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COURT OF GENERAL SESSIONS OF THE PEACE,
CITY AND COUNTY OF NEW YORK, PART V.

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

against
WILLIAM HARNEY.

Before:

HON. EDWARD SWANN, J.

and a Jury.

New York, February 5th, 1913, etc.

Indicted for Grand Larceny in the second degree.

Indictment filed December 30th, 1912.

APPEARANCES:

For the People, ASSISTANT DISTRICT ATTORNEYS W. H. L.

EDWARDS and LEOPOLD LEO.

For the Defendant R. J. HAIRE, ESQ.

A jury was duly impaneled and sworn.

James E. Lynch,
Official Stenographer.

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Mr. Edwards opened the case on behalf of the People.

THE PEOPLE'S EVIDENCE.

GEORGE K. CUMMINGS, called and duly sworn as a witness on behalf of the People, testified as follows:

(The witness gives his residence as Hotel St. George, Clark street, Brooklyn.)

DIRECT EXAMINATION BY MR. EDWARDS:

Q Mr. Cummings, what is your business? A Cereals.

Q Where is your place of business? A 82 Wall street.

Q Do you or have you ever met this defendant? A Yes, sir.

Q Do you recollect about when you first met him? A The latter part of July.

Q This last July? A Last year.

Q How did you come to go to see him? A Why, a man by the name of Mr. Smith, Edgeworth Smith took me and introduced me to Mr. Harney at his office.

Q Mr. Smith was a real estate broker, was he not? A Yes, sir.

Q What, if any conversation, did you have with the defendant Harney at that first meeting? A I told Mr. Harney and that I had a place in Vermont belonging to my wife, that I would like to borrow some money upon it.

Q Did you tell him how much? A I did, and I brought photographs of the place and a general description, which we

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talked over and he said it looked very well from the pictures, and so forth, and the description, but that he was, being the sole trustee of this estate, he was very jealous of loaning the money, and took very extra precautions, and that he must go and see it himself.

Q Now, did he tell you any further with respect to what money he had to loan? A That he had to loan?

Q Yes, what money he had to loan? A Well, he said it was a very large estate, and that the man had died and left two younger sons and a widow, that they were ignorant people, and this father who had died had been a very great friend of his, a life long friend, and that he had left this entirely in Mr. Harney's charge to loan upon country real estate at six per cent.

Q Did he tell you where the estate was located? A Not at that time.

Q But he did later, did he? A Yes, sir.

Q And what did he tell you at a later time with respect to that? A He told me it was a Pittsburg estate.

Q Pittsburg, Pennsylvania? A Pittsburg, Pennsylvania.

Q How much of a loan did you ask him for at that first interview? A \$60,000.

Q Well now, what else was said? A Well, that was about all that was said except that Mr. Harney fixed a date for going to view the property.

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Q And this property was near Rutland, Vermont? A Near Rutland, Vermont.

Q Was anything said about who should pay his expenses on that trip? A Oh, yes, I was to pay his expenses to go up there and look at the property.

Q Did you ever go to the property with him? A I went there and he came up the next day.

Q And you met him there? A I met him there.

Q And did you go together to see the property? A Yes, we were on the property, Mr. Harney looked all over it and said that it was, well, he could see the value, he says, "There is no question about that, I can see that, there is no good of any more lengthy investigation because it speaks for itself, it is here and just as you represented it, and just as the photographs showed it, in good condition."

Q Then did he say anything about whether or not he would make the loan? A Oh, yes, he said "It looks all right to me, and I am going back to New York and you come in and see me."

Q So then both of you returned to New York, did you?

A Yes.

Q Did you go back together part of the way? A Part of the way, he went back as far as Albany and he said he had some business in Albany and so I left him at Albany and I went on.

Q When did you next see him after that, or can you tell us about when that was that you got back from the trip to Ver-

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mont? A Well, I should say that was in the fore part of August, the very early part of August.

Q Then did you see him again after you got back to New York? A Oh, yes, I was very anxious to see him again, and in the next day or two I came in to see him.

Q Whereabouts? A At his office.

Q Where was that, at 50 Church street? A 50 Church street, the Hudson Terminal Building.

Q In the County of New York? A Yes.

Q Did you have a talk with him then? A Yes, I had a talk with him and Mr. