes.

1912

CASE 1615

A Yes, they do, at times give them additional notices.

Q So that, as matter of fact, it was not the policy of the Department to come right down on the owner with all rigors of the law immediately on the filing of a violation?

A Oh, no, sir, it isn't customary.

Q And that was understood by the inspectors; wasn't it? A I don't know as they had any right to understand anything about that practice.

Q Well, you were the Chief Inspector: A No, not even I as Chief Inspector.

Q Well, you understood it to be so; didn't you?

A Well, I understood it to be so from the practice of the Department, but not as a part of my duty.

Q But it was a part of your duty, was it not, to see that the inspectors were informed intelligently of their duties? A Well, but that's not a part of my work.

Q Well, but isn't that a fact? A Yes, sir.

Q And you try to do your duty; don't you? A Yes, sir.

Q You didn't consciously commit any breach of it; did you? A No, sir, I didn't.

Q Well, do you recollect whether or not there was what is called a Cycle of Reinspection, covering the district in which this tenement house, so called, was located, in or about the month of March or April, 1912?

CASE # 1015

A Yes.

Q Will you explain to the jury what that means, this Cycle of Reinspection? A A Reinspection Cycle, as the Department calls it, is made three or four times a year; that is, a reinspection of the tenement houses in the Borough of Manhattan, to see whether the orders against the property are complied with or not, and the inspector is to make his report as to the finding on the day of the inspection.

Q Now, do you recall any particular circumstances, any unusual circumstances, about this Cycle of Reinspection, that took place some time in the Spring of 1912? A Yes, sir.

Q Well, just explain that situation to us, please.

A Well, owing to a decision of the Court of Appeals as to the definition of what a tenement house was, it became necessary to have legislation enacted to determine that fact and make it a settled fact, and the Legislature passed an act defining the proper definition of a tenement house, which made some change in the ~~the~~ old definition; and, to ascertain whether the buildings on our records in the Department were tenement houses or not, we had to make an inspection of the entire City of New York, and we did so in the Borough of Manhattan, to find out what classification these houses were in, according to that latest decision of

CASE 21615

the Court of Appeals, to find out if it was under the old term or definition of a flathouse or tenement house, and this additional information was required from the inspectors, to ascertain whether there were certain plumbing fixtures in the house or not, so as to comply with the new Tenement House Law.

Q And when were instructions given to the inspectors with respect to this inspection? A March 21st, I believe, was the date.

Q 1912? A Yes, sir.

Q Were they given orally or in writing? A In writing, at least, they were read to them, but I prepared the instructions in writing.

Q And have you brought with you such instructions?

A Yes, sir.

Q Will you kindly produce it? A Yes. These are the inspections which I issued on March 21st, 1912, to the inspectors.

MR. CRAIG: I ask that it be marked for identification.

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

THE COURT: I do not see how they have any bearing on this case, but I suppose you do. It makes no difference why the defendant went to that house,

184
If he took \$40 for any act in relation to this house, he is guilty under the indictment.

MR. CRAIG: Well, but we will come to that question later.

THE COURT: Even if he got orders from the Chief Inspector to go and get the \$40, he would still be guilty.

MR. CRAIG: And I except on the record to your Honor's remarks in the presence of the jury.

THE COURT: I only want to limit the case to the issues. The Tenement House Department is not on trial here.

MR. CRAIG: I ask your Honor to instruct the jury to disregard the remarks that your Honor has just made.

THE COURT: The jury will decide the case on the evidence, when submitted to them. My effort is only to keep the case within proper limit, and counsel differs with me as to the proper limit, and his questions will be ruled on when asked.

MR. CRAIG: Now, I offer it in evidence.

MR. MANLEY: My only objection is that it is incompetent, and will unnecessarily prolong the trial.

MR. CRAIG: Well, I certainly want to expedite

CASE # 1615

matters, too.

BY MR. CRAIG:

Q. Is that paper, Defendant's Exhibit C for identification, does that paper contain the instructions which were given to the inspectors for this Cycle of Reinspection, on or about the date it bears? A Yes.

MR. CRAIG: Now, I offer that in evidence.

MR. MANLEY: I object to it as incompetent, but I am perfectly willing that the question should be asked of the witness what it is and what are its contents.

THE COURT: I will allow it if that is the only objection you have to make. I will admit it.

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

MR. CRAIG: And I will reserve, if your Honor please, the right to read it to the jury until a little bit later, in order to save time.

THE COURT: Yes.

BY MR. CRAIG:

Q. Now, you remember that you gave some testimony on your direct examination as to some white or yellow cards. Now, are they sometimes called route cards? A Yes, there is such a card in the Department.

Q. No, I mean the one that states on it the places that the inspector is to visit on a certain day? A That is called

CASE 1615

his route sheet.

Q And from what is that made out? A When the work is handed to the inspector, in the morning.

Q That is, he is given some sort of memorandum or record from the Department of particular properties with respect to some sort of complaint or violation which exists in the Department? A His work is laid out, in the morning, and he makes out his route sheet, as to how he is going to visit those premises.

BY THE COURT:

Q That is, he has no right to go wherever he pleases? A No, sir.

MR. CRAIG: Inobject and except to the question of the Court and ask to have it stricken out.

THE COURT: Objection overruled. Motion denied.

MR. CRAIG: Exception.

BY MR. CRAIG:

Q Now, will you tell me whether or not inspectors sometimes make additions to the slips, on returning from their day's work? A They have no right to, under the rules.

MR. CRAIG: I move to strike out the answer as irresponsible to my question.

THE COURT: Motion denied.

1615
CASE # 1615

MR. CRAIG: Exception.

BY MR. CRAIG:

Q Well, do they, as matter of fact?

MR. MANLEY: Objected to, as already answered.

THE COURT: Excluded.

MR. CRAIG: Exception. I have repeated the question, because I don't think the witness understood my question, because he didn't answer it responsively.

BY THE COURT:

Q Did you understand the question that he put to you? A Yes, I did.

BY MR. CRAIG:

Q Did you ever see in the Department, since you have been an inspector there, any of these route slips, with additions made to them by the inspector, after the day's work? A No, sir, I never did.

MR. CRAIG: That's all.

RE DIRECT EXAMINATION BY MR. MANLEY:

Q Will you tell us what the rule was that was issued to all inspectors, including the defendant, on the 21st of March of this year?

MR. CRAIG: I object. It is in evidence already, and it is only repetition, and only takes up our time, as well as your Honor's.

1911
CASE 1615

MR. MANLEY: It is in evidence, of course, but counsel didn't read it to the jury.

THE COURT: I don't see how the paper is admissible at all. If you had objected to it at the time, I would have excluded it.

MR. MANLEY: I objected to it as improper, but I did not want to appear to be objecting to something that the defendant wanted to get in.

THE COURT: There is a very simple issue before the jury here.

MR. MANLEY: Yes, sir.

THE COURT: It is clearly incompetent, and you have that rule in your hand.

MR. CRAIG: Well, I will withdraw my objection. I don't object to the question now.

THE COURT: It does not appear that any explanation is required.

MR. MANLEY: Then I will read it to the jury. But, before doing that, I ask your Honor to strike out the exhibit from the record as being incompetent.

THE COURT: No, it has been received. Let it remain in now. The only effect of it that I can see is to encumber the record, and befog the issues.

MR. MANLEY: But, counsel for the defendant not having elicited from the witness an explanation of it,

CASE 2-1615

I have to do so now. He has not even read it to the jury.

(Mr. Manley reads the exhibit to the jury).

BY MR. MANLEY:

Q Now, that is a copy of the letter sent out by you to all the inspectors, including the defendant? A Yes, sir.

Q Or read to them? A Yes, read to them.

Q Well, did you give these instructions which you read to the inspectors at the direction of any superior officer in the Department? A I did.

Q At whose direction? A The First Deputy Commissioner.

Q And his name is what? A William H. Abbott, Jr.

Q Now, as I understand your testimony in answer to the questions on cross examination by Mr. Craig, the object of this was to find out certain things which it was necessary for the Department to find out, at that time? A Yes, sir.

Q And did that Cycle of Reinspection extend throughout the City of New York? A Throughout the Borough of Manhattan, anyway. I know that positively.

Q And it says that, as this is merely an additional Reinspection Cycle, inspectors are not to file any violations whatever, unless they can make affidavits that the conditions, the sanitary or structural conditions, are ex-

51911615
CASE 1615

travely dangerous. Now, did that mean that if an inspector saw violations right before him of any of the Tenement House Act's provisions, or the rules of the Department, did that mean that he was not to report those things to the Department?

MR. CRAIG: I object to that as incompetent.

Whatever it means it shows on its face.

MR. MANLEY: Now, that is the very reason why counsel put that in.

MR. CRAIG: Yes, and I object to the witness characterizing something which he stated in plain English at the time, and we have the plain English preserved in writing, and we don't need the operations of his mind now as to what he may have thought but left unexpressed at the time he delivered this instruction.

MR. MANLEY: I haven't asked him what he thought. In criminal law, the writing is not the best evidence.

THE COURT: The writing is the best evidence, Mr. Manley.

MR. MANLEY: It is the best evidence of a specific instruction.

THE COURT: You may ask him whether he added anything to that or not.

101

CASE 1615

MR. CRAIG: Well, I object to that, as to whether he did add anything to his instructions at the time, because it is by what he said that we know his meaning, and that is here, and every inspector had a right to rely upon that.

THE COURT: The question is whether he read that paper to the inspectors, or whether he explained that paper to the inspectors.

BY THE COURT:

Q what did you do at that time? A I read that instruction to the inspectors.

Q And did you add anything to it? A No, sir, I added nothing to it then. I thought the instructions spoke for themselves.

THE COURT: Well, that is all. The paper speaks for itself.

BY MR. MANLEY:

Q I call your attention to Rule 44 of the General Rules of the Department. Was that rule in force at the time when you read these particular instructions, dated March 21st, to the inspectors? A Yes, sir.

MR. CRAIG: May I see the rule?

MR. MANLEY: Certainly.

BY MR. MANLEY:

Q Did this rule, which you read, or this paper, which

5191
1615
CASE 1615

you read, on March 21st, to the inspectors, did that in any way set aside Rule 44 of the General Rules for Inspectors?

MR. CRAIG: I object to that, as calling for a construction of the rule.

THE COURT: Overruled.

MR. CRAIG: Exception.

BY THE COURT:

Q You have no power to make rules; have you? A No, sir, I have no power.

MR. CRAIG: I object to the question and the answer, and move to strike out the answer as incompetent, and not binding on the defendant.

THE COURT: Objection overruled. Motion denied.

MR. CRAIG: Exception.

BY THE COURT:

Q Who makes the rules for the Department? A The Tenement House Commissioner.

BY MR. MANLEY:

Q Now, if this defendant, this inspector, having charge of this building on 96th Street, after the reading of these instructions, on the 21st of March, 1912, went to the premises that we are talking about, and there, in trying to get information called for by what you had read to him on the 21st of March, saw that a water closet had been put in on the ground floor in place of a toilet, and

1615

a partition built around it; that new bath tubs had been put in in all the rooms, in all the apartments rather; and that toilets had been replaced, and ~~xxxx~~ stands built around them, should he, under the rules of the Department, have reported that to the Department?

MR. CRAIG: I object to that as incompetent.

THE COURT: Overruled.

MR. CRAIG: Exception.

A Yes, sir.

BY MR. MANLEY:

Q And that, in spite of what you had read on the 21st of March, to all inspectors?

MR. CRAIG: I object, on the same ground.

MR. MANLEY: Well, it is included in the other question, but I will withdraw it.

BY THE COURT:

Q You are familiar with the rules? A Yes, sir.

Q And you know the duties of the inspectors? A Yes, sir.

BY MR. MANLEY:

Q Now, you were asked by Mr. Craig, at the beginning of your cross examination, this morning, if time was allowed before the penalties were gone into. Now, penalties are gone into after violations are reported to the Department; are they not? A Yes, sir.

Q In other words, there has got to be a record of some kind ----

THE COURT: Well, he said his Department has got nothing to do with penalties.

MR. MANLEY: I will not press it any further.

BY MR. MANLEY:

Q But you understand that that is the procedure, from your knowledge of the procedure of the Department?

MR. CRAIG: I object. Your Honor wouldn't let me go into the procedure, and I don't think he has the right to go into it now.

THE COURT: I sustain the objection. He has answered that question already, both in answer to counsel for the defense and counsel for the People, and to the Court.

BY MR. MANLEY:

Q Now, you were asked, yesterday afternoon, by counsel for the defendant, if this was a copy of a letter which was sent to H. Nelson McLernan, on the 29th of March, 1912?

A Yes, sir.

Q You were asked that; were you? A Yes, sir.

Q And you were also asked by counsel for the defendant from what records they got the name H. Nelson McLernan, so as to tell to whom to send the letter. Do you remember that? Now, I ask you if, from your knowledge of the

1917
CASE 77 1615

records, and you have testified that they were kept in your department, you can tell from what record they get the name H. Nelson McLernan, so as to tell to whom to send the letter?

MR. CRAIG: I object to it as immaterial.

THE COURT: It is immaterial.

MR. MANLEY: I know it is absolutely immaterial, but I want the jury to understand the rest of it, and not half of it. Counsel went into it only half way.

MR. CRAIG: Well, then, I will expedite matters by consenting that the whole record go in before the jury, and either side may make any use of it that they see fit; I will consent that the whole thing go in.

MR. MANLEY: No, I don't see any necessity for that. It will only serve to encumber the record. It is unnecessary, and there is much incompetent material in it. That is the only reason that I object.

THE COURT: I have already stated what the issue is in this case.

MR. MANLEY: I will withdraw the question. That's all.

MR. CRAIG: I offer in evidence ----

THE COURT: It makes no difference who the owner of the property was.

1615

CASE 1615

MR. MAHLEY: Not the slightest.

MR. CRAIG: I offer in evidence this bundle of papers, which Mr. Manley just read from, and I ask that the bundle be marked.

THE COURT: Well, you may have it marked for identification, but I will exclude it as evidence in the case. I only want such papers admitted as have some relevancy to the issue.

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

MR. CRAIG: Now, I offer it in evidence.

THE COURT: Excluded.

MR. CRAIG: I except.

RE CROSS EXAMINATION BY MR. CRAIG:

Q And you said that you received your directions to promulgate this instruction of March 21st from some other person? A Yes, sir.

Q Was he your superior? A Yes, sir.

Q Was that given to you orally or in writing?

A Writing.

Q Have you brought it with you? A Yes, sir.

Q Will you kindly produce it? A Yes, sir.

Q Have you found it, Mr. Lavelle? A Yes.

Q Will you let me see it a moment, please? A Yes.

Q Did you testify that you received these instructions from the First Deputy of the Third Deputy? A The First Deputy.

Q There is no Third Deputy, or was not at that time?

A No, sir.

Q And that was William Abbott? A Yes, William H. Abbott, Jr.

Q Is the instruction to which you refer the one dated the 13th of March, 1912? A Yes, sir.

MR. CRAIG: I ask that it be marked for identification.

THE COURT: Mark it for identification.

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

MR. CRAIG: I offer now in evidence Defendant's Exhibit E for identification.

THE COURT: Excluded.

MR. CRAIG: Will your Honor hear me just briefly.

THE COURT: Why, that was a communication made to him. How does that affect the defendant in any way?

BY THE COURT:

Q You did not show that communication or publish that communication to anyone; did you? A No, sir.

THE COURT: He has testified that he prepared a certain letter and read it to the inspectors, and the

1912

CASE 1615

defendant was present, and I have allowed you to put that letter in evidence.

MR. CRAIG: And you asked him yourself, your Honor, whether he had any authority, to make rules, and the statute vests that authority in the First Deputy Commissioner, and here is the written direction from the First Deputy Commissioner, and this man is the mere conduit through which it passes to the inspectors. Now, I desire to place in evidence in the record the direction from the First Deputy Commissioner, who is charged by law with defining the duties and giving instructions to the inspectors, and I wish to show that this is such a direction.

MR. MANLEY: Well, but we have got it now on the record that he did this at the direction of the person who had the authority. Now, that carries it right through.

THE COURT: Well, is there any specific thing in that letter which you wish to introduce?

MR. CRAIG: Yes, sir, the legal authority of the First Deputy Commissioner to give these instructions to the witness.

MR. MANLEY: Why, he has testified that he did it at the direction of the First Deputy.

MR. CRAIG: And I want the direction in evidence,

1920

1615

CASE

because otherwise the Department is not bound by that action.

MR. MANLEY: Yes, that binds the Department, the order of the First Deputy Commissioner. But I have no objection to its going in.

THE COURT: Well, then, I will allow it in evidence.

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

BY THE COURT:

Q Did you mark that, or underline it with red ink, that part (indicating)? A No, sir, I didn't do that, but it was done in my office.

THE COURT: I don't think it is relevant, but I will allow you to put it in.

(Mr. Craig reads the exhibit to the jury).

BY MR. CRAIG:

Q Now, Mr. Lavelle, was it pursuant to this order that this instruction was given by you, on the 21st of March, 1912, which has been testified to by you? A Yes, sir.

Q Do you notice on this paper, Defendant's Exhibit E, that it has been underscored here and there?

MR. MANLEY: Oh, I object to any marking on the paper. The contents are in evidence.

THE COURT: Well, let him answer it.

A Yes, sir.

BY MR. CRAIG:

Q Were these underscorings made in your office?

A Yes, sir.

Q And I suppose that was done to emphasize the particular part that was underscored? A That was underscored, I believe, after I received this subpoena duces tecum, to see whether that was the letter that you meant in that paper.

Q You then did realize the import of the part that you underscored?

MR. MANLEY: I object.

THE COURT: Objection sustained.

MR. CRAIG: Exception. And I desire to read to the jury the part that is underscored.

MR. MANLEY: Why, it's in evidence.

MR. CRAIG: Then I offer in evidence the underscoring in red pencil.

MR. MANLEY: Why, he has read the whole of it to the jury, your Honor.

THE COURT: Yes, the underscoring is not a part of the letter.

BY MR. CRAIG:

Q What would follow to an inspector who failed to obey the instructions of the Chief Inspector? A He would be placed on charges.

1001

5101 1015

Q And would be liable to lose his place in the Department? A Yes, but not necessarily so.

BY MR. MANLEY:

Q Now, when you read these instructions, on March 21st, to the inspectors, were you carrying out the instructions given you by Mr. Abbott in the letter of March 13th, 1912? A Yes, sir.

Q I call your attention to ^{the} slip which is now marked People's Exhibit 4 in evidence, and ask you if that part of it which reads ---- which is stamped on the slip --- "Has each apartment, except the janitor's, a separate kitchen, water closet and bath tub?" Are those the things which the inspectors were to find out in accordance with the instructions read to them by you on the 21st of March?

MR. CRAIG: Objected to as immaterial, irrelevant and incompetent, and not proper re-direct examination.

THE COURT: Overruled.

MR. CRAIG: Exception.

A Yes, sir.

BY MR. MANLEY:

Q Now, I call your attention to that part of the exhibit, which you have already testified was in the defendant's handwriting, marked, "Complied with, 1,2,3,4,5. No additional items reported," and signed by him, and dated

April 4th, 1912, and ask you, did that have anything to do, as to what he was to find, as to the separate kitchens, water closets and bath tubs?

MR. CRAIG: Objected to.

THE COURT: Allowed.

MR. CRAIG: Exception.

A Yes.

BY MR. MANLEY:

Q Now, I call your attention to this sheet which follows right after People's Exhibit 4, and ask you if that had anything to do with the defendant Farley's making a report as to the condition of items 1, 2, 3, 4 and 5, on the 4th of April, this sheet being dated the 3rd of April?

MR. CRAIG: I object to it as incompetent.

THE COURT: Well, I will sustain the objection.

It was objectionable as to form. You can ask him to explain the connection, if any, between those two instruments.

MR. MANLEY: I will adopt that suggestion.

BY MR. MANLEY:

Q Explain the connection between those two sheets, if there is any. A This is a departmental form which shows that the owner called at the Department, at 4-3-12.

MR. CRAIG: I object to that. It isn't in evidence. But I will not object, if they offer it in

APR 11 1915

evidence.

BY THE COURT:

Q Is there any connection between the two sheets?

MR. CRAIG: I think, if your Honor please, that the sheet should be marked for identification, at least, before that question is asked.

(It is marked People's Exhibit 5 for identification).

BY THE COURT:

Q Now, the question is, to what document, if any, does that relate? To what document in your hands does that paper refer, or is connected with --- I don't mean physically connected with --- in that bundle that you have in your hands?

BY MR. MANLEY:

Q Does People's Exhibit 5 for identification have any relation to any paper in your hands? A It is a slip made out by a clerk in the office, stating that the owner called, and asked for the reinspection of those premises. It is Form No. 37, filled out by a clerk in the office.

Q And it indicates that he called on what date?

MR. CRAIG: I object to that. The only way to do this is to offer it in evidence.

THE COURT: Well, you can offer the paper in evidence, if counsel wishes it, this particular sheet.

CASE 2:16-15

MR. MANLEY: Then I offer it in evidence.

(It is marked People's Exhibit 5 in evidence).

MR. CRAIG: But, of course, it is understood, and is clearly understood on the record, that, while it is admitted without objection, it is not admitted as proof of the facts stated therein.

MR. MANLEY: I am offering it as explanatory of what is contained on the bottom of People's Exhibit 4, if it is explanatory.

BY MR. MANLEY:

Q Now, I ask you if People's Exhibit 5 explains in any way People's Exhibit 4, which is the other sheet? A As a result of the request contained in this paper here ---

Q People's Exhibit 5? A Yes. This slip is sent out for reinspection.

Q Exhibit 4? A Yes, sir.

Q Now, what does that mean? A It means that somebody called at the Tenement House Department, and requested a reinspection on all pending violations against the premises 340 East 96th Street.

Q What date did that person call? A 4-3-12.

Q That means April 3rd, 1912? A Yes, sir.

Q Now, what does Exhibit 4 indicate, if anything, after that person called, it being but the next day? A It indicates that, on the following day, this reinspection was

1912

CASE 1015

sent out -- that the inspector was sent out to make a reinspection.

Q And who was the inspector sent out? A Inspector Thomas Farley, the defendant.

Q Well, did that reinspection, on April 4th, have anything to do with the Cycle of Reinspection, of March 21st? A Yes; it was part of the Cycle of Reinspection.

Q Did it have anything to do with finding out how many separate kitchens there were, or how many water closets or bath tubs there were?

MR. CRAIG: I object to that.

THE COURT: Sustained. He said it related to the Cycle.

MR. MANLEY:

Q In what way did it relate to the Cycle?

MR. CRAIG: Objected to.

THE COURT: Allowed.

MR. CRAIG: Exception.

A The inspector was expected to return on all pending violations on those premises; and, in addition, to answer these questions asked on that Form, No. 167, stamped on that form.

Q Therefore, he was to go out, and not merely find out things that were among things which you read out on the 21st of March, but all pending violations?

MR. CRAIG: I object to that.

THE COURT: Sustained. The paper speaks for itself.

BY MR. MANLEY:

Q Now, in People's Exhibit 4, as to the violations 1, 2, 3, 4 and 5, was that report made either in response to going out in pursuance to the order of March 21st, or was it made in response to the person who came in on April 3rd, which is Exhibit 5?

MR. CRAIG: I object to that, as incompetent.

THE COURT: Well, if he knows, I will let him state.

MR. CRAIG: And I object to it on the further ground that it is not only incompetent and immaterial and irrelevant, but not proper re-direct examination.

BY THE COURT:

Q Do you know? Have you personal knowledge?

MR. CRAIG: As distinguished from an opinion.

BY THE COURT:

Q As distinguished from an opinion? A I don't know positively.

THE COURT: All right, then, you don't know.

MR. MANLEY: All right, then; that's all.

BY THE COURT:

Q You do not gain any more information that any other

1961
CASE # 1615

person who understands the routine of the office can gain from reading those papers? A No, sir; it's a matter of record.

BY MR. CRAIG:

Q You have a letter there dated the 23rd of February; have you not?

THE COURT: Which letter do you mean? The Deputy Commissioner's letter?

MR. CRAIG: No, the one which your Honor excluded, a moment ago, and which I am hopeful your Honor will now admit.

A I don't see any letter of February 23rd.

MR. MANLEY: Do you mean that one (indicating)?

MR. CRAIG: I can find it if you will let me have that bundle. This one right here, dated the 23rd of February, (indicating).

MR. MANLEY: That is the one that your Honor ruled out.

(The question is repeated by the stenographer).

A I have, yes.

BY MR. CRAIG:

Q And does that letter, which has been marked Defendant Exhibit B for identification, relate to the violations that this reinspection covered, and the same violations that you have been interrogated about by the District Attorney?

CASE 1615

A Yes, it does relate to those.

MR. CRAIG: I offer it in evidence.

MR. MANLEY: I object to it as incompetent.

THE COURT: Well, I will allow it in evidence now. It has been connected now.

BY THE COURT:

Q That is the 23rd of February; is it not? A Yes, sir.

THE COURT: And how can that relate to the 3rd of April. You may ask him that question, if you desire.

BY MR. CRAIG:

Q How does that relate to the 3rd of April? A This letter relates to the pending violations against the premises, pending on February 23rd, 1912, and there was a notice sent to the owner that nothing had been done to comply with those violations.

BY THE COURT: Q And the letter speaks for itself, doesn't it? A Yes, sir, very clearly.

THE COURT: I will receive it in evidence now.

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

MR. CRAIG: That's all, Mr. Lavelle.

MR. MANLEY: Just a minute. That's all.

CASE # 1615

W I L L I A M H. A B B O T T, of 254 85th Street,
Brooklyn, a witness called on behalf of the People,
being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MANLEY:

Q What is your business, Mr. Abbott? A First Deputy
Tenement House Commissioner.

Q And you have been such how long? A Four years.

Q Now, did you some time during the week of the 22nd
of April, that being a Monday, and Friday being the 26th,
did you see Mr. H. N. McLernan?

MR. CRAIG: I object to that as immaterial,
irrelevant and incompetent, and not binding on the
defendant.

THE COURT: Well, I will allow the question.

MR. CRAIG: I except.

A I did, sir.

BY MR. MANLEY:

Q Where did you see him?

MR. CRAIG: Same objection.

THE COURT: Overruled.

MR. CRAIG: Exception.

A I saw him first in my office, 44 East 25rd Street.

BY MR. MANLEY:

Q That is, in the Tenement House Department? A Yes,
sir.

CASE 1615

Q Did you go anywhere with him?

MR. CRAIG: The same objection.

THE COURT: Overruled. Unless it is connected with the defendant it will not hurt him. I have to allow the District Attorney to lay a foundation to prove his case, if he can.

MR. CRAIG: Exceptions.

A I did, sir.

BY MR. MANLEY:

Q Where did you go? A On the following day, I visited ----

MR. CRAIG: Pardon me, Mr. Abbott. The only question is where did you go.

BY MR. MANLEY:

Q What place did you go to, if any? A To a building on the southwest corner of First Avenue and 96th Street.

Q Is that 340 East 96th Street, in the City and County of New York? A It is known as that number, yes.

Q And did you go into the various parts of that building?

MR. CRAIG: The same objection.

THE COURT: Overruled.

MR. CRAIG: Exception.

A I did.

BY MR. MANLEY:

1911
CASE 1615

Q And had you had a talk with Mr. McLernan before going there?

MR. CRAIG: I object to that.

THE COURT: Overruled.

MR. CRAIG: Exception.

A I did, sir.

BY MR. MANLEY:

Q Now, was your attention called there to any new work?

MR. CRAIG: One moment. I object to that as hearsay and incompetent.

THE COURT: Objection sustained.

BY MR. MANLEY:

Q Did you see any new work there?

MR. CRAIG: I object to that as incompetent.

THE COURT: Objection overruled.

MR. CRAIG: Exception.

A I saw work which appeared to be recently done.

BY MR. MANLEY:

Q What was that work? A It was the replacing of some plumbing fixtures in the bathroom on the second story, one of the rear apartments, and I understood ----

Q You can't tell what you understood, just what you saw? A Also a plastered partition erected in the store, forming what appeared to be a water closet compartment.

575-1615

Q Now, I show you Exhibit 4A, People's Exhibit 4A, and ask you if what you saw there and what you have just described as to the bathroom on the second floor and the toilet on the ground floor had any reference to those five items that are on the back side of this exhibit?

MR. CRAIG: I object to that as immaterial, incompetent irrelevant, and improper.

BY THE COURT:

Q Well, do you know whether they do or not?

MR. CRAIG: I object. That may be a question for the jury.

THE COURT: I will allow the question.

MR. CRAIG: Exception.

A They had nothing whatever ---

BY THE COURT:

Q Do you know, is the question? Yes or no.

BY MR. MANLEY:

Q Do you know whether they had or not? A Yes, I know.

Q Did they have any connection?

MR. CRAIG: Objected to as immaterial, irrelevant, incompetent, and not binding on the defendant, and no foundation laid.

THE COURT: Allowed.

MR. CRAIG: Exception.

EXHIBIT 1

152

152

A They had not.

BY MR. MANLEY:

Q Did you have something to do, Mr. Abbott --- I withdraw that. Did you write this letter to Mr. Sarsfield H. Lavelle, Chief Inspector, dated March 13th, 1912, of which this is a copy (indicating)? A Yes.

Q You are familiar, of course, with the rules and regulations governing the Department, and the statutes of the state with regard to the duties of the Tenement House Department; are you not? A Yes.

Q Now, I ask you, in view of the contents of this letter to which I called your attention, of March 13th, 1912, whether, in accordance with the law and the rules of the Department, an inspector, going to this building, and seeing this partition that surrounded this toilet on the ground floor in the store, and the repairs to the plumbing which you have described on the second floor, in that bathroom, whether it was necessary for him, plans not having been filed with regard to those two things, to have reported it to the Department?

MR. CRAIG: I object to it as incompetent.

THE COURT: He may state his opinion.

MR. CRAIG: I object to his opinion. That is not what the question calls for. It involves a legal construction of the Tenement House Act.

1001

CASE 1015

THE COURT: He is an expert in the law. He says he is familiar with the statutes, and the duties of inspectors. I will allow him to answer the question.

MR. CRAIG: I take an exception.

Now, may I ask him a question or two before he answers that question?

THE COURT: You may.

BY MR. CRAIG:

Q Mr. Abbott, are you a member of the bar? A No, sir.

Q You never had any training in the law? A No, sir.

MR. CRAIG: Now, may the District Attorney's question be repeated by the stenographer?

(The question is repeated by the stenographer).

THE COURT: Well, strike out "in accordance with the law".

MR. CRAIG: And I object to the question being emasculated in that way.

THE COURT: Well, I will sustain your objection as to his construing the law. I did not catch that part of the question when it was first asked.

MR. MANLEY: Well, I will withdraw the whole question, and reframe it.

BY MR. MANLEY:

Q Now, what was the duty of an inspector going to

101-1615
CASE 2:1615

those premises, and seeing the partition built down in the store around the toilet, and seeing the plumbing repairs which had been made in the bathroom on the second floor, as you have described; what were his duties as to making any report to the Department, provided no plans had been filed by the owner or agent as to making those alterations?

MR. CRAIG: I object to that as an incorrect and incomplete recital of the facts proved on this trial.

THE COURT: Overruled. I think it states enough of the facts, and with sufficient correctness, to make the question proper.

MR. CRAIG: I except.

A It would have been his duty to file a violation for the work that he saw going on ----- I should say a report. He should have filed a report that the work was going on.

BY THE COURT:

Q Inspectors did not make violations, do they?

A No, sir.

Q They make reports? A Yes, sir. That is my answer.

BY MR. MANLEY:

Q Did you discover there, Mr. Abbott, that, according to the rules of the Department, it was necessary to have plans filed in regard to the alteration of the toilet on

RECORD

101

CASE 27-1615

the ground floor, which had had a partition built around it, and the alterations in the bathroom on the second floor?

MR. CRAIG: Objected to.

THE COURT: Allowed.

MR. CRAIG: Exception.

A I did discover that such a report should have been made.

BY MR. MANLEY:

Q Had any such report been made by the inspector in charge of the building?

MR. CRAIG: Objected to.

BY MR. MANLEY:

Q Have you examined the files of your Department in regard to that building at the time? A Yes, sir.

Q And are you familiar with them? A Yes, sir.

Q And do you know who the inspector was in charge of that territory including that building? A Yes; Farley, the defendant.

Q Had he made a report of those violations? A No, sir.

CROSS EXAMINATION BY MR. CRAIG:

Q Now, Mr. Abbott, I understand that you have not had whatever may have been the detriments or advantages of a legal training? A Yes, that is so.

CASE # 1615

Q And then you know only what someone has told you about the Tenement House Law? A I wouldn't put it that way. The law is very distinct, as it is written in the book, and the interpretation of the English language is more or less plain to an English speaking man, and, by putting two and two together, you usually form an idea in your own mind what the meaning of the sentence is.

Q And then what you mean to say is, that, in addition to what has been told to you, you read the Act? A I am familiar with the Act.

Q Are you familiar with the fact that it required the Court of Appeals to tell the Tenement House Department what a tenement house was? A Yes, sir.

Q Did you concur in the view of the Court of Appeals, or did you differ with the Court of Appeals as to what a tenement house was, before that opinion came down?

MR. MANLEY: Oh, I object to that.

THE COURT: I will allow it.

A I think it is unfair to ask my opinion against the Court of Appeals.

BY MR. CRAIG:

Q Not at all. You are a qualified expert.

THE COURT: Well, your opinion will not hurt the Court of Appeals, and you may give it.

A I did not agree with the Court of Appeals,

EXHIBIT
101
CASE # 1015

THE COURT: That is not an uncommon thing, for a layman to differ with the Court. You are asked for a fact, and so please answer it quickly.

THE WITNESS: I think I have answered it.

BY MR. CRAIG:

Q. And in the same way, by the same process, by reading the rules and hearing what other people have said, you arrived at that conclusion as to what the effect of the rules of the Department was? A. Yes.

Q. Now, will you concede that you are so --- that you have the common human frailties that might lead you into error at times, as to what the rules of the Department might mean? A. Excepting where I draw the rule up myself.

Q. Well, how many rules did you draw up? A. I have drawn many.

Q. And did you always and invariably draw them ~~with~~ in such apt and circumspect language that there was no possibility of their being misunderstood by the persons who read them? A. I certainly tried, and that was my object in framing them.

Q. Well, that was the object of the Legislature in framing the Tenement House Act; wasn't it?

THE COURT: Oh, what is the use of going into all this?

MR. CRAIG: Well, I only wanted to know what his

1691

CASE # 1615

150

opinion is worth, if I can ascertain.

THE COURT: Well, he evidently thinks very well of it, because he says he differs with the Court of Appeals. But you may ask the question.

(The question is repeated by the stenographer).

A Yes.

BY MR. CRAIG:

Q Do you know how many sections there are in the Tenement House Act? A No, sir, I don't. The last number is about 150 odd, but there are many intervening numbers that are not enumerated.

there
Q And/are some that are enumerated with letters?

A Exactly.

Q Do you know how sections of the Charter there are that relate to the Tenement House Department? A No.

Q But you know, do you not, that some of the sections of the Charter relating to the Tenement House Department cover as much as one page in one sentence? A Yes.

Q And that they are necessarily more or less involved in expression? A Yes.

Q And you said that you had examined the files of the Department with respect to these premises, 96th Street and First Avenue; did you not? A Yes.

Q Did you find from your examination of the files, or do you know from your examination --- I withdraw that. Did

1915
CASE 1615

you find in the files of the Department any record of anybody having been prosecuted, such as young McLernan, or either of them, for having violated the Act, with respect to having made these alterations or changes without having filed plans? A I did not.

Q And have you any knowledge on the subject as to whether any prosecution has ever been instituted? A I believe not.

Q And how firm is your belief? Does it amount to knowledge? A Yes, I think I can say positively.

Q So that you can testify that you know that no prosecution of any kind has been had against owners or agents, or the contractors, or builders, upon that place for the violations of the Tenement House Act there committed? A Yes, I can say that positively.

MR. CRAIG: That is all.

MR. MANLEY: That is all.

MR. CRAIG: Just one more question.

BY MR. CRAIG:

Q Do you know that, by Section 128 of the Act, it is made a misdemeanor to make any change or alteration in a building without having perviously filed plans which have been approved by the Tenement House Department? A Oh, yes.

Q And you know that that is a misdemeanor on the part of the owner and agent, and contractor, or anybody con-

1799

CASE 71615

cerned in the transaction? A Yes, sir.

Q And do you know the names of the persons who were concerned in this transaction, that is, the names of Hugh McLernan, H. Nelson McLernan, and Andrews, the architect on the job; you knew all those things; didn't you? A I don't know about the contractors. I knew the agent's name. He was the man who was recorded as having an interest in the property.

Q And you knew that those things constituted a violation of the Act? A Yes, sir.

Q Is there any power in the Tenement House Department to give immunity against prosecution for such violations of ~~xxxx~~ the Tenement House Act? A No.

Q Well, will you explain why -- I will ask you this further question --- had the Department ever gone after any of these men, even for the civil penalties of \$250 each, which the City is entitled to collect, for the benefit of the taxpayers, for a violation of this Act? Yes or no? A No.

Q Now, will you explain to the jury, why it is, with your ~~xx~~ knowledge of these violations, you had never proceeded against the owners or others for their criminal violation of the Act, or instructed the legal representative of the City, the Corporation Counsel, to proceed to collect for such violations? A The violations have never been made

1701

CASE 77 1615

violations, and we could not begin prosecution on something that did not exist.

Q Why, didn't your office have violations there from September, 1911, to February, 1912? A Oh, you are referring to the old ones?

Q Didn't you know that I was referring to the old ones? A No, sir.

Q Well, you never prosecuted anyone for the old ones; did you? A I couldn't tell you that.

Q Don't you know? A No, sir.

Q Did you examine and inquire to find out? A No, sir.

Q Didn't you know that the city was entitled to a penalty of \$250 for each violation? A No, sir, they are not. If the violations are not complied with, they are.

Q Well, that is your construction of the act; is it?

A The city is not entitled to \$250 for every violation of the Tenement House Law.

Q Well, they are entitled to sue for it, and, if the Court finds they are entitled to it, they are entitled to collect it; aren't they? A No, sir. The violation has to be on file, and properly served. A violation may be served on a man to-day, and, if he complies with it, tomorrow, no prosecution is started.

Q And how many days has he to comply with it? A That

1702
ROZICASE 1015
EX-1015

depends. Sometimes it will be a serious case, and then it is 24 hours; and, if it is not a serious case, we having a great deal more important work to do, it make go on for a year or two.

BY THE COURT:

Q Well, you refer then to the Corporation Counsel; don't you? A Yes, sir.

Q They leave your Department? A Yes, sir.

Q Your Department is required to find out whether the owners or persons responsible for the property comply with the violations? A Yes, sir.

Q And, if they don't, they are reported to the Corporation Counsel? A Yes, sir.

BY MR. CRAIG:

Q And you understand that I referred to prosecutions by the Corporation Counsel; don't you? A I don't quite understand your question.

Q You understand that prosecutions for penalties for violations have to be brought by the Corporation Counsel; you understand that; don't you? A Yes.

Q I have assumed that you knew that. A Yes, sir.

Q Now, you say that you found violations when you went there, in April? A Yes.

Q Did you make any report on it? A Yes.

Q Did you file a violation? A No.

1701

CASE 1615

Q Why not? A The ----

Q Just answer me. Excuse me. A The matter was referred to the Commissioner for instructions.

Q And there you stopped? A Yes, sir.

Q Has any violation been filed up to the time that you are now testifying? A I believe there is.

Q when was it filed? Do you know? A No.

Q How serious a violation was this, with respect to the time the Department would allow the owner --- I refer now to the old violations. I withdraw that question. How serious were these old violations which were filed against this property, with respect to the amount of time that the Department would allow the owner, before prosecutions were begun under the Penal Statute, or for the penalties?

A So ~~in~~ unimportant that it wasn't thought necessary to file violations, and begin prosecution on that point, at the time.

Q You understand now that I refer to the old violations? A No, I did not.

Q Well, that was my question. A Then may the question be repeated?

(The question is repeated by the stenographer)

A I don't remember the details of the violations, but I think they were what we would term more or less trivial, things that did not endanger the lives or the health of the

1797

CASE 1615

tenants; and when that was the case, we would take those that were more important first, knowing ---

Q Did you ever see any tenants in this building?

A No.

Q You never did? A No.

Q So that the fact as to whether or not the tenants might be incomed or injured was not a factor? A We were able to judge that from the kind of report that the inspector makes.

Q Now, are you prepared to testify whether the original violations showed the existence of any tenants in that building? A I couldn't tell you, off-hand.

Q And, if there were no tenants in the building, that would be an additional reason why the owner should have more time? A Yes.

Q And that would even apply to any violation? If the owner showed a disposition to comply with the Act, it was the policy of the Department to give him an opportunity to do so? A No. To the first part of your question I would say no.

Q And what about the last part? A We ---

MR. CRAIG: However, I will withdraw the question, and put another one.

BY MR. CRAIG:

Q It was the policy of the Department to give owners



who seemed to be so inclined, an opportunity to comply with the requirements of the Department; was n't it? A Oh, yes, always.

Q And even in serious cases they were given 24 hours, where life and limb were in danger? A Yes.

Q And in cases where the peril was either nominal or non-existent, any reasonable amount of time would be given, so long as the owner showed an inclination to comply with the Act? A Yes.

Q And that knowledge was not all locked up with you; was it? Wasn't it generally understood by the Department, that that was the policy of the Department? A The theory ---

Q No, can't you answer that question?

BY THE COURT:

Q Well, do you know whether that knowledge was locked up in your breast? That is the question. A No, sir, it wasn't.

BY MR. CRAIG:

Q And it was the kind of knowledge that men versed in the technique of the Department had also, as well as yourself? A Yes, sir.

RE DIRECT EXAMINATION BY MR. MANLEY:

Q What I understand you to mean on that point is, that, after the report is made by the inspector that there is a

1791

CASE 1615

violation you give the owner a chance to remedy the violation?

A Yes, sir.

Q But it does not mean, does it, that the inspector would not make a report of the violation? A No, sir.

Q For instance, white washing the walls of a cellar, you would not want to put a man in jail for that, without giving him at least 24 hours notice; would you? A No, sir.

RE CROSS EXAMINATION BY MR. CRAIG:

Q Now, there was vested in the inspectors a certain amount of discretion as to whether a report should be made in a given instance; was there not? A No, sir.

Q Then what did you mean, in these instructions of March 21st, when you said that it didn't apply to violations existing at that time, unless they were very serious? A I would explain that that letter was written with the object of making a rush inspection over the entire city. One of the strictest rules of the office is that the inspector shall not use any discretion whatever.

Q Well, now, what ^{rule} is that which is more strict than any other rule? Tell us the number of it. A I don't remember the number off-hand.

Q Well, then, some rules are strict, and some are not strict; is that right? A No, I wouldn't say that.

1791

CASE # 1615

Q Well, then, what do you mean when you say to the jury here that one of the strictest rules of the Department is so and so, if you don't mean that some rules are strict and others are not strict? A Well, if I may be allowed to remould that, I will do so.

Q No. I want you to explain it. A We have certain rules upon which charges are based.

Q Well, I don't want you to digress. A A man losing his hat band is subject to a day's fine, and that is a rule which I do not regard as important. And a man is punished by a fine of five days' pay for losing his badge. Or the man who smokes or lounges in tenement houses to which he has been sent officially, or who visits the contractor or owner after office hours, and talks over with him violations, the rule against that is strict. That is a rule which we consider more serious and stricter than the rule applying to the losing of a hat band.

Q Now, then, you mean that there are some rules that the Department attaches more significance and importance to than other rules; is that what you mean? A Yes, sir.

Q And that an absolutely performance is exacted as to some rules, while as to other rules the Department is less exacting; is that right? A Yes.

MR. CRAIG: That is all.

MR. MANLEY: That is all. And the next witness

will be my last witness, if your Honor please.

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

DIRECT EXAMINATION BY MR. MANLEY:

Q where do you live, Mr. Schwartz? A 313 East 72nd
Street.

Q And are you an employee of the District Attorney's
office? A I am.

Q You are a process server in his office, serving
subpoenas, is that it? A I am.

Q Now, did you, upon Friday, the 26th day of April
last, go to the premises, in the forenoon, 340 East 96th
Street? A I did.

Q With whom did you go there? A I went in company
with Mr. Al Thomas, a detective attached to our office, and
Mr. Joseph H. Fink, of the Tenement House Department.

Q And into what part of the premises did you? A First,
into the dining room, and then into the parlor.

Q Of whose apartment? A Of the apartment of Mrs.
Jakon, the janitress of the building.

Q Now, while you were there, did you hear anyone come
to the door? A I did.

Q At the time when you heard a person come to the door,

1791

CASE 1615

in what part of the premises, of the apartment, were you; in what room? A The dining room.

Q Is that, starting in from the outside hall --- what room is that? A That's the second room in from the outside hall.

Q That is the dining room where you were? A Yes, sir.

Q Now, did you see the defendant? A I saw the defendant later, not then.

Q Now, what did you hear, when the person came to the door? A Mrs. Jakob went to the door, and then we went into the parlor.

The first word I heard was, "Let's go down to the store. Bring the key with you. I want to examine the toilet. And bring that money along."

Q Now, you say you were in the parlor when you heard that? A No, I wasn't in the parlor when I heard that. I come out of the parlor into the hall, and into the room across the hall from the dining room.

Q And that is the second room in the apartment? A Yes, sir.

Q Now, what was the next thing you heard, if anything? A Then Mrs. Jakob left the apartment and I saw the defendant going out with her.

Q From the apartment? A From the apartment, yes. And

RIZI

CASE 1915

then I went down on the stairs leading to the lower hallway, and while there I heard the defendant say, "You can tell him that will be all right, and to have that ready, some time next week, and I'll be around for it."

Q Did you hear anything else while you were standing at that point? A No, sir, I can't remember anything else that I heard.

Q Were you present at the time of the arrest? A I was.

Q And what conversation, if any, did you hear between anyone and the defendant at that time? A Oh, when the defendant left the premises, Thomas and myself were right after him.

And Thomas put his hand on his shoulder, and the defendant turned around, and said, "What do you want?" And Thomas said, "We want you."

And Thomas said, "Take your hand out of there," pointing to his right hand. And he took his hand out of his pocket, and in his hand he had a roll of bills, and before Thomas said anymore than that, he said, the defendant said, "There is \$40. there. I admit it."

And Thomas counted the money and he compared the numbers on the bills, and found the numbers were exactly as the same as he had taken of the bills that he had given to Mrs. Jakob previously.

1711

CASE 1615

And then Thomas said, "Where did you get it?" And he said, "I got it from that woman over there," and he pointed to the house No. 340 East 96th Street.

And he said, "Can't I fix this somehow, can't I do something for you?"

Q And is there anything else that you remember, in the way of conversation? A No, sir.

Q And you went to the station house with the defendant and the officer; didn't you? A No, sir; I went back to get Mrs. Jakob and then went back to the station house.

MR. MANLEY: That's all.

CROSS EXAMINATION BY MR. CRAIG:

Q Did you make a memorandum on that date of the ----- a memorandum of these words that you say you overheard?

A I made a memorandum later on, when I came back to the office.

Q Have you seen that memorandum since? A Yes.

Q Has anybody else ever seen it? A Thomas has, yes.

Q Well, do you know that the language that you have used here is almost identical with the language word for word, that Thomas gave in testifyinf? A Well, it ought to be. It was the language used.

Q Well, it ought to be. But you then what Thomas was going to testify to? A I didn't know what he was going to

RECORDED

INDEX

CASE 7-1615

testify to, except the fact of what he overheard.

Q Well, stop right there. That's an answer to my question. Have you and Thomas collaborated at all as to the testimony which you were to give here? A We didn't collaborate at all. We gave our testimony as it should be, the truth.

Q Did you memorize your testimony? A No, I did not.

Q Do you know whether Thomas memorized his testimony? A I don't know anything about that.

Q Can you repeat the contents of that memorandum, without looking at it? A No, I can't.

Q When did you last see it? A Yesterday.

Q Did you get it pretty thoroughly in your mind then? A I didn't read it word for word.

Q Well, I didn't ask you that. A I simply glanced over it to refresh my memory.

Q And then you didn't read it closely? A No, sir.

Q You thought you had it pat? A (No answer)

Q You understand what I mean. A No, I don't.

MR. MANLEY: I think we might have it in more elegant language, if your Honor please.

BY MR. CRAIG:

Q You felt that it was necessary, in view of the way

you were going to deliver your testimony, to do more than scan this memorandum? A I felt I knew what testimony I was going to give.

Q Exactly. You had it down fine? A I knew what I knew; that's all.

Q Well, now, answer me. You know what I mean.

A No, I don't understand you. A I don't know what it means.

Q All right, then, I'll withdraw it. You have never heard that expression before? A Yes, I've heard it before.

Q And you don't understand the English language, or the ordinary colloquial use of it? A Yes, I do.

Q And did you understand my question then, when I asked you, you had it down fine?

MR. MANLEY: I don't understand the question at all, your Honor, and I object to it, on the ground that it isn't clear.

THE COURT: Overruled. The witness has not said that he does not understand the question.

(The question is repeated by the stenographer).

A Had what down fine?

BY MR. CRAIG:

Q The narrative that you were going to give as a witness? A I knew what testimony I was going to give, because I heard the conversation.

11711

CASE # 1615

Q At any rate you knew what testimony you were going to give? A Of course, I did.

Q And for that reason you didn't feel that it was necessary to examine this memorandum with particular closeness? A I simply glanced over that memorandum, to refresh my memory. It happened some time ago.

Q But you said you knew what testimony you were going to give, before you looked at it; didn't you just say that? Now, answer me. A Didn't I say what?

Q (Question repeated) A No; I don't know what you mean.

Q Were you afraid that you might be called upon to produce that memorandum, to see whether it tallied with the story that you were going to give? A No, I wasn't afraid.

Q Then why did you look at it, if you knew what you were going to testify to, and weren't afraid? A Because I didn't want to make a mistake in my testimony and I wanted to refresh my memory.

Q Well, you went up there for the purpose of seeing whether you can catch somebody in the commission of a crime; isn't that so? A Yes.

Q And you had that one thing in your mind all the time you were up there; didn't you? A Yes, sir.

Q And you were particularly intent upon those things which might --- I'll withdraw that. And you wanted to succeed;

CASE # 1615

didn't you? A I went up for that purpose.

Q And your promotion and well being depends upon your making good, as they call it? A No.

Q And then do you understand that, in case you fail to make good and show yourself to be an incompetent process server or detective that you will be promoted in spite of that? A No.

Q Well, then, have you no pride in success? A I have.

Q And you went -- you were sent up on this job to make good? A I was sent up there for a certain purpose.

Q Well, you understood that you were required to make good? A I wasn't required to make good.

Q Well, you were going to make good, whether you were required or not? A If possible, yes.

Q So that was your point of view, you wanted to --- you were looking for the commission of a crime and were looking for those things that, to your mind, would indicate the commission of a crime? A Yes.

Q And were you looking for anything else? A No.

MR. CRAIG: That is all.

MR. MANLEY: That is all.

THE COURT: Any other witnesses?

MR. MANLEY: No, sir. I rest.

MR. CRAIG: If your Honor please, I don't know

1711

CASE # 1615

whether you want me to argue this in the presence of the jury or not, but I move on the record for a direction of acquittal on the first count contained in the indictment.

THE COURT: I do not know any reason why that should be taken from the jury.

MR. CRAIG: Does your Honor desire to hear me?

THE COURT: Yes, I will hear you.

MR. CRAIG: Or may I make the same motion now as to the second count, and then argue as to both? That will expedite the matter.

THE COURT: I will hear you on both motions.

(Counsel for the the defendant then argued both motions).

THE COURT: I will have to deny the motions. I will deny the motions.

MR. CRAIG: I take an exception.

(The Court then admonished the jury in accordance with Section 415 of the Code of Criminal Procedure, and adjourned the further trial of the case until Friday morning, October 18th, 1912, at 10:30 o'clock).

1711
CASE # 1615

TRIAL RESUMED.

New York, October 18th, 1912.

MR. CRAIG: Alderman Dowling is here as a character witness, if your Honor please, and may I vary the order of proof and put him on first, so that he may get away? He has been waiting her for some time to testify.

THE COURT: Yes, you may do so.

THE DEFENSE.

FRANK I. DOWLING, of 401 West 24th Street, a witness called on behalf of the defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. CRAIG:

Q What is your vocation, Mr. Dowling? A I am a member of the Board of Aldermen.

Q You are the leader of the minority in the Board of Aldermen? A Yes, sir.

Q Do you know the defendant Farley? A Yes, sir.

Q How long have you known him? A Over 20 years.

Q And do you know his reputation for honesty and integrity in the vicinity where he resides? A Good.

Q That is all. And what is his reputation for truth and veracity? A I have always found it to be good.

1111

CASE 1915

MR. CRAIG: You may cross examine.

MR. MANLEY: No questions.

T H O M A S F. F A R L E Y, of Dunton Lodge, Long Island,
the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. CRAIG:

Q You are the defendant in this action? A Yes, sir.

Q Did you ever meet Hugh N. McLernan --- or whatever
his name is --- who was one of the witnesses who testified
here, the other day? A Yes, sir.

Q And about when was the first time you ever saw him?
Somewhere around the 10th of April; wasn't it? A Yes, sir,
about that time.

Q And did you see him at 340 East 96th Street?
A Yes, sir.

Q Did a conversation take place between you on that
occasion? A Yes.

Q Please state what the conversation was? A I met
Mr. H. Nelson McLernan on the premises, and he said, "Hello,
Inspector," and I said, "How do you do, sir? Are you the
owner or agent of this property?" And he told me he was
the agent.

And he says, "By the way, what have you done with those
violations that were against the property?" And I told

10177
CASE 271615

him that the violations that had been pending, I had dismissed, because they had been complied with, and he said,

"Well, it's nearly time. I'm glad of it."

BY THE COURT:

Q This was the old man? A No, sir, the young man, H. Nelson McLernan.

Q All right. I only wanted to distinguish between them. A And I said, "You have made quite some alterations here, Mr. McLernan. Have you filed a plan or notified the Tenement House Department about these alterations, before doing them?" And he said, "Well, I think my architect and plumber have taken care of that matter." And I said, "Well, possibly they have, but I don't think so."

And he said, "Now, you are not going to file any violation against me, Inspector?" And I says, "I haven't said that I would." And he said, "Well, I have spent considerable money here, and I wouldn't care to have any further trouble in this matter," and I said, "I'll look it up," and he said, "Well, see me in a few days. I'll see the architect and plumber and let you know about it, and you see me in a few days and I'll let you know about it," and I said --- I promised him I would.

BY MR. CRAIG:

Q Did you say in that conversation with McLernan, "You see the owner, and I think we can fix it up"? A No, sir, absolutely not.

1710
CASE 1615

Q Or did you say anything like that, in substance or in effect? A No, sir.

Q Now, you heard read here, did you not, Inspector, this instruction which was given for the Reinspection Cycle, about the date of March 21st, 1912; did you not? A I did, sir.

Q Now, did you ever see --- referring to People's Exhibit 3, which has been designated as a route slip, or something of the kind, will you tell me what the practice is in the Department with respect to additions to the slip, after the day's work? In reference to additions to it?

Q Yes. A Well, when an inspector goes out in the morning, he routes all the work that is given to him, on the premises that he thinks he can visit, that day, and very often he gets through with that work before quitting time in the afternoon, which is ordinarily four o'clock; and if, for instance, he could get through at three or half past two o'clock, it would be his duty to make other inspections in the district, if there were any, and look around the district in general; and, if he visits other premises, he very often adds them on the bottom of the slip, and turns the slip in at the office, the next morning, at roll call, though it is ^{not} absolutely necessary.

Q Now, at the time that you were there to see McLernan, Jr., as I will call him, was the condition of those premises

1721

CASE # 1615

such that you could make an affidavit to the effect that the sanitary or structural conditions were extremely dangerous? A No, sir, they were not.

Q Did you, subsequent to this occasion when you saw --- as I understand, you never saw the younger McLernan, except on that one occasion? A Yes, sir.

Q Now, did you, on a subsequent visit, see the elder McLernan? A Yes, sir.

Q And what took place between the elder McLernan and yourself when you saw him? A He said he was the father of the other Mr. McLernan, and the first words he said to me was, "Are you the inspector in the district?" And I said, "I am," and he said, "My son left \$10. here for you," and I said, "I don't know why he should leave it for me. I did nothing for him that he should leave me \$10.", and I said, "What are you doing here anyway?"

And he said, "I'm taking off old paper, and repairing the plaster. Now, Inspector, how much would it cost to fix this matter up?"

And I said, "I don't know how you can fix it up, except by hiring an architect, and by filing a plan, which should be put through the Department in the regular way," and he said, "What would all that cost?" And I said, "For a job of this size, about \$50, I think, to have the plans drawn, and put through the Department in the regular way."

CASE # 1615

Q What was the practice in the Department where violations existed, which consisted of having done certain work without filing plans, with respect to getting rid of that violation? A Why, if a violation was filed against any premises where the alterations had taken place without a plan being filed, why, the owners or agents would file a plan. The only way to get that violation dismissed was to file a plan, showing the alteration, and have an inspector come in the regular way and inspect it, and, if the violation complied with the law, the inspector would sign up the copy given to him by the Department, dismissing the violation alteration.

Q Now, did you, in that conversation, say, in words or substance, "The thing has been going on so long, that they have got on to it in the Department, and I have got to see others above me"? A Absolutely not.

Q Or anything to that purport or effect? A No, sir.

Q Now, then, following that --- I will withdraw that. Do you know Mr. Andrew Molinelli? A Yes.

Q What is his business? A He is a plumbing contractor.

Q And does he file plans in the Tenement House Department covering plumbing work? A Yes, sir.

Q Did you see, following the conversation with the elder McLernan, did you see Mr. Molinelli? A Yes; after the second conversation.

1731

CASE 1615

Q Where was it you saw Molinelli? A In his office,
No. 28 Oliver Street.

Q Will you state what took place between you?

MR. MANLEY: Oh, I object to that as being in-
competent, a conversation with a third party, a con-
versation with a man named Molinelli.

THE COURT: I will sustain the objection to
that. It was not with one of the witnesses here,
was it?

MR. MANLEY: No, sir, not at all.

MR. CRAIG: No, sir, not one of the witnesses.
But the defendant has a right to explain this trans-
action and tell what occurred in connection with it.

THE COURT: Well, that was a self serving declara-
tion, a conversation with a third party, not wit-
ness here. I will sustain the objection.

MR. CRAIG: I except. Now, just to make the
matter clear, your Honor, I will ask this question.

BY MR. CRAIG:

Q Did you have a conversation with Molinelli with
reference to the preparing and filing plans on this property
at 96th Street and First Avenue?

MR. MANLEY: I object to that, as being a self-
serving declaration.

BY MR. CRAIG:

1721
CASE # 1615

Q On this occasion when you saw him at his office?

MR. MANLEY: Objected to.

THE COURT: I will let him testify, if you like, that he employed an architect, and let him name the architect, but the conversations are not admissible.

MR. CRAIG: But the conversation would establish the employment.

THE COURT: No, but you may let him state that, if that is his defense, what he did in reference to this whole transaction.

BY MR. CRAIG:

Q Well, what did you do with Mr. Molinelli, with refereme to this transaction?

THE COURT: Yes, hemay explain his conduct, but not what he said to different people.

A After I had seen the elder McLernan the second time, I saw Mr. Molinelli, at his office, 28 Oliver Street, and I said, "Andrew ----"

MR. MANLEY: I object.

THE COURT: No, I will sustain the objection to the conversation.

MR. CRAIG: I except.

BY MR. CRAIG:

Q State what was done, when you saw Mr. Molinelli there? A I told him that I ----

1721

CASE 1615

MR. MANLEY: Now, I object to any conversations.

THE COURT: Sustained.

BY MR. CRAIG:

Q The Judge has ruled that you can't state the words --

BY THE COURT:

Q You went to see him about this matter; did you?

A Yes, in reference to drawing plans for these alterations.

BY MR. CRAIG:

Q And did he say that he would make the plans for the alterations? A Yes, sir.

Q And how much did he say he would charge? A \$50.

Q Well, what did he say with reference to the \$50.?

MR. MANLEY: I object to that as incompetent.

THE COURT: Objection sustained, as to what he said.

MR. CRAIG: Exception.

BY MR. CRAIG:

Q Then you saw the elder McLernan on a second occasion, did you not? A Yes, sir.

Q And what occurred then? A He told me that he had seen his son, the night previous, and he told him to tell me that he thought we could straighten the matter out all right, and that he would see me there on Friday of that week.

Q Now, it was necessary, was it not, to have plans filed

1711

CASE # 10115

in order that this work could be properly shown in the Department? A Yes, sir.

Q And in order that this house might be free from --- free from an adverse report from yourself or any other inspector? A Yes, sir.

Q Now, you were at the premises on Friday, the 26th of April, 1912; were you not? A Yes, sir.

Q Now, omitting the details, because we have had all that, and there is no questions about the details, you saw Mrs. Jakob, the janitress? A Yes, sir.

Q And state the conversation that took place between you? A Mrs. Jakob said to me, "The boss left \$40 here for you, and told me to tell you that he had to leave town for a few days, and couldn't be here to-day, but told me to give you this \$40, and the balance he would give you during next week, or the next time you be around, and I should tell you to go ahead and get the matter straightened out."

I said to Mrs. Jakob, "Very well. Bring/ ^{down} the key to the empty store, downstairs. I wish to look at that new toilet compartment." She did so.

I examined it, because there was a little --- I was not quite sure as to how about the floor and a few other details that I wanted to look at.

And she came down and opened the store and we went in, and I looked at what I wanted to, and she handed me the

CASE 1615

\$40.

I told her to tell Mr. McLernan that I would have the plan drawn and filed, and put through in the regular way, and that he needn't worry any further about the matter.

Q Did you hear Fink's testimony? A Yes, sir.

Q Did you hear him say that upon this occasion when you went there you said, "Then I heard a woman's voice say, 'Have you got that for me'" addressing the janitress?

A Did I hear him say that?

Q Yes. A I did hear him say that.

Q Did you make any such statement as that? A Absolutely not, no, sir.

Q Did you hear any other masculine voice express any such statement as that? A No, sir.

Q Did you say anything --- did you say to Mrs. Jakob, in substance or in effect: "Is there anyone in these other rooms?" A No, sir.

Q Did anything of that kind take place? A No, sir.

Q Now, this \$40 that you received there, you received for what purpose? A For the purpose of hiring an architect to draw a plan for the alterations that had taken place.

Q And to turn over the money to Mr. Molinelli?

A Yes.

Q Are you a married man? A Yes, sir.

Q Wife and family? A Yes, sir.

Q Of what does your family consist? A A wife and five

children.

Q How long were you employed -----

MR. CRAIG: I guess that is all. You may examine.

CROSS EXAMINATION BY MR. MANLEY:

Q Now, Mr. Farley, there is no doubt that this was a tenement house; is there?

MR. CRAIG: I object to that. That has been contested all the way through, and even the head of the Department said he differed from the Court of Appeals on that subject.

THE COURT: Objection overruled.

MR. CRAIG: Exception.

A No, sir.

BY MR. MANLEY:

Q In your opinion, was that a tenement house? A It was arranged as one, yes.

Q And you were in there acting as an inspector in the Tenement House Department; weren't you? A Yes, sir.

BY THE COURT:

Q There was no doubt in your own mind that it was a tenement house; was there? A No, sir, it is on our records as such.

BY MR. MANLEY:

WITNESS

1771

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Q Now, you had been there a good many times during February, March and April of last year? A No, sir.

Q How many times altogether? A I never went there until the month of April.

Q You had never been there at all before the month of April? A No, sir.

Q And you were not there at any other time at all?
A No, sir.

Q How many different times were you there, Mr. Farley, in April? A Five times, is the nearest of my recollection.

Q Yes. You were there on or about the 4th of April?
A Yes, about that date.

Q You remember that? A Yes.

Q And, upon that date, you prepared this report, did you not, People's Exhibit 4B?

MR. CRAIG: I object to that as improper and incompetent. It is proven in the record, and nobody disputes it, and I don't think we should prolong the case unnecessarily.

THE COURT: Overruled.

MR. CRAIG: I except.

A Yes.

BY MR. MANLEY:

Q Now, you went there upon that day in response to that special order which Chief Inspector Lavelle had read to all

1730
CASE 1615

and 5 were complied with, that means the violations itemized on the back of that sheet, 4A? A Yes, sir.

Q Well, now, when you went there on the 4th of April, you saw that these other changes were going on; did you not? A No, sir.

Q Did you not see, at the time when you went there, that they were putting a toilet in place of a urinal, down in the store, and building a partition around it? A No, sir.

Q Did you not see, when you went there on the 4th of April, that they were replacing all the bath tubs in the various apartments, and fixing the plumbing in reference to the bath tubs and toilets in each apartment, and putting the new platforms around the toilets? A No, sir.

Q Did you go through the house when you went there on the 4th of April? A Yes, sir.

Q And you didn't see any of those things there?
A Not going on. They were already existing and completed, when I went there.

Q Oh, then, the things which I had referred to, the toilet put in place of the urinal, and the various bath rooms, the toilets replaced, in the various apartments, that work was all completed on the 4th? A Yes, sir.

Q Now, in your opinion, was that such a violation, that work having been done without the filing of plans --- was it a

1615
CASE 22
ES 16

violation?

MR. CRAIG: Now, I object to that as incompetent.

BY MR. MANLEY:

Q In your judgment?

MR. CRAIG: Objected to.

THE COURT: Allowed.

MR. CRAIG: Exception.

A Yes.

BY MR. MANLEY:

Q It was a violation then in your judgment, as I understand it? A Yes.

Q In other words, the doing of work of that sort, as I understand it, Mr. Farley, required that plans of some kind should have been filed; isn't that so?

A Yes, sir.

Q Now, is it not true that, when plans are filed as to alterations in tenement houses, that the inspectors in whose district that tenement house is receives notice of the filing of those plans? A Yes, sir.

Q And you have not received notice of the filing of these plans with regard to these particular alterations about which we have been speaking? A I have not.

Q And, therefore, you inferred from that, and had every right to presume that plans had not been filed?

A Yes, sir.

519177ES13
CASE 1615

Q That is true; is it not? A Yes, sir.

Q Well, now, you did not at any time file any violation with the Department as to those new alterations; did you?

A I did not, sir.

Q And, as I understand it, you did not do it by virtue of this order of the 21st of March; is that so?

A Yes, sir.

Q Now, that order which was read to you by the Chief Inspector, to all you inspectors, on the 21st of March, was that you inspectors should go out, and do exactly as is set forth in this order; that is true, is it not?

A Yes, sir.

Q You went out on the 4th of March --- the 4th of April rather ---- and had fully done your duty, and made the report which you turned in on the 4th of April?

A Yes, sir.

Q And everything that you were required to do by virtue of the order of the 21st of March you had done, on the 4th of April; hadn't you? A Yes.

Q Now, you went there, you think, the first time after the 4th of April, about the 10th? A I think it was, as nearly as I recollect.

Q Now, you say you had never been there before the 4th of April? A No, sir.

Q By the way, how long have you been in that district?

A Since the 20th of March -- 20th or 21st of March.

Q 20th or 21st of March? A Yes, sir.

Q Then the very second time you had been there was along about the 10th? A Yes, sir.

Q You had never seen then Mrs. Jakob before the 10th?

A I saw her the first time I went there, at my first visit.

Q That would be the 4th; wouldn't it? A Yes, sir.

Q Did you ever see her before the 4th? A No, sir, I never was in the building previous to that date, to my knowledge.

Q Well, is it your best recollection that you had never seen her before the 4th? A Yes, sir.

Q Can't you state so positively? A Yes, I do state so positively.

Q Then the second time you saw her was probably on the 10th? A No, I think I saw her in between. I'm not positive, but I think it was around the 10th or 12th of April.

Q And you probably saw her between the 4th and 10th; didn't you? A I don't think so. I may have seen her at the door, and stopped there. This was my district, and I might have seen her there, and stopped at the door.

Q Didn't you see her several times and ask her who the owner or agent was? A No, sir; I asked her that at the

1615
CASE 1615

time of my first visit.

Q That was on the 4th? A Yes, sir.

Q And you asked her that because you were concerned about the new alterations there? A Yes.

Q And you wanted to see the owner about them? A Yes, sir.

Q Now, did you ever ask her more than that once where the owner or agent was? A Not to my knowledge, no, sir. I don't remember asking her again.

Q Then, having asked her just one, you see McLernan, Junior, when you come there on the 10th; don't you?

A Yes, sir.

Q And when you saw these violations there on the 4th, and wanted to see the owner, why, instead of seeing the owner, knowing that plans had not been filed, didn't you go ahead and report? A Because we were under orders of the Chief Inspector not to report such violations.

Q And then why did you go back on the 10th? A Because I wanted to see the owner and see if I couldn't get him to file plans, and settle the matter in the regular way, put the matter through in the regular way.

Q Why, instead of going there and seeing the owner on the 10th, having already had the information which you derived on the 4th, and, as you now say, going there because of what you had learned on the 4th, why didn't you

177
177
CASE 1615

clap the violation on, and bring it to the notice of the owner? A Well, because I was under orders not to file a violation, unless the conditions were dangerous. We were out on the Cycle of Inspection on the 4th, to re-arrange tenement houses in accordance with the Court of Appeals decision.

Q If you were ordered to do only what was called for by this special Cycle of Inspection, at least, the way you interpreted it, and you knew that you could overlook everything that was not called for by the Cycle, why did you go there on the 10th, and speak about something that you were not required to report? A Because I didn't want another inspector to come there and visit those premises, and discover this condition of things after I had been there, this new water closet business etc., and charges would have been preferred against me for not discovering it when I was there. I wanted him to make it right on the records of the Department, I wanted to be safe, because we are supposed to keep our districts clean at all times and in all cases.

Q Then you went there again on the 10th of April; is that it? A Around about that time, yes.

Q Now, did you see Mrs. Jakob on that day? A The day that I saw the younger McLernan, I saw her, yes.

Q You saw her first, and asked her where the agent or

177
CASE 1615

owner was? A Yes.

Q And you ascertained from her that the agent was on the premises; is that so? A Yes, she pointed him out to me.

Q And you had the talk with him? A Yes, sir.

Q And you made him, I suppose, thoroughly understand, Mr. Farley, that the only interest that you had in it was to engage an architect and tell him what to do? A No, sir.

MR. CRAIG: I object. The question is as to the understanding of the witness, the opinion of the witness.

THE COURT: I will sustain the objection.

MR. CRAIG: And will your Honor strike out the answer?

THE COURT: Yes.

BY MR. MANLEY:

Q And your only object, then, in meeting Mr. McLernan, was to straighten out everything, and have everything regular in regard to these alterations? A Yes, it was.

Q And you knew that all that was necessary was to fill out a special blank in the Department, and have someone come and inspect the alterations; didn't you? A No, sir; it had to be a plan, a blank wouldn't do.

Q And then you knew that the plan had to be passed

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200
CASE 1615

upon by somebody in the Department, to see if everything was done right? A Yes, sir.

Q Did you ask him if he had an architect at any time?

A Yes, sir.

Q Did he say he had not? A No, he didn't.

Q What did he say about the architect? A He told me that he supposed that his architect or plumber had taken care of that matter.

Q And then you understood that he had an architect?

A Well, from what he said, from the remark he made.

Q And you inferred, I take it, from that remark, that he had an architect? A Yes, sir.

Q Did you ask him who his architect was? A Yes, sir.

Q Did he tell you? A Yes, sir.

Q Who did he tell you it was? A I think he mentioned somebody by the name of Thomas.

Q Well, did you say that you knew an architect who could fix it up for him? A No, sir.

Q Did you mention to him the name of Mr. Molinelli? A No, sir.

Q Didn't you say that it would be easy to get an architect to come there, and file plans, and tell him exactly what to do? A No, sir.

Q Why didn't you? A Because the conversation wasn't

EXHIBIT
1615
CASE 2-1615

on that line.

Q Well, now, you told him, after the conversation in which he asked you about the old violations, and after you had told him that the old violations had been discharged and fixed up, you told him there was another that you might have to put on; is that so? A No, sir, I did not.

Q Well, what did you say on that point? A Simply, as I have testified before, the conversation I had with him was in reference to why he had done the alterations without filing plans; and I told him he shouldn't have done so. I didn't threaten him at any time or any place, or anybody else, that I would file a violation against the property.

Q Well, what else did you say, except that he should have filed plans? A I told him that he should have filed plans for the alterations, and should not have done it without filing plans.

Q And what else did you say? Did you suggest that he should go ahead and file plans, and that would fix it up? A He asked me to wait a few days. No, sir, I didn't suggest anything of the kind.

Q He asked you to wait for a few days for what purpose? A Until he could see his plumber and architect in the matter.

Q And did he say that he would see them? A Yes.

1730
CASE 1015

Q. And did you tell him that anything else would be necessary, except to go ahead and file plans? A. No, sir, I did not.

Q. Did you examine the work? A. I looked over it casually in my trip through the building.

Q. That is, you looked at what had been done in the bathrooms, and in the store? A. Yes, sir.

Q. And was it done in a workmanlike manner, according to the rules of the Department? A. Yes, technically, it had been.

Q. Now, during that conversation, did you say to him, after he had asked you about the old violations, and you said that they had been discharged, did you say: "Well, there is another one that I may have to put on"? A. No, sir.

Q. Wait a minute. "You fellows have gone and changed all those bathrooms, and changed the fixtures and put partitions around the toilet, and that shouldn't be done without a plan to cover it, and is a violation," and did Mr. McLernan say, "I don't feel that way about it, and I don't know whether it is so or not"? Did such a conversation take place? A. In part, it did.

Q. Well, what part did take place? A. I never mentioned that I would have to file a violation against the property at all. I told him that they had done that work,

1615

and knew that they had done it without a plan.

Q And did you say then, "Now, I'll tell you. Who's got charge of this work?" And didn't Mr. McLernan say, "I have, subject to the owner's orders."? A No, sir, I did not, because I supposed he was the owner. The janitor told me so.

Q And did you say this: "Well, I'm not going to put this violation on for a few days, I will leave it open. You see the owner, and I think we can fix it up"? A No, sir.

Q Nothing of that kind was said? A No, sir.

Q In other words, nothing was said at this conversation between you and McLernan, Junior, about fixing it up? A No, sir.

Q And did Mr. McLernan, Junior, then say: "Well, all right, Chief, I'll do that; I'll see the owner in a few days"? A He said, "All right, Chief, I'll see you in a few days," but he didn't say, "All right, Chief, I'll see the owner."

Q Now, did you and he go about the premises and look at the work? A I think we went into one bathroom. I'm not positive about that.

Q Now, when you went into the bathroom, did you say that those platforms would have to be all torn out, and that work exposed, and the fixtures uncoupled, so that the

1791

CASE # 1615

Department could make an inspection of them? A I said that possibly the platforms would have to be removed, so that the inspectors could see the connections.

Q And didn't you say: "Of course, you understand that this will cost you a few hundred dollars anyway"? A I don't remember saying anything about the cost at all.

Q You don't remember that any conversation occurred as to the amount that it would cost him to tear all those things up? A It wasn't tearing everything up. It was only removing the platforms.

Q Well, would it cost him anything to tear up those things that you suggested to him? A Yes, you would have to remove the water closets and take the slate from under it, and take up the floor.

Q (Question repeated) A No, sir. That was none of my business, what it would cost.

Q Now, was any time mentioned when you were going to see him again? A No particular time. He told me, the next time I was around, in two or three days, to see him.

Q Now, that being the 10th, the next time that you had a conversation with anybody was the time you saw McLernan, the elder; is that so? A Yes, sir.

Q Now, do you remember that that was on Monday of the week that you were arrested? A I do.

Q That was the 22nd of April; wasn't it? A Whatever

FBI

CASE 1615

the date is.

Q That was 12 days afterwards, from the time that you had the first talk with McLernan, junior? A About that.

Q And had you been in the premises in the meantime?

A No; only to pass by, not go in.

Q Hadn't you been there and seen Mrs. Jakob? A No, sir.

Q And hadn't you asked her what had become of the owner or agent? A No, sir.

A Are you sure of that? A I am positive.

Q Now, then, you got there on the 22nd; did you; and you saw Mr. McLernan? A Senior, yes.

Q Now, what talk did you have with him again, please?

A Going by the building, I saw somebody in the store, and I went in there, and there was an old gentleman on a ladder, plastering the wall and tearing paper off.

And he said --- I said, "Good morning," and he said, "good morning. Are you the inspector in this district?" And I said, "I am."

And he said, "My son left \$10 here for you."

Q Now, just a minute. During the first conversation ----

MR. CRAIG: I object to the interruption. And I ask that the entire conversation be given at this time, as he has asked for it.

MR. MANLEY: Well, go ahead, and complete it.

1771
CASE 7-1615

THE WITNESS: Shall I continue?

MR. MANLEY: Yes.

A (Answer continued) He said, "My son left \$10 here for you." I said, "Well, I don't know why he should leave \$10 here for me. I done nothing for his \$10. You had better give it back to him."

So we talked a few minutes --- I don't know exactly about what --- about the building and what they were going to do with the store, and things of that kind, and the old gentleman says to me, "Now, Inspector, what will it cost to straighten this matter out?" And I said, "Well, the only way it can be straightened out is, you will have to have an architect draw plans, and file them, and put them through the Department in the regular way."

And he said, "What will that cost?" And I said, "For a job of this size and kind, to have the plans drawn and put through the Department in the regular way, will cost about \$50."

BY MR. MANLEY:

Q And nothing was said, as I understood you to say, when you talked to McLernan, Junior, on the 10th, nothing had been said about your hiring an architect? A No, sir.

Q You didn't mention to him that it was necessary to hire a new architect? A No, sir.

Q All you wanted young McLernan to do was to put in

1711
CASE 1615

plans and remedy the defect? A Yes, sir.

Q And you had probably seen Molinelli, had you not, before you saw McLernan, the elder? A No, sir.

Q (Question repeated) Did you not? A Oh, yes, I had seen him.

Q You saw him then before you saw the old gentleman?

A Do you mean in referenceto that work?

Q Yes. A No, sir. Though I often saw Molinelli.

Q You know him pretty well? A Yes, sir.

Q Then you hadn't seen him, you say, before you saw the old gentleman? A No, sir.

Q And then you and Molinelli had not talked about what this work would cost? A No, sir.

Q Yet you suggested to Mr. McLernan, the elder, that it would cost \$50? A Yes, sir.

Q Now, in the conversation you had on the 10th, with McLernan, Junior, there had not been any suggestion, as I interpreted your testimony, as to money being paid to fix this matter up? A No, sir.

Q And then you were absolutely surprised when the figure of \$10 was mentioned by McLernan, Senior? A Yes, sir.

Q It surprised you that he should mention that subject? A Yes, sir; because I had done nothing for it.

Q Now, did you ask him if the owner was around, did

CASE # 1615

you ask the elder McLernan, at that time? A No, sir; he told me who he was and I didn't have to ask him anything further.

Q And did you say: "I have been wanting to see him lately, and I can't run across him"? A I might have said that, I might have spoken that way. I had passed the premises several times.

Q And did he then say, "If you want to see him, I will let my son know, but he isn't around here now, but I will take him a message to-night." A That was after he asked me about what the matter would cost, for filing the plans.

Q Well, he did say that at some period of the conversation; didn't he? A He told me he would see his son, that night.

Q And did you then say to him that they had done the plumbing without plan having been filed for it, and it was a violation of the law, and they would have to do it over again, to make it right? A No, sir;

Q That they would have to take the platforms away from under the water closets and expose all the work, on account of there being no plans for it? A No, sir; only what I said in reference to the same matter before; that it would be necessary to expose the work under the closets, to let the inspectors see it.

EX-111
1771
CASE 271615

Q Then nothing that I have just read to you was said? A I might have said to old man McLernan, as I said to his son -----

Q No, not what you might have done, but what did you say? A No, I don't recollect saying that at all to him.

Q And did you say that they had done this plumbing in violation of law, because they had no plan for it, and they had to take up the work again and expose it, expose the plumbing, and it would cost a good deal of money to do it, and that, if they would make it right with you, you would see that no violation was put on it? A No, I didn't. Only part of that I said.

Q Did you say this: "And, if they would make it right with you, you would see that no violation was put on"?

A No, sir, I did not.

Q And did you say that you would fix it up with the Department? A No, sir.

Q And that nobody would know anything about it?

A No, sir.

Q And did he then say: "Will \$10 satisfy you?"

A No, sir.

Q And did you say: "No, it will cost \$50"? A No, sir.

Q Did you say: "It will cost \$50, because the thing has been going on so long that they have got onto it in

1751

CASE 1615

the Department, and I've got to see others above me?"

A No, sir.

Q Now, then, there was no suggestion of the kind at all? A No, sir, not made by me.

Q And then that is made up out of whole cloth, absolutely? A Yes, it's an absolute lie.

Q Did you ever see McLernan, Senior, before that day?

A Not before the first time I had seen him.

Q And you probably never had heard of him before?

A No, sir, never, in all my life.

Q And that being so, you never have had any trouble with him at any time? A No, sir.

Q Or he with you? A No, sir; never saw the gentleman before.

Q And did he then say: "I will see my son to-night, when I get home," and did you then say, "I'll be back tomorrow, at half past eleven o'clock, for the \$50"? A No, sir. He told me to come back, the next day, and he would tell me what his son had said.

Q Now, what was the father to state to the son that you were to come back, the next day, to find out about?

A He was to state to the son the cost that I thought the plans for the alterations would be.

Q And you thought you had made it so clear to the old gentleman that he couldn't misunderstand it; didn't you?

1771
CASE 1615

A Yes; he asked me plainly what it would cost, and I told him, to the best of my opinion.

Q And you wanted him to ask his son if he was satisfied that the cost would be \$50? A No, sir, I didn't tell him anything of the kind.

Q Now, then, will you tell me again what that \$50 was to go for, as you told the old gentleman? A It was to be the cost of filing plans in the Department, and putting them through in the regular way..

Q And you made that so clear, or thought you did, that there could be no mistake about it; didn't you? A I thought I spoke as plain as I could to him.

Q Did you see Mrs. Jakob, that day? A Yes, in the vestibule.

Q And did you say something to her? A No, not that day.

Q Didn't she ask you: "What? You here again?"

A No, sir.

Q And didn't you say: "Where is the owner? I want to see the owner"? A No, sir. I said, "Good morning," and walked into the store.

Q And didn't you then say: "I guess it will be all right. I don't have to see the owner, because I've seen the old gentleman, and he says he will tell the owner"?

A No, sir.

1790
CASE # 1615

Q Nothing of that kind? A No, sir.

Q Now, I don't suppose, Mr. Farley, that you had ever seen Mrs. Jakob, before that day, or before the times you saw her up there, I mean? A Not before I went to the building first.

Q And you have never had any trouble with her, of course? A No, sir, I never knew her before.

Q And you don't know of any reason why she should testify falsely against you; do you? A No, sir.

Q Now, you say that, about the first time you saw her was on the 4th? A I think that's it.

Q And the second time was on the 10th? A Yes, sir.

Q And the third time was on the 22nd, when you saw her in the hall, but didn't talk to her? A Oh, yes, I had seen her at the door, but didn't talk to her.

Q Now, did you hear her testify here, in answer to these questions: "Q. Have you seen this defendant in those premises, the defendant Farley? A. Yes, sir."? A Yes.

Q "Q." --- Did you hear me ask her this question, and did you hear her make this answer: "Q. Did you see him on the premises during the time they were fixing some bath tubs on the second floor, one flight up, and the toilet in the store, on the ground floor?"

MR. CRAIG: I object to this as immaterial, irrelevant and incompetent, all this testimony, though I

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1791

CASE 77 1615

haven't objected before; and it is wholly improper to rehearse the testimony before the jury in this way, and ask whether he heard her testify so and so.

THE COURT: Objection sustained.

BY MR. MANTLEY:

Q Now, didn't she ask you in the progress of that conversation, when you were asking for the landlord, didn't she say to you: "Can I say something to the landlord or agent what you want?" And you said, "No, I'll see the agent or landlord myself. Tell him that I want to see him"?

MR. CRAIG: I object to that on the same grounds.

THE COURT: Overruled.

MR. CRAIG: Exception.

A No, I never did. In the first place, I was never there during the progress of the work.

Q I didn't say during the progress of the work.

(Question repeated) A I might have said that, but it was not while the work was going on, it was after. I'm absolutely positive of that.

Q Now, let us come down to the 26th. Did you state to the elder Mr. McLernan, on Tuesday, the second day that you called there, that you would be back on Friday, the 26th, between 11 and 12 o'clock? A He asked me to be there, and I told him I would probably be there before 12 o'clock.

Q. But didn't you tell him that you would be there?

A. Yes, I told him I would be there before 12 o'clock.

Q. Did you suggest the time and the day? A. No, sir. My recollection is Mr. McLernan asked me to be there on Friday, the 26th, in the forenoon. He said that his son wanted to meet me there at that time.

Q. And that is the reason, then, you went there on Friday? A. Yes, sir.

Q. Now, did you put down on your route card, on the 26th of April, that you were going to those premises at that time? A. No, sir.

Q. You knew there was a rule in the Department, did you not requiring that you should put down all places that you intended to visit that day? A. All places where work was laid on our desk to do.

Q. Was that rule merely confined to the places where you had work to do? A. The work is laid on our desk in the morning, with the addresses of the premises on it, and we lay out our work according to the slips that are laid out on the desk.

Q. Then, if there are no slips on the desk, you don't have to put down where you are going? A. No, sir; you are not supposed to put down anything but what is on your desk, and you go anywhere you please in your district.

BY THE COURT:

1793

CASE # 1615

Q And you say you may go wherever you please, then?

A Yes, sir; but you are supposed to look after your district, your Honor, and keep in your district.

Q Well, but you said that, independently of the route card, you could go wherever you pleased, if there was no route laid out for you on your desk in the morning? A Yes; but you must look out for your district generally, and keep in your district, so that you can be called up from the office at any time.

Q And you said, did you not, in writing out the route slip, you merely wrote out the places that the Chief Inspector told you to go to? A Yes, sir.

Q But you didn't feel bound to adhere to it; did you? A Oh, yes, I did.

BY MR. MANIFFY:

Q Isn't that the object of that rule, that, if they want you at any time, they can send out, and, with reasonable certainty, find you? A Yes.

Q Well, you went there, that morning, and you went to the door of Mrs. Jakob's apartment? A Yes, sir, on the morning of the 26th.

Q And you knocked on the door? A Yes, I think I rang the bell in the vestibule.

Q And she came to the door? A Yes.

Q And did you say, "Is the landlord around?" A No,

FBI

CASE 77-1615

sir.

Q Didn't you ask for him at all? A No, sir.

Q And didn't she say, "Yes. He left you \$40?"

A Do you want me to tell her conversation?

Q Why, yes, that's what I'm asking you to tell now?

A Well, she said ----

MR. CRAIG: I object to it now as useless repetition and frivolous, and I ask that this line of cross examination be excluded by your Honor, all further cross examination on these subjects, in the exercise of your proper, legal discretion in this trial, and I move to strike out the answer.

THE COURT: Objection overruled. Motion denied.

MR. CRAIG: Exception.

BY MR. MANLEY:

Q And didn't she say: "Yes, he left you \$40"?

A Yes, she said he left me \$40.

Q And did you say then: "Is that all?" A No, sir.

Q And did you then go in and sit down in the dining room? A No, sir.

Q Did you go into the apartment at all? A No, sir.

Q Did you stay out in the hall all the time? A In the private hall, ather kitchen door.

Q Did you ask her: "Is somebody around?" A No, sir.

1781

CASE 1615

Q And didn't she say: "No, sir." A No, sir.

Q And nothing of that kind was said? A Nothing of that kind was said by me or her either.

Q You didn't care whether there was anybody around or not; did you, of course? A Not at all, no, sir.

Q Now, did you after that, say: "Bring the money down in the store, and take the key down, too, and open the door, and I will measure the toilet"? A I told her to come down in the store with the key, because I wanted to look at the toilet in the store.

Q Did you say anything about measuring it? A I might have. I don't remember whether I did or not.

Q Well, when you got down there, did you measure the toilet? A I looked at the toilet and put my rule across it, to the best of my recollection. My object was to see whether the floor was fully covered with slate under the toilet.

Q Well, your impression is that you measured the toilet, then? A Yes.

Q Well, then, did you walk into the vestibule, and didn't she say this to you: "Please tell me something what you will do with the \$40, because I'm not janitor here long, and the landlord will think maybe I keep the \$40"? A No, sir, she said nothing of the kind, absolutely nothing of the kind.

CASE 1615

Q And did you say, in reply to that: "Oh, that's all right. Tell him I will fix up the violation and everything will be all right, and tell him not to forget to leave the other \$10 for me, next week"? A No, sir; there was no violation on the property to fix up.

Q I'm asking you if you said that? A No, sir.

Q Nothing of the kind? A No, sir.

Q And did you say to her: "And tell him-----" meaning the landlord or agent --- "to fix up that stone, and it will be all right," so that some other inspector might not come there and report it? A I think there was a broken saddle there, and I told her to tell the landlord to fix it up, so that no one would trip over it.

Q No. I asked you, did you tell her to have that done, so that another inspector would not come around and find it? A No, sir.

Q And did you at any time tell her that the \$40 was going to an architect to fix up the plans? A I told Mrs. Jakob to tell Mr. McLernan that I would have the plans drawn and filed, and he needn't worry about it any further.

Q You told Mrs. Jakob to tell Mr. McLernan that you would have the plans drawn and filed, and he needn't worry about it any further? A Yes, that's the exact conversation.

Q And that was down in the vestibule, that you said that; was it? A No, sir; it was in the store.

1791

CASE 1615

Q In the store? A Yes, sir; before I came out of the store.

Q And so that you thought, from what you had said to her, that she must have understood that the money was for the drawing of the plans? A I didn't say that to her at all.

Q Well, you wanted her to understand that, anyway?

A Yes.

Q And ^{from} what you said, you inferred that she understood it? A Yes, I supposed so.

Q Now, you remember the time when you were arrested on the street; don't you? A Yes.

Q And Mr. Fink and Mr. Thomas were there? A Yes, sir.

Q And Mr. Schwartz? A Yes.

Q What conversation took place at the time of the arrest? A Why, the officer --- I believe his name is Thomas, tapped me on the shoulder, and I turned around, and said, "What do you want?" And he said, "I want you."

And I asked him who he was, and he showed me his badge of authority, and he said, "What have you got there?" And I said, "\$40," and I had it in my hand, and in my coat pocket (illustrating), and he says, "Where did you get it?" And I told him I got it from the janitress of the corner building.

And he said, "What did you get it for?" And I told him

1791
CASE 7-1015

to take it to an architect to draw plans for the alterations which had been made in the building.

Q And you told him that so that it could be heard by Fink, Thomas and Schwartz? A Well, I talked in a natural tone of voice, and they were in easy hearing distance, unless they've got tin ears.

Q In other words, when Thomas asked you where you got it, you said you got it to pay an architect? A Yes, sir.

Q For the filing of plans? A Yes, sir.

Q Did he ask you who the architect was? A No, sir.

Q Did you tell him who he was? A No, sir.

Q Why didn't you do it?

MR. CRAIG: I object.

A Why so?

MR. CRAIG: I object.

THE COURT: Overruled.

MR. CRAIG: Exception.

BY MR. MANLY:

Q (Question repeated) A I didn't think it was necessary to do it. It was none of his business.

Q Now, you knew that you were falsely arrested; didn't you? A Yes.

Q And you knew that they had absolutely no ground to arrest you on, didn't you, Mr. Farley? A Well, I didn't know whether they had or not.

Q Well, if you are telling the truth on the stand, you knew that they had not; didn't you?

MR. CRAIG: Objected to.

THE COURT: Overruled.

MR. CRAIG: Exception.

A I didn't think they had any right to arrest me, no, because I hadn't committed any crime.

BY MR. MANLEY:

Q And didn't you, a man who had done nothing to justify arrest, intend to leave that spot, without letting them know what the real facts were, and be hauled away to a police station? A They didn't haul me. I went willingly with them.

MR. CRAIG: Objected to.

THE COURT: Overruled.

MR. CRAIG: Exception.

BY MR. MANLEY:

Q Then, as I understand it, the only explanation that you made as to the money was that you got it for the purpose of paying an architect to draw plans? A Yes, sir.

Q Now, you knew that Thomas was not probably acquainted with tenement house conditions; didn't you? A I didn't know anything about Thomas.

Q But you found out that he was a police officer?

A Yes, I certainly did.

Q And Mr. Fink was standing right there, the secretary to the Tenement House Commissioner? A Yes, he was.

Q And you knew, of course, ^{that} he would understand everything about tenement house conditions that you stated?

A No. I don't think he understands anything about a tenement house.

Q Well, but you knew that, from his long association with the Department, he ought to know something about it?

A He hasn't had any long association with the Department.

Q Well, you knew from the time he has been there, he ought to know what an architect was; didn't you? A He had nothing to do with architects. That isn't his business in the Department at all.

MR. CRAIG: I object to the question and move to strike out the answer.

THE COURT: Motion denied.

MR. CRAIG: Exception.

BY MR. MANLEY:

Q Well, then, why didn't you tell Mr. Fink why you had got the money? A Because it was none of his business. I didn't think it was any of his business.

Q Well, why didn't you give the arresting officer and the others there all the details of it? A Because it wasn't necessary. I simply answered the questions the officer asked me.

1015
101
1015

Q Don't you suppose that, if you told all this, it would have cleared you on the spot? A No, it wouldn't have cleared me, because I realized at once, as soon as I saw Fink there, that it was a frame-up from the office.

Q And you think then that this case is a frame-up from the office of the Tenement House Department; do you?

A Yes, I do now, and I did then.

Q And you think then that this case is a frame-up of you by the officers of the Department of Tenement Houses of New York City? A Yes, I do.

Q Have you had trouble with Mr. Abbott? A No, sir.

Q Or with Mr. Fink? A No, sir.

Q Or the Tenement House Commissioner? A No, sir.

Q Or Mrs. Jakob? A No, sir.

Q Or either of the McLernans? A No, sir.

Q And you were protected by the Civil Service; weren't you? A Yes.

Q Well, then, why do you think they were trying to frame you up? A On account of Mr. McLernan's visiting there, and making a complaint there, and the under dog has always to suffer, you know. I knew that Fink, that cur Fink, was trying to do it to benefit himself. He is the man that I blame for it. He's only a cur in my estimation.

BY THE COURT:

1721

CASE 1615

Q Well, why should McLernan have visited the Tenement House Department? A I suppose he visited it for information. I don't think he understood the case.

Q Well, how do you know he visited the apartment at all? A Only from the evidence in this case, what I've heard here.

Q But you said that you thought, when Mr. McLernan visited the Department, Fink framed this matter up against you. A Yes, I inferred that from the testimony here. It has been testified that Mr. McLernan did go there.

BY MR. MANLITY:

Q How long have you known Mr. Molinelli? A About three years.

Q Is he an architect? A He's a contracting plumber.

Q Were you in the Department at the time you first knew him? A Yes.

Q How long had you been in the Department before you met him? A Oh, probably two years or three years. I can't say exactly.

Q Have you seen him very often during the past three or four years? A Yes, sir.

Q Have you ever had business dealings with him?

A No.

Q Have you ever engaged him at any time to act for people having anything to do with the Department that you

179

CASE 1015

investigated with regard to drawing plans? A No, sir.

Q You come in contact, Mr. Farley, or you did, while you were in the Department, or must have, did you not, with a good many contracting plumbers? A Yes, sir.

Q And contractors in general? A Yes, sir.

Q And real estate agents? A Yes, sir.

Q And yet you never before asked Mr. Molinelli to draw plans for anybody? A No, sir, I never had occasion to.

Q Do you know that there is a rule of the Department, do you not, not to do anything of that kind?

MR. CRAIG: I object. The rules are in evidence, and he is presumed to know them, strict or not strict.

THE COURT: Overruled.

MR. CRAIG: Exception.

A I don't remember the rule. It may be there, but

I don't remember.

BY THE COURT:

Q Is there or is there not such a rule? That is not an answer to the question. A I think there is.

Q Well, don't you know that there is? A Yes.

BY MR. MANLEY:

Q Don't you know that there is a rule in the Department that whatever information you may get by virtue of your office, you must not divulge for any private interest?

1700

CASE 1615

A Yes, you are supposed to be a dummy in the Department.

Q Now, let me read you that rule.

MR. CRAIG: I object to his reading it. The whole rules are in evidence.

THE COURT: The defendant says he knows the rule, Mr. Manley.

MR. MANLEY: Well, but I want to talk about it to him, to discuss it with him, and ascertain his knowledge of it, and his regard for it.

THE COURT: Well, he says he knew of the rule, and he is bound to obey the rules or resign his position.

BY MR. MANLEY:

Q Didn't you know then, when you intended to go to Mr. Molinelli, that you were violating a rule of the Department? A Yes.

MR. CRAIG: One minute. I didn't get a chance to object. I move to strike out the answer, on the ground that I didn't get a chance to object before he answered. I object to it as immaterial, irrelevant and incompetent.

THE COURT: Well, you may object now. Insert an objection before the answer, Mr. Stenographer. Objection overruled.

MR. CRAIG: Exception.

BY MR. MANLEY:

Q Well, you hadn't seen Molinelli at all prior to the 22nd, the time you saw McLernan, the elder; had you?

A I had seen him often, perhaps; I don't remember.

Q But about this matter, I mean. A No, sir.

Q Did you think that that was a fair price for him to charge, \$50? A He told me so.

Q But you say you hadn't seen him prior to talking to McLernan, the elder, and before you told McLernan, the elder, it would cost \$50? A Yes; I thought it was a fair price.

Q And so you fixed the price for Molinelli to charge?

A No, sir, but I had talked to Molinelli in reference to the job.

Q But I thought you said you hadn't seen Molinelli about this particular job before the 22nd? A Well, you probably got me twisted up about that.

Q Well, I don't want to twist you up at all. What is the fact about that? A I probably saw him after I saw the elder McLernan.

Q You probably saw him after you saw the elder McLernan? A Yes; and I saw him previously to seeing the elder McLernan, also.

Q Now, previous to seeing the elder McLernan, --- and you say you saw him on Monday, the 22nd of April --- had you talked with Mr. Molinelli about this job? A Yes.

FBI

CASE 1915

Q Then you were in error when you testified that you had not talked with him about this job? A If I so testified, I am, yes.

Q Well, now, you are pretty positive that you had seen Molinelli about this job? A Yes, sir.

Q And that is probably why, then, you suggested to the elder McLernan the sum of \$50; is it not? A Yes.

Q I understood you to testify, some time ago, that nothing at all was said to McLernan, Junior, on the 10th about getting any architect? A Nothing at all, sir.

Q You did tell him, as I remember your testimony, that plans should be filed? A Yes.

Q And that was the substance of the conversation of the 10th? A Yes.

MR. CRAIG: I object to it, this whole examination.

THE COURT: Overruled.

MR. CRAIG: Exception.

BY MR. MANIFY:

Q If that is so, if your conversation with McLernan, Junior, only related to the filing of the plans, why did you go to the architect and find out the cost would be \$50?

A Because from his attitude at the time, I presumed he would ask me that question, and I wanted to be prepared for it.

1791

CASE 77-1615

Q Now, what was his attitude? A Well, he didn't want me to put any case on him, and told me how much money he had spent. Why, his general attitude; he wanted me to fix it up. That's what I imagined, and that he would come back to me again.

Q Now, what did you imagine? A I thought he would ask that very question which his father did ask me.

Q What was that? A How much it would cost to straighten the matter out with the Department.

Q Well, why didn't you ask him then, on the 10th, if you thought he would afterwards ask you that? A I had no business to ask him anything of the kind.

Q Now, have you told me all of the attitude of McLernan, Junior, on the 10th, that led you to go to the architect, to find out how much the architect would charge?

A Yes, sir.

Q And yet nothing was said between you and him about an architect? A No. But you can read between the lines. I can, anyway.

Q Well, will you read for me between the lines, from what happened between him and you on the 10th, what led you to do that? A Because I inferred that he would ask me that very question, when he next saw me, as he asked me to see him again in a few days.

Q Well, all the architect was to do was to file plans;

was it not? A Yes, sir.

Q And almost any architect can file such plans; couldn't he? A Yes, sir.

Q And why didn't you ask him, then, who his architect was, and tell him what the architect should do, instead of going away and attempting to engage another architect for him, without saying anything to him? A I had no right to tell him what his architect ought to do. He knew himself.

Q Well, to use an inelegant expression, you just took a chance and went to Molinelli? A I wanted to be prepared, if he asked me the question, when I met him again; I wanted to be prepared for anything that he would bring up.

Q And so, when you saw McLernan, Senior, you were prepared? A Yes, sir.

Q When was it when you saw Mr. Molinelli about this matter? A Oh, along in April some time, after I had seen McLernan, Junior.

Q About how long after the 10th? A I couldn't say. I see Molinelli very often.

Q Is he in court? A I don't know. He is expected to be here.

Q Is he subpoenaed here? A Yes.

Q And how long after the 10th did you see him, about? A Oh, possibly within a week.

1721

CASE 1615

Q Had you been to his office or place of business often during the time you were tenement house inspector?

A Yes, sir.

Q Had you ever suggested to anybody, owners, or agents of tenement houses, that Mr. Molinelli might be a good person to employ? A If I was asked, yes.

Q In other words, you had suggested his name to various people in that connection? A Yes, I have.

Q Then you had suggested Molinelli? A Yes, sir.

Q In other words you swung business, if you had a chance to do it? A Well, I don't know whether he got it or not.

MR. CRAIG: Now, I object to that. That is a wholly prejudicial question to ask in the presence of this jury, and I ask that the District Attorney be reprimanded for putting the question.

THE COURT: Objection overruled. Motion denied.

MR. CRAIG: Exception.

BY MR. MANLY:

Q You never got any commission on any work that you caused him to get; did you? A No, sir, I never knew that he got any work.

Q In other words you didn't have any particular reason for suggesting Mr. Molinelli to people, any more than any other architect; did you? A Yes.

1770
DEPTCASE 27-1615
DEPT

Q But the reason was not for the purpose of sharing any commission, or anything of that sort? A No, sir, not at all. I knew that he could do it.

Q Well, aren't there other architects besides Mr. Molinelli who can do it? A Thousands of them.

Q Now, how did you happen to pick out Mr. Molinelli for this particular job, if you had never see him do any other job? A Well, I know that his firm does a lot of tenement house work, and I knew that they had taken care of cases of the same kind, filed plans for the removal of an alteration violation, and I knew they knew just how to go about it.

Q And you knew Mr. Molinelli sufficiently to have a great deal of confidence in him? A Yes, sir.

Q And how long had you known him? A Three years or over.

Q But you had never known him before you went into the Department? A No, sir.

Q Now, did you explain fully to Mr. Molinelli what had been done up there? A Yes, I gave him an outline of the work.

Q And \$50 was agreed upon as being the proper thing?

A He said, "You give \$50, and I'll go ahead, if the case comes up."

Q Now, there was an examination of this charge in the

1771

CASE 1615

Police Court after you arrest; was there not?

MR. CRAIG: I object. That is entirely immaterial, irrelevant and incompetent, and improper. I don't think he knows what an examination is.

THE COURT: Well, I look upon the question as only preliminary.

MR. CRAIG: Well, I don't care how it might be looked upon by different people, with all respect to your Honor, but I object to the question.

THE COURT: If he does not know what an examination is, I will exclude the question.

BY THE COURT:

Q Don't you know what he meant in his question by an examination? A I was arraigned in the court, if he means that.

MR. CRAIG: And I object to it as immaterial, irrelevant and incompetent.

THE COURT: I will allow it and I will instruct the jury that it is not an item of evidence at all, the examination in the Police Court. It is merely one of the preliminary steps in this proceeding, gentlemen of the jury, and you are not to consider it at all on the question of the defendant's guilt or innocence. But I will allow it as the basis for further questions.

CASE # 1615

BY MR. MANLEY:

Q (Question repeated) That is to say, a complaint was prepared and made in the Police Court; wasn't it?

MR. CRAIG: I object to that as improper, and immaterial, irrelevant and incompetent. He doesn't know what a complaint is.

MR. MANLEY: I don't think Mr. Craig should be allowed to speak for his client in this way, your Honor.

THE COURT: Well, that is Mr. Craig's opinion only. Objection overruled.

MR. CRAIG: Exception.

BY MR. MANLEY:

Q What is a complaint, Mr. Farley?

MR. CRAIG: Objected to.

THE COURT: Allowed.

MR. CRAIG: Exception.

A It's a technical point, and I can't give you a technical answer.

THE COURT: Well, omit the details, Mr. Manley. The defendant says he was arraigned in the Magistrate's Court.

MR. MANLEY: Well, I will withdraw the question, and reframe it.

MR. CRAIG: And I object to the withdrawal after I

5191
CASE 1615

have objected, and my objection has been overruled.

THE COURT: Objection overruled.

MR. CRAIG: Exception.

BY MR. MANTLEY:

Q Now, do you remember being in the Police Court after you were arrested?

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

THE COURT: Overruled.

MR. CRAIG: Exception.

A Yes.

BY MR. MANTLEY:

Q And you remember that you came before the Magistrate?

MR. CRAIG: I object.

THE COURT: Overruled.

MR. CRAIG: Exception.

A Yes.

BY MR. MANTLEY:

Q Now, did you have Mr. Molinelli there in the Police Court?

MR. CRAIG: I object.

THE COURT: Allowed.

MR. CRAIG: Exception.

A No, sir.

BY MR. MANTLEY:

Q Why didn't you? A I didn't think it necessary to

1727
CASE 27-1615

have him there.

Q. Didn't you consider that that was a complete defense?

A. No, sir.

MR. CRAIG: Onemminute, please. I object. I must now make a specific objection to this line of questions, because they are highly improper in my judgment.

THE COURT: I will allowit. He may explain, but these questions are proper.

MR. CRAIG: The District Attorney knows what took place in the Magistrate's Court. I don't know whether your Honor knows or not.

THE COURT: I do not.

MR. MANLEY: And I wasn't there.

THE COURT: And what took place in the Magistrate's Court is in no way binding on this jury, as I said before.

MR. MANLEY: I am not asking what took place, I am merely laying the foundations for other questions.

THE COURT: As I understand, these questions are simply preliminary to other questions?

MR. MANLEY: Yes, sir.

THE COURT: And whether or not he was arraigned in the Magistrate's Court, of itself, is immaterial, but that is one step only in the course of these proceedings. I have allowed these questions so far merely

1915
CASE 21615

for the purpose of showing that he was present at a certain time and place. That is all.

MR. CRAIG: I except.

MR. MANLEY: That is all. Just a minute. Just one more question.

I ask that this paper be marked for identification.

MR. CRAIG: Nobody has identified it yet. I object to it.

MR. MANLEY: You have always insisted that I should have any paper marked for identification before I used it, referred to it in any way.

THE COURT: It may be marked for identification by the stenographer, after you have seen it, and you may examine it before any questions are asked.

MR. CRAIG: Oh, I object to it.

MR. MANLEY: I will not insist, if he objects.

BY MR. MANLEY:

Q I show you this paper. Have you seen one like it before?

MR. CRAIG: I object to that as immaterial, irrelevant, incompetent and improper.

THE COURT: Overruled.

MR. CRAIG: Exception.

A Yes, I've seen many of them.

1777

CASE 1615

Q What is that? A (No answer)

MR. CRAIG: I object to that as incompetent and improper.

THE COURT: Overruled.

MR. CRAIG: Exception.

A It is a blank repair slip.

MR. MANLEY: Now, let us have it marked for identification.

BY THE COURT:

Q What do you mean by a blank repair slip? A It is a blank slip.

Q But used where? A In the Tenement House Department.

(It is marked People's Exhibit 6 for identification).

BY MR. MANLEY:

Q Isn't this a slip which is to be filled in by the owners or agents of tenement houses who have only slight repairs to make on them?

MR. CRAIG: I object. It shows on its face what it is. Your Honor must receive the paper as a whole, if at all, and we don't care about his oral testimony about it.

THE COURT: He may state his knowledge of the uses of the paper. This is an official on the stand, and this is a document, or form, or paper used by him

1721
CASE # 1615

in the discharge of his duties, as I understand.

BY THE COURT:

Q Isn't that so? A Yes, sir; used by the Department.

MR. CRAIG: And I object to your Honor's question also.

THE COURT: Objection overruled.

MR. CRAIG: Exception. Will your Honor hear Mr. Manley's question again? Perhaps your Honor did not catch it.

(Mr. Manley's question is repeated by the stenographer).

THE COURT: Yes, I will sustain the objection to the question, if you object to the form, and require the District Attorney to ask what it is.

MR. CRAIG: Very well, sir. Then I withdraw the objection.

BY MR. MANLEY:

Q Then what is it? A It's a blank repair slip used by the Department.

Q Under what circumstances is it used? A (No answer)

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

THE COURT: Overruled.

MR. CRAIG: Exception.

1771
CASE # 1615

BY THE COURT:

Q Do you know under what circumstances it is used?

A Yes, sir.

BY MR. MANLEY:

Q Under what circumstances is it used?

MR. CRAIG: Objected to.

THE COURT: Allowed.

MR. CRAIG: Exception.

A When there is slight repairs to be made, when no structural alterations is to be made, the owners or agents are allowed to file this slip without a plan.

BY MR. MANLEY:

Q Does the filing of this slip bring the slight alterations to the attention of the Tenement House Department?

MR. CRAIG: Objected to.

THE COURT: Overruled.

MR. CRAIG: Exception.

A Yes, sir.

BY MR. MANLEY:

Q And that is its purpose; is it not?

MR. CRAIG: Objected to.

THE COURT: Overruled.

MR. CRAIG: Exception.

A Yes, sir.

CASE 1615

BY MR. MANLEY:

Q Now, in your judgment, couldn't this particular form, People's Exhibit 6 for identification, entitled, "An Application to Repair," wouldn't that have been sufficient, wouldn't it have been sufficient for the owner that filled this out, relating to the alterations in bath rooms and toilets, and so notify the Department in this fashion?

MR. CRAIG: Objected to.

THE COURT: Overruled.

MR. CRAIG: Exception.

A Absolutely not.

BY MR. MANLEY:

Q In your judgment, it would not have been sufficient?

A No, sir.

THE COURT: I allowed all the other questions so that the last question asked by the District Attorney might be asked, as to the credibility of the defendant's story, that is all, and his answer is that that slip would not suffice.

BY THE COURT:

Q This was a case that needed the services of an architect? A Yes, sir.

BY MR. MANLEY:

Q Was it your understanding that this blue slip was to be used where the repairs proposed would not in any respect affect the structural part of the building?

CASE # 1615

MR. CRAIG: I object to that as immaterial, irrelevant and incompetent.

THE COURT: Yes, I think he has gone fully into that, Mr. Manley.

MR. MANLEY: Of course, I have got now his opinion that this would not be sufficient on the record, and that is all, without any explanation of the grounds of that opinion.

THE COURT: But he has testified that that slip would be used where slight repairs would be made.

MR. MANLEY: And I want to see whether he is right about that.

THE COURT: Well, I don't think you can cross examine him further on that point. I allowed it but for one purpose, and he has answered.

BY MR. MANLEY:

Q Now, do you the rules of the Department prescribe under what circumstances this blue slip is to be used?

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

THE COURT: Objection sustained. He may ascertain the knowledge of the defendant on the subject.

BY MR. MANLEY:

Q What knowledge did you have on the subject of this particular blank, entitled, "An Application to Repair"?

A (No answer)

1711
CASE # 1615

BY THE COURT:

Q Do you know whether the rules provide for the use of that blue slip?

MR. CRAIG: I object.

THE COURT: Allowed.

MR. CRAIG: Exception.

A Yes, sir, they do.

THE COURT: The question before the jury here will be one of intent, and they have the right to search the operations of this witness's mind; that is all.

BY THE COURT:

Q And you knew the rule as to the matter of that slip? A Yes, sir.

Q How long have you been in the Department? A Three years and about four months.

BY MR. MANLEY:

Q When was that rule issued in regard to that blue slip, how long ago? A I couldn't tell you exactly.

Q Well, has it not been in use for about three years?

MR. CRAIG: Objected to.

THE COURT: Overruled.

MR. CRAIG: Exception.

A I couldn't tell you.

1711
CASE 27 1615

BY MR. MANLEY:

Q Well, hasn't it been in use for about three years?

A I don't know, sir.

Q About how long would you say it had been in use?

A Well, some time; I couldn't say how long.

Q Well, your best judgment? A (No answer)

BY THE COURT:

Q A week? A Oh, over a year, two years probably; and it might have been there before I went into the Department, I don't know.

BY MR. MANLEY:

Q Now, this rule that was issued in regard to it, was that a rule that came from Mr. Lavelle, that is, did he read it off to all the inspectors? A Which rule do you mean, sir? Which rule do you refer to?

Q The rule in regard to the use of those blue slips. Was that read off by Mr. Lavelle to all the inspectors?

A I believe it was.

Q I refer to People's Exhibit 6 for identification.

A Yes.

BY THE COURT:

Q And you understand that that is what he is talking about now, the slip marked People's Exhibit 6 for identification? A Yes, sir.

BY MR. MANLEY:

919177 ESW
CASE 1615

Q And have you any recollection that there was a rule at any time read by Mr. Lavelle? A An instruction was read by Mr. Lavelle, I remember, yes.

Q Now, what was that instruction in regard to it?

MR. CRAIG: Objected to.

THE COURT: Overruled.

MR. CRAIG: Exception.

A That owners, or agents, or architects could use the repair slip. I think the first time that was read out was in reference to installing partition windows. We formerly required a plan to be filed for them, and the Commissioner modified the order so that the owner or architect would not be required to file a plan for cutting a window between two rooms, or between an outer hall and an inner room, where it didn't affect the structural part of the building.

Q In other words, for minor alterations to a building? A Certainly small repairs.

Q Well, now, what was there about the repairs that you saw, after they were all completed, in these bath rooms and in the toilet down on the ground floor that required a plan, and not that blue slip, People's Exhibit 6 for identification?

MR. CRAIG: I object to this. This is reopening the case entirely.

THE COURT: Overruled.

5101-1615

MR. CRAIG: Exception. And I ask now that all these witnesses be excluded from the courtroom, who have been brought in here to hear this witness's testimony.

THE COURT: The rule is that when they have testified, they are allowed to remain in the room; but, if you desire to have them excluded, they may be.

MR. CRAIG: I would like to have them excluded.

THE COURT: Then they will go out. I will entertain a motion to strike out all the District Attorney's question as to the arraignment in the Police Court, if you make that motion.

MR. MANLEY: If your Honor please, I don't think your Honor heard all the questions on that subject. I asked him if this architect was present as a witness there. That was the point of it all.

THE COURT: Well, we will consider that matter further at the conclusion of this witness's testimony. The law is that he may waive examination entirely there, and nothing can be inferred against him by the jury.

MR. MANLEY: Certainly. But the only reason for asking about that was to show that Molinelli was not present as a witness.

THE COURT: Yes, but no inference must be drawn

1700
CASE # 1615

against him because he was not present. The rule is that a witness may be confronted by statements which appear to be inconsistent with his present statements; that is all. And I allowed, as I said, you to show that he was present at a certain time and place, and I thought it would be followed up by certain statements, and it was not; and, since the person for which I allowed it was not my purpose in allowing the testimony, I will strike it out.

MR. MANLEY: Yes, the only purpose for which I introduced it was to show that the architect was not called as a witness there.

THE COURT: And that was entirely immaterial.

MR. MANLEY: Yes, sir, there is no doubt about that. Now, I would like to have an adjournment, at this time, so that I can produce the rule that was read to the inspector. All that I have here is the letter of the Commissioner to Mr. Abbott, which was transferred by Mr. Abbott to the Chief Inspector.

THE COURT: Then you are unable to go on? It is now one o'clock, and you may have all the time you wish, Mr. Manley, for a proper cross examination.

MR. CRAIG: Has he finished?

THE COURT: No.

MR. CRAIG: Well, what does he want to do? Hang

1700
CASE 1615

us up here all the afternoon?

THE COURT: Well, he has the right to conduct his case according to his judgment.

MR. CRAIG: And I ask your Honor, now, to require him to close his cross examination of this witness.

THE COURT: I shall not do so. And, while it is time to take the usual recess, and I am willing to sit longer, if he is ready to conclude the examination, he says he is not, and I will not compel him to conclude it now.

MR. CRAIG: And I insist upon his closing now, and except to your Honor's refusal to require him to do so.

THE COURT: No, I will not restrict the rights of either party to ask questions which they think are material or proper. The jury will decide this case on the law as given to them by the Court, and on the facts as testified to by witnesses. Statements of the Court or of counsel on either side will be entirely disregarded by them, unless they agree with their own notions of what has been testified to by the witnesses, or are proper deductions therefrom.

(The Court then admonished the jury in accordance with Section 415 of the Code of Criminal Procedure, and took a recess until two o'clock).

CASE 1615

After Recess.

JAMES P. FARLEY, the defendant, his cross examination being continued, testified as follows:

CROSS EXAMINATION CONTINUED BY MR. MANLEY:

Q Now, Mr. Farley, you testified that a general order was issued some time ago, but you can't state when, in regard to this blue slip, as to repairs, People's Exhibit 6 for identification. A Yes.

Q And you stated in a general way that an owner, instead of submitting plans, could fill out this blank, when the repairs were slight; is that so? A Yes, that's right.

BY THE COURT:

Q Do you mean a different order from the one Mr. Lavelle testified to? A Yes, sir, this is the order in reference to the blue slip that he is talking about now, your Honor.

Q (Question repeated) A No, sir.

MR. MANLEY: No, there is no connection between them.

BY MR. MANLEY:

Q Now, for instance, when there was a replacing of water closets or other fixtures with fixtures of a like character, and in the same position, did the rule provide that this blue slip might be filled out?

CASE # 1615

MR. CRAIG: One moment. I object to that. The rule itself is the best evidence, and he has got it here.

MR. MANLEY: Then I offer it in evidence.

MR. CRAIG: And I don't object to it.

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

MR. CRAIG: Exception.

BY THE COURT:

Q You know the rule they are speaking of; do you?

A Yes, your Honor.

BY MR. MANLEY:

Q And did the rule provide for the filling out of that same slip when the changes consisted in the removal of plumbing fixtures?

MR. CRAIG: I object to it. The rule is in evidence.

THE COURT: I overrule the objection.

MR. CRAIG: Exception.

A If there was to be no changes, yes.

MR. MANLEY: Shall the paper be marked in evidence now?

THE COURT: No, I have not admitted the paper in evidence. I overruled your objection to the question, and you took an exception, Mr. Craig. Let

1700

CASE 27 1615

us have the record straight. The paper has not been admitted. I ruled upon your objection to Mr. Manley's question.

BY THE COURT:

Q You referred to that rule yourself in your testimony; did you not? A Yes, in reference to the blue slip.

MR. MANLEY: I offer it in evidence.

MR. CRAIG: And I object to it as immaterial, irrelevant and incompetent.

THE COURT: And the District Attorney has the right to question him about the rule. Now, you may offer the rule in evidence, if you wish, Mr. Manley.

MR. MANLEY: Perhaps I can obviate it by the next few questions.

MR. CRAIG: No, I am going to object to every question on this line, until that rule goes in evidence.

MR. MANLEY: Then I will offer it in evidence.

MR. CRAIG: No objection.

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

THE COURT: Well, but you haven't shown it to the defendant, have you and had him identify it?

BY THE COURT:

Q Is that so? A I only identified it as a rule that referred to the filing of the blue slip, your Honor.

1792

CASE # 1615

MR. MANTLEY: Yes, and we are not offering it as a paper that he identified.

THE COURT: Very well, then, the record is now straight.

BY MR. MANTLEY:

Q. Now, in accordance with this rule, Mr. Farley, as far as those changes on those premises that we are talking about are concerned, the changes in the bathrooms of the various apartments, where new tubs were put in the place of the old ones, and new platforms in the toilets, would it not have been sufficient, as far as those repairs were concerned, to have filled out this blue slip? A No, sir.

Q. For what reason?

MR. CRAIG: I object.

THE COURT: Overruled.

MR. CRAIG: Exception.

A. Because the fixtures were not replaced by fixtures of similar character. They were entirely different, of different construction.

BY MR. MANTLEY:

Q. Did you see the old fixtures before they were replaced? A I saw one or two of them.

Q. In their places? A No, sir, lying around.

Q. You saw them lying around after they had been replaced? A Yes.

1791

CASE 1615

Q And somebody, I suppose, told you they were the old fixtures? A No, sir, I knew it from my observation.

Being a practical plumber, I had knowledge.

BY THE COURT:

Q Well, what fixtures did you see? A Water closet fixtures.

Q You saw the parts that were exposed? A Yes, sir.

Q But not the pipes in the walls? A No, sir.

Q And so that, if a different pattern of water closets was to be put in, it would require an architect's plans?

A Yes, sir. And I knew that the new style closets could not be attached to the same connections there.

Q And so, if an old bath tubs were taken out, and a new one, of new construction put in, it would require an architect's plans? A No, sir, I refer only to the water closets, not the bath tubs.

BY MR. MANLEY:

Q I want to read this portion of the rule, as preliminary to asking you a question: "This form ----" that is, referring to the blue slip ----" will be used by the Department in case where the owners propose to make changes in their building which are so slight in their character that they can be properly considered by the Department as repairs, and as being of so slight a character that they need not be regarded as structural repairs. (reads)." Well, now, these

1711

CASE 1615

changes that were made in the bathrooms there, did they affect the structural part of the building? A As far as the plumbing work was concerned, yes. Plumbing is part of the structural part of the building.

Q Did it involve an alteration of the building?

A Yes.

Q It certainly didn't involve a removal of walls or parts of the walls; did it? A No, but it involved the construction of new walls and partitions.

BY THE COURT:

Q Well, in what particular instance did it involve the construction of new walls and partitions? A In the construction of a new partition wall for the enclosure of a water closet compartment in the store on the first floor.

BY MR. MANLEY:

Q Well, I'm not asking about that. A But his Honor did, and I am answering his question.

Q I am now directing your attention to the bathrooms upstairs.

BY THE COURT:

Q Aside from the partition on the first floor?

A No, sir.

BY MR. MANLEY:

Q I am not talking about the partition constructed in the store around the toilet, but about bathrooms in

1711
CASE # 1615

the apartments above the ground floor. Did you understand that? A No, I thought you were talking about the entire alteration.

Q Now, leaving out of the question entirely the toilet on the ground floor, don't you think, as far as the changes in the bath tubs and in the toilets were concerned, in the apartments, they could have been covered by the making out of this blue slip? A No, sir.

MR. CRAIG: One minute; I object to it as an improper statement of the facts.

THE COURT: overruled.

MR. CRAIG: Exception.

BY MR. MANLEY:

Q Your answer is, then, something more was necessary than the blue slip? A Absolutely necessary.

Q Well, why? A Because there was an entire alteration that required plans. It was new plumbing, not the replacing of the fixtures. In the bathrooms, they had what we call short hopper water closets, and they were removed, and entirely new style water closets put in, which requires a plan to be filed with the Tenement House Department.

Q No, it isn't a hard matter to prepare a plan like that; is it? A No, it isn't. I can do it myself, but you have got to show the entire construction of every plumbing line in the building, and file it in triplicate.

CASE 27 1615

Q Now, as to the changes in the toilet on the ground floor. There is a rule, is there not, a rule of law or procedure of some kind, that a toilet must have an outside window?

MR. CRAIG: I object to that. The rules are in evidence.

THE COURT: Overruled.

MR. CRAIG: Exception.

BY MR. MANLEY:

Q Is there? A There is a rule that all new toilets provided must have ventilation to the outer air.

Q And there must be at least three square feet in the window?

MR. CRAIG: I object to that. And I move to strike out the answer on the ground that new plumbing construction is under the jurisdiction of the Building Department, and not the Tenement House Department.

THE COURT: Overruled.

MR. CRAIG: Exception.

A Yes.

BY MR. MANLEY:

Q Now, in this particular toilet in the store, a partition had been built around the toilet; hadn't it?

A Yes.

Q That was a structural change, and there would have

1615

to be a plan for that? A Yes, sir.

Q Now, is it very difficult for anybody to draw a little plan, showing the partition around that toilet, and showing the window, three by one feet? A Not difficult, if you know how to do it.

BY THE COURT:

Q How high was the partition in the store downstairs? A From floor to ceiling.

Q What was the material? A Gath and plaster.

MR. MANLEY: That is all.

THE COURT: I do not know how the record stands exactly, Mr. Manley, about the questions that you asked about the Police Court.

MR. MANLEY: I will state it to your Honor, if you desire.

THE COURT: Yes.

MR. MANLEY: I will tell your Honor my recollection of it. I simply asked him if he remembered the proceeding in the Magistrate's Court, and he said there was such a proceeding.

THE COURT: Well, but how is the record on that?

MR. MANLEY: I am stating what the record is, if your Honor please.

THE COURT: Well, is that in the case or out of the case? Did I strike it out or not?

R R Z T

1615

MR. MANLEY: I understood your Honor to strike it out.

THE COURT: Well, I will allow you to ask the defendant if there was a hearing there, and why he did not call certain witnesses there. I will allow that question now. Mr. Manley stated that that was his reason, and I overruled him, but I have examined the authorities since, and I think he has a right to ask that question.

MR. CRAIG: I except.

BY MR. MANLEY:

Q At the examination in the Police Court, which followed some time after your arrest ----

THE COURT: Well, but was there an examination?

BY MR. MANLEY:

Q Well, was there an examination in the Police Court after your arrest?

MR. CRAIG: I object, unless it appears that he knows what an examination is.

THE COURT: Overruled.

MR. CRAIG: Exception.

A As far as I know, there was no hearing, if that is what you mean.

BY THE COURT:

Q There was no hearing? A No, sir.

1915

BY MR. MANLEY:

Q Weren't you taken before a Police Magistrate?

MR. CRAIG: Objected to.

THE COURT: Overruled.

MR. CRAIG: Exception.

A Yes.

BY MR. MANLEY:

Q And were you taken before a Magistrate, sitting on the bench, like the judge here? A yes, sir.

Q And did you ascertain that papers had been prepared, charging you with the crime for which you had been arrested?

MR. CRAIG: Objected to as utterly incompetent, immaterial and irrelevant.

THE COURT: overruled.

MR. CRAIG: Exception.

A Yes.

BY MR. MANLEY:

Q Now, did you produce any witnesses there in your own behalf?

MR. CRAIG: That I object to as wholly improper and incompetent.

BY THE COURT:

Q Did you make any statement there in your own defense?

A No, sir.

MR. CRAIG: I object to that question.

1781

CASE 1615

THE COURT: Overruled.

MR. CRAIG: Exception.

THE COURT: Well, my ruling was that, if there was a hearing there, you might inquire.

MR. CRAIG: And your Honor overrules my objection?

THE COURT: yes, we are trying to ascertain whether there was any hearing or not.

MR. CRAIG: Exception.

BY MR. MANLEY:

Q Didn't you hear any witnesses examined in the hearing before the Magistrate?

MR. CRAIG: Objected to.

THE COURT: Overruled.

MR. CRAIG: Exception.

A No, sir.

BY MR. MANLEY:

Q Didn't Mr. McLernan testify? A No, sir.

MR. CRAIG: Now, I object to this line of examination, and I protest against it.

THE COURT: objection overruled.

MR. CRAIG: Exception.

A No, sir.

BY MR. MANLEY:

Q Didn't the police officer, Thomas, testify? A No, sir.

1179

1615
1819

Q. You were present there? A. Yes.

Q. Did you see Mr. McLernan in the Police Court with H. N. McLernan? A. I think he was there, yes.

Q. And was officer Thomas there? A. Yes, sir.

Q. Well, did you waive examination, as they call it?

A. Yes.

MR. CRAIG: Now, I object to this entire line of examination as immaterial, irrelevant and incompetent and improper.

THE COURT: Then the questions are improper. There was no examination of the defendant. That was the point that I wanted to bring out. Now, the ruling that I made, this morning, was the proper ruling under the circumstances. I inferred from the questions of the District Attorney that there had been a hearing. If there had been a hearing and a defense interposed by the defendant, the People had a right to show --- to ask the questions that Mr. Manley asked, this morning.

MR. CRAIG: Now, your Honor, don't you see the manifest unfairness of this? The District Attorney knew that there was no hearing.

MR. MANLEY: I knew nothing of the kind.

THE COURT: Well, I was trying to find that out. I did not know whether there was or not.

1915

1915

MR. CRAIG: And there was no disclosure made to you by the District Attorney as to what occurred there.

THE COURT: I know, but the defendant could answer the questions.

MR. CRAIG: Very well, then. I will say no more. I will stand on the record.

MR. MANLEY: Now, let me reply to that statement of counsel that I knew there was no hearing.

THE COURT: Well, there is no necessity of replying, if there was no hearing.

MR. MANLEY: But he has said that I knew certain things.

MR. CRAIG: And I say now you did know that, that there was no hearing.

THE COURT: I merely wanted to get at the facts. I do not know what the fact is.

MR. MANLEY: Well, when counsel learns more about criminal proceedings, your Honor, than he does now, he will not make such accusations. From the papers in this case, at least, the District Attorney's copy of them, it doesn't appear whether there was an examination or not.

THE COURT: As there was no examination, the court rules that your questions are objectionable, and I will strike them from the record.

101
101
CASE # 1015

MR. MANLEY: And I have no objection.

MR. CRAIG: But the harm being done, and it being impossible that your Honor's action now can remove the prejudice created by the examination, or attempted examination, I ask your Honor to withdraw a juror, and declare this a mistrial.

THE COURT: Your motion is denied.

MR. CRAIG: I except, and I decline to examine the witness any further on account of your Honor's declination to do so, and I except to your Honor's ruling.

A N D R E W L. M O L L E N B E R G, of 28 Oliver Street, a witness called on behalf of the defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. CRAIG:

Q. What is your business? A. A plumbing contractor.

Q. Do you know the defendant Farley? A. Yes, sir.

Q. Did you know him in the month of April, 1912?

A. Yes, sir.

Q. Did you have some conversation with him in the month of April, 1912, with respect to plans for a building at 96th Street and First Avenue? A. Well, I don't know what building, I don't know what building it was.

1912
CASE 1615

Q Well, state what the conversation was. A Mr. Farley came to me in the latter part of April, that was in the evening, and he said, "Andy, I think I will have a plan to draw for you," and I said, "What kind of a plan?" And he said, "A plumbing plan," and so I said --- he said to me --- I said ---he said to me ---

Q Have you an impediment in your speech? A I stutter a little bit. He said to me, "I think I've got a job for you," and I said "All right." I get awful nervous and excited sometimes.

Q Was anything said about -----

MR. MANLEY: Just a minute. Let him finish.

A (Answer continued) He came to me, about the latter part of April and he said he has got aplan for me to draw, and I said, "What kind of plan?" And he said, "A plumbing plan."

BY THE COURT:

Q Well, was that all that was said? A No, sir. Then I asked him to give me a descripton of the job, and then he asked me how much I thought it would cost, and I said, "From the descriptions, you give me \$50." And I said, "If you get me the job, and if you get me the money, I will go up and take measurements."

MR. CRAIG: You may examine.

1615
191
CASE 1615

CROSS EXAMINATION BY MR. MANLEY:

Q Will you tell me again what Mr. Farley said to you?

A Mr. Farley came to me in the latter part of April, and he said, "Andy, I think I'll have a plan for you to draw," and I said, "What kind of plan?" And he said, "A plumbing plan." And then he gave me a description of the plan, and said, "How much do you think it will cost?" And I said, "About \$50." And I said, "You get the money, and I'll go up and take measurements for the job."

Q Will you tell me the description of the plan he gave you? A A plumbing plan, something like a line of water closets that was installed.

Q How much did he go into details? A Well, he was telling me to draw a plumbing plan, that's all.

Q How much did he go into the details of it? A He said just a plumbing plan, a line of water closets; he didn't itemize; he said just a plumbing plan, and I said, "What kind?" And he said, "A line of water closets."

Q But did he go into the details at all? A Not further than that.

Q Did he say where the house was? A No, he said it was uptown, and I knew it was uptown, because he was working uptown.

Q And when did he come there? A In the latter part of April.

9191
CASE 1015

Q How do you remember that it was in April? A How can I remember?

Q Yes. A Well, I know he came the latter part of April.

Q Well, but how can you remember that he came to you in the latter part of April? A I know that Mr. Farley was arrested in the latter part, and this was about a week prior to his arrest.

Q He came to you just about a week before his arrest? A Yes, sir.

Q Now, you have known Farley for how long? A About three years.

Q Are you an architect? A No, sir, I'm a plumbing contractor, but I draw plans for my men and occasionally for the Departments.

Q And how long have you been a plumber? A Well, I was licensed in 1904.

Q Licensed as a plumbing contractor? A No, sir, as a boss plumber. And then I took hold of contracts.

Q And so you are in that business now, doing jobs of plumbing? A Yes, sir.

Q And you draw these plans? A Well, I draw all the plumbing sketches for my own men, I lay out the work, roughing measurements.

Q Now, what does "roughing" mean? A Before the

1904
CASE 1615

plaster is set, the lines and lead work.

Q Well, it means plumbing work; doesn't it? A Yes; and there is rough studding, and plumbing, too.

Q Did Mr. Farley ever come to you before that and ask you to do something for him? A Yes.

Q That was the first time; wasn't it? A To do what? What do you mean?

Q To do work of that kind? A No, he never came before. He recommended me several times to people to get work.

Q But he never came to you before to do anything for him? A No, sir.

Q I suppose you got acquainted with him by doing some job and running across him in some tenement house work where you had a job? A Oh, well, I met him in the district when he used to come on my inspections, and sometimes another inspector came.

Q Now, did he tell you that he had had any difficulty up in that house uptown that he asked you to draw plans for?

A No, sir; he just said he wanted me to draw a plan; might want me to draw a plan; might have a job for me.

Q Well, then, you didn't know whether you were going to do anything or not, from the way Farley spoke to you; did you? A No. I told him, if he gets the money, after he give me the description, I would go up there and take measurements.

1001
1001
1001
CASE 771615

Q Well, you were not going to work until you saw the money? A No, I have to see the color of it first.

Q Well, didn't you think if Parley, who had known you so long, asked you to do the work, you would get paid?

A Well, I didn't know I could trust him so far, as far as money was concerned. I didn't know him so well where money was concerned.

Q Well, did you ever draw plans or things of that kind, where you didn't take the job yourself? A Yes.

Q You do it for others; do you? A Well, I done one particular case, yes, where I didn't get the job.

Q Well, I'm not asking you about when you are bidding on the job, but do you make it a business at all of drawing plans where you don't apply for the job or don't get it?

A Oh, no, very seldom. There was only one case of that kind. I generally get the work.

Q And this was the second time only that you had been asked to do it; was it? A Well, I might have been asked to do it more than once, but I only did it once. I only did it once on a Staten Island job, and I didn't get the job.

Q Well, you told Parley that you would charge \$50; did you? A That it would cost \$50.

Q Did he tell you where you were to go to do the job?

A No, sir.

Q What street or avenue? A No, sir.

1897

CASE 1615

Q Did he tell you how many floors were in the house?

A No, sir.

Q Or how many rooms in an apartment? A No, sir.

Q Or how many bathrooms there were in each apartment?

A No, sir.

Q Did he tell you how many bathrooms there were on the fourth floor? A No, sir.

Q You didn't know how many bathrooms there were?

A No; he just said a plumbing line.

Q Did he tell you they had put in different kind of fixtures? A No, sir; he just give me a description, that it was a new plumbing line.

Q I say, did he tell you that they had put in different kinds of fixtures? A Yes, I think he said they put in water closets.

Q I'm not asking you that. Did he tell you they put in a new kind of fixtures? A New kind of fixtures?

Q Yes. A Yes, according to the description, I believe he said that.

Q You are pretty sure that he said that? A yes, I'm sure that he talked about taking out one kind, and putting in another.

Q Now, have you told me all that he said about it?

A yes, sir.

Q You have told me everything that he said about the

100
100
CASE # 1615

job? A Yes, sir.

Q And then you told him that it would cost \$50?

A Yes, on account of going to the Tenement House Department ----
the Building Department ---mit would cost \$50.

Q And were you going to put it through the Department?

A Yes, file it and put it through.

Q You were going up there to see the Department
about it? A Oh, no. I could go up and see the job, and
get an authorization first, and then file it with the
Department.

Q And were you going to throw up your own work, and
go to see the Department and file a plan? A Oh, a boss
can steal a couple of hours out of his business, once in
awhile, and go up there; can't he? I'm here now, and busi-
ness is going on just the same.

Q Well, how large a business are you doing now? A Oh,
I don't know, I take five or six thousand dollar contracts.

Q How many men have you now? A Three men.

Q Did he tell you that a lot of partitions had been
built up there? A I don't recollect.

Q Or did he say that any partitions had been built in
the house, in the flats? A I don't recollect. All that I
heard was about a line of water closets.

Q How many times have you seen him about this matter
before he was arrested? A Mr. Farley?

1908
CASE # 1015

Q Yes. A That was the only time.

Q That was the only time you had seen him before he was arrested? A Oh, I have seen him for the past three years.

Q How often? A Well, he used to come down to the shop, I should judge, sometimes once a week and sometimes once in two weeks.

Q He averaged about once a week or once in two weeks?

A Yes, sir.

Q Where was your shop at that time? A It was 28 Oliver Street, and it's there now yet.

Q And he used to come and see you at 28 Oliver Street?

A Yes, sir.

Q Did you ever give him any money for bringing you jobs? A No, sir.

Q He just recommended you because he was friendly to you? A He knows that I'm capable of doing jobs and drawing plans.

Q And then that's the reason he recommended you?

A Yes, I suppose so.

Q Now, when was it that he came to see you after he was arrested, how soon after the day he was arrested did he come to see you? A Well, I seen it first on the newspaper, and then he was there a couple of days later.

Q A couple of days afterwards, in your office? A Yes,

10181

CASE 1615

he was down to see me.

Q What time in the day? A It was in the evening, I should judge around six or seven o'clock.

Q And did you see him after that? A Oh, yes, I seen him several times around the shop.

Q When was the next time, after the few days after the arrest, that you saw him at the shop? A I don't know. I used to see him on and off.

Q Did he used to come down to your shop just the same? A He used to come down to the shop, and I used to meet him around the neighborhood.

Q And did he keep on coming to see you in your shop just as often after his arrest, and after he was out of the Department? A Oh, yes, he used to come down to see me, anyhow.

MR. MANLEY: That is all.

MR. CRAIG: That is all.

P A U L S. B O L G E R, of 1891 Madison Avenue, a witness called on behalf of the defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. CRAIG:

Q Mr. Bolger, what is your age? A 58.

Q How long do you reside in the City of New York?

CASE 1615

A About 48 years.

Q In what business are you engaged? A Plumbing, heating and ventilation.

Q And how is your business carried on? In what particular field of the industry are your operations conducted? A Why, the erection of new buildings, and the overhauling of old buildings.

Q Where is your establishment? A 666 Lexington Avenue.

Q And do you know the defendant Farley? A I do.

Q How long have you known him? A About eight years.

Q And was he at any time in your employ? A He was.

Q Over what period? A Three years.

Q In what capacity? A Bookkeeper and general confidential man.

Q And at that time how many men, on an average, did you have in your employ? A I should say 50, on an average.

Q And, in a general sort of a way, what was the aggregate of the business that you transacted? A You mean yearly?

Q Yes. A \$200,000.

Q Did Mr. Farley leave your employ of his own volition?

A He did.

Q When you say he was employed in a confidential capacity ----

THE COURT: Well, I think you have gone far enough

CASE 1615

in that line. This is a character witness, I presume, and the rule is that you cannot bring out specific facts on that. You can inquire into his general reputation, and I have already allowed you some latitude.

BY MR. CRAIG:

Q Now, do you know the reputation of the defendant Farley in the vicinity in which he lives for honesty and integrity? A I never heard anything to the contrary, but what he was honest.

Q And what is his reputation in the vicinity in which he resides for truth and veracity? A Where Mr. Farley resides?

Q Yes. A I have no knowledge as to that.

Q You mean to circumscribe it to a certain ward or district; do you? A So I understood you.

Q No, I mean in the general vicinity in which we are living, New York City? A I never heard a word against his truth and veracity.

MR. CRAIG: You may examine.

MR. MANLY: No questions.

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E D W A R D C O D Y, of 328 West 30th Street, a witness called on behalf of the defense, being duly sworn, testified as follows:

1811
CASE 77 1615

DIRECT EXAMINATION BY MR. CRAIG:

Q What is your age, Mr. Cody? A 60.

Q You are a little hard of hearing? A Yes, sir.

Q How long have you resided in New York? A 45 years.

Q What is your business? A Undertaker.

Q Are you acquainted with the defendant Farley? A I am.

Q How long have you known him? A 25 years.

Q What is his reputation in the vicinity where he lives for honesty and integrity? A Well, as far as I know, his honesty is all right. I have had business transactions with him in my line of business.

MR. MANLEY: Now, just answer the questions.

BY MR. CRAIG:

Q What is his reputation for truth and veracity?

A Good.

MR. CRAIG: You may examine.

MR. MANLEY: That's all.

J O H N J . T A G G A R T, of 282 Tenth Avenue, a witness called on behalf of the defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. CRAIG:

Q How long have you resided in the City of New York?

CASE # 1615

Q What? A I believe so.

Q And did you ever hear the sum mentioned that he was charged with taking out of the estate of which he was executor? A I did not; no, sir.

Q And wasn't it something like \$3400?

MR. CRAIG: Objected to.

THE COURT: Sustained. He says he did not hear it.

BY MR. MANLEY:

Q And didn't you ever hear that he was punished for contempt of court in connection with it?

MR. CRAIG: Objected to.

THE COURT: Sustained.

MR. CRAIG: Well, I think now that it is unnecessary to prolong this matter of character testimony. I have other witnesses here, but I am content with those that I have put on. We rest.

THE COURT: Very well. Do the People rest?

MR. MANLEY: No, sir. I wish to call Mr. McJernan, Senior.

CASE 1615

R E B U T T A L .

H U G H M C L E R N A N , being recalled by the District

Attorney, testified as follows:

DIRECT EXAMINATION BY MR. MANLEY:

Q Mr. McLernan, the defendant has testified, Mr. Farley has testified here, that when he saw you, upon either Monday or Tuesday of that week in April, when you were working up in the store, he told you that he would have to have \$50 to pay to an architect who would draw proper plans, and put it through the Department. Did he say anything of that sort to you? A No, sir.

MR. CRAIG: One minute. I didn't have time to object. Will your Honor strike out the answer?

THE COURT: Yes, strike out the answer.

MR. CRAIG: I object to it, in the first place, as not proper rebuttal; and, in the second place, as a misstatement of the testimony; and, in the third place, that any testimony of that character elicited from the defendant on cross examination was with respect to a collateral matter, and the prosecution is bound by the answer, and therefore the question is immaterial, irrelevant and incompetent.

THE COURT: Overruled.

MR. CRAIG: Exception.

BY MR. MANLEY:

CASE # 1615

Q Did he say anything about an architect? A No.

Q Did he say anything at all about giving this money for the purpose of having an architect put in plans? A No.

MR. CRAIG: I object, on the same grounds.

THE COURT: Overruled.

MR. CRAIG: Exception.

MR. MANLEY: That's all.

MR. CRAIG: No questions.

THE COURT: If you say that first statement in the question was a misstatement, I will allow you to modify it.

MR. CRAIG: Oh, no, let it go, although I did say it was such.

THE COURT: It agrees with my recollection of the testimony.

EMMA JAKOB, being recalled by the District Attorney.

testified as follows:

DIRECT EXAMINATION BY MR. MANLEY:

Q Yesterday, Mrs. Jakob, when on the stand, you stated that, when Mr. Farley was down in the vestibule, after you and he had gone from upstairs down into the vestibule, that you said to him: "Will you please tell me something that you will do with the \$40, because I'm not janitor here

CASE 1615

long, and the landlord will think maybe I keep the \$40," and that he then said: "Oh, that's all right. Tell him I'll fix up the violations, and everything will be all right; and tell him not to leave the other \$10 for me, next week, and tell him to fix up that stone, and it will be all right." Now, did he at that time, or any other time, up there, say that he wanted that money so that he could hire an architect to tell the people up there what to do in filing plans?

MR. CRAIG: I object to that as not proper rebuttal. I object to it as an incorrect recital of the testimony in the record; and I object also on the ground that whatever testimony of that character was elicited by the prosecution on cross examination is as to a collateral matter, and the People are bound by his answer.

THE COURT: Overruled. The question should be modified. You ask, "Did he say to you?" I don't know whether Farley was asked about what he said to her.

MR. MANLEY: Yes, sir; he was asked about what he said to her. I read this very testimony to him when he was on the stand.

MR. CRAIG: And I object to it. It isn't rebuttal, I think. It is a repetition of the direct examination of this witness.

THE COURT: Well, that is the form of the question.

CASE # 1615

Counsel had great latitude, as you know, in phrasing their questions. The Court cannot phrase them for them, if they correctly state the facts.

BY THE COURT:

Q You did not hear him talk to anybody else there; did you? A No, sir.

Q You never heard him talk to anybody else? A No, sir.

THE COURT: Now, that question should be modified to read "Did he say to you at that time?"

BY MR. MANLEY:

Q Did he say anything to you at that time, that he was getting the money to give to an architect to draw plans?

MR. CRAIG: I object, upon the grounds that I have previously stated on the record.

THE COURT: Overruled.

MR. CRAIG: Exception.

BY MR. MANLEY:

Q Did he say anything about giving the money to an architect? A No, sir, he never mentioned nothing.

MR. MANLEY: That's all.

CROSS EXAMINATION BY MR. CRAIG:

Q Where are you employed now? A In the same place, sir.

Q And from whom do you receive --- do you receive com-

CASE 1615

pensation? A What do you mean with that?

Q Well, are you paid for your services as janitress?

A Yes.

Q What do you get paid? A Only my rooms.

Q You don't get any money? A No, sir.

Q Who do you get the rooms from? A From the landlord.

Q Well, who is the landlord? A Well, I don't know the name of the landlord, but the agent is ----

BY THE COURT:

Q The agent is McLernan? A No, sir. That landlord sold the house and I have a new agent.

Q Then you are not in the employ of Mr. McLernan any more? A No, sir, I'm not.

THE COURT: Well, I understood that that was your question; was it not?

MR. CRAIG: Well, I am uncertain about that, but I may have asked her that question.

THE COURT: You wanted to bring out the fact that she was still employed by Mr. McLernan?

MR. CRAIG: No, sir; employed in the same place.

BY MR. CRAIG:

Q You are still employed in the same place? A Yes, but I have a different landlord, and I didn't see Mr. McLernan from the day he left the house until the day I come to court.

1951

CASE 77 1615

Q Did he pay you in full? A No, sir. I'm not paid yet for the work I done in the house, I'm not paid yet.

Q But you expect to get paid? A No, I don't expect nothing. I'm an honest woman, and I hope to God I'll never get paid for nothing, only my work. I'm telling only the truth, and I'm the mother of four children, and I hope it will be the last time I will be sitting here, and you can't say nothing to me that I am saying anything wrong about this man.

Q Now, you wouldn't take sides in the controversy; would you? A I don't know what you mean.

Q (Question repeated) A Would you explain that better to me, what you mean with that? I wouldn't give you no answer when I didn't know for sure. You must tell me in plain words.

MR. CRAIG: All right. That's all.

ALBERT THOMAS, being recalled by the District Attorney, testified as follows:

DIRECT EXAMINATION BY MR. MANLEY:

Q Officer Thomas, at the time when you arrested this defendant on the street, and had a talk with him on the street, or at any time after that, did he say anything to you that he had got this money, received it, from Mrs. Jakob,

CASE 77 1615

for the purpose of hiring an architect to tell these people what to do?

MR. CRAIG: I object to that as not proper rebuttal; and because there is no foundation laid for it; and, so far as any matter in regard to it was elicited from the defendant on cross examination, it relates to a collateral matter, and the People are bound by it.

THE COURT: Well, I do not recollect the testimony distinctly on that point.

MR. MANLEY: He testified that he told the officer and others there, at the time of the arrest, that he got it for the purpose of employing ^{an} architect to prepare plans.

THE COURT: Allowed.

MR. CRAIG: Exception.

A He did, in the car going up to court, in the neighborhood of about two o'clock.

BY MR. MANLEY:

Q When was that said for the first time?

MR. CRAIG: I object. He has answered.

BY MR. MANLEY:

Q Did he state on the street at the time of his arrest?

A No, sir.

MR. CRAIG: I object. You have given your answer.

1923

CASE # 1615

THE COURT: Overruled.

MR. CRAIG: Exception.

BY THE COURT:

Q What do you mean by an arrest, officer, what do you call the time of an arrest? A When you place your hand on a man's shoulder and tell him he is under arrest.

Q Yes, and you took him into custody then? A Yes, sir.

BY MR. MANLEY:

Q And that was about what time of the day? A About 20 minutes after 11.

BY THE COURT:

Q And he made certain statements to you at that time?

A Yes, sir.

Q And the District Attorney asked you, if, at that time, he told you that he got \$40 to give to an architect? A No, sir, he did not.

BY MR. MANLEY:

Q When did he first tell you that, that he got that money for an architect? A Well, on our way to court, shortly after two o'clock. There had been no court, that day, from 12 o'clock until 2 o'clock.

Q And he had been locked up, pending the opening of court?

MR. CRAIG: Objected to.

CASE 71615

BY MR. MANLEY:

Q Had he, or had he been out on bail?

MR. CRAIG: Objected to.

THE COURT: Allowed.

MR. CRAIG: Exception.

A No, sir; he had been locked up in the station house.

BY MR. MANLEY:

Q What did he say to you about an architect at about two o'clock?

MR. CRAIG: Objected to. I submit that is entirely collateral.

MR. MANLEY: Well, if there is an objection I'll withdraw it. That's all.

CROSS EXAMINATION BY MR. CRAIG:

Q You didn't say anything about this on your direct examination, when you testified the other day? A No, sir. You didn't ask me.

Q Well, why didn't you tell it in answer to the prosecution? A Neither did the prosecution.

Q Didn't I ask you whether you wanted to add anything to your narrative of the transaction, and you said you didn't? A Yes; but I answered all the questions that were asked me.

Q And, after you left the stand, counsel for the defendant inquired of you in respect to this matter; did he

1938
CASE 1615

not, whether or not he had stated to you that this money had been received for the purpose of having plans drawn by an architect; isn't that so? A At the time of his arrest, you asked me.

THE COURT: Where was the conversation and when?

BY MR. CRAIG:

Q Now, after you testified in behalf of the prosecution, the counsel for the defendant interrogated you, in the corridor of the courthouse, did he not, as to whether or not the defendant said to you that he took this money to employ an architect? A I understood you to ask me about the time of his arrest.

Q And I told you to refresh your recollection; at the time, did I not, upon that point, and called your attention to the fact, did I not, that the defendant claimed that he had a very clear recollection on that point? A I understood your question to be at the time of his arrest.

Q Well, at any rate you didn't volunteer the information, the admission, if you may characterize it as such, that he did make that statement to you, although you place it now at a different moment of time? A No, I did not.

MR. CRAIG: That is all.

MR. MANLY: That is all.

CASE 1615

W I L L I A M H. A B B O T T, JR., being recalled by the
District Attorney, testified as follows:

DIRECT EXAMINATION BY MR. MANLEY:

Q Mr. Abbott, I suppose you are familiar with this
particular blank form, People's Exhibit 6? A Yes, I am.

MR. CRAIG: I object to it, as not proper
rebuttal.

THE COURT: Overruled.

MR. CRAIG: Exception.

BY MR. MANLEY:

Q Now, you have already testified that you went up
to the premises, before the day of the arrest of the defendant,
and you told us what you found there. Now, I call your
attention to the new work on the ground floor in the toilet,
which is in the store, where you said some new partitions
were put in, and where there is a toilet and a window going
into the outer air. Now, as I understand from your testimony,
that, under the rules of the Department and the law of the
State, they require the furnishing of a plan.

MR. CRAIG: I object to that as not proper
rebuttal.

THE COURT: I will sustain the objection to that.

MR. MANLEY: If your Honor please, the defendant
has testified that the reason he got this money was for
the purpose of employing an architect; that it was

1027

CASE # 1615

necessary to hire an architect to straighten out this complicated state of affairs in this building. Now, I am going to show by this witness that the only plan that was necessary to file for this new work was for the work in the store, and that the other work did not require it at all.

THE COURT: Well, but the defendant has so stated, as I understand his testimony.

MR. MANLEY: In other words, I want to show that there was so little work in the preparation of plans that anybody could have made them out.

THE COURT: I sustain the objection.

MR. MANLEY: That is all. I rest.

MR. CRAIG: The defense rests. I move now for a direction of acquittal on the first charge contained in the indictment, on the ground that the People have not made out the charge therein contained by legal and competent evidence, as required by law.

THE COURT: Motion denied.

MR. CRAIG: Exception. And I will make the same motion as to the second count.

THE COURT: Denied. I will submit it to the jury on both counts.

MR. CRAIG: Exception. And I ask your Honor to require the prosecution to elect upon which count they

1921

CASE # 1615

will stand.

MR. MANLEY: The two counts are absolutely the same, I think.

THE COURT: I deny your motion.

MR. CRAIG: I except. And I ask your Honor to dismiss the indictment on the ground that on its face it is insufficient to charge a violation of the statute.

THE COURT: Denied.

MR. CRAIG: Exception.

(Mr. Craig then summed up for the defense and Mr. Manley closed the case for the People).

CASE # 1615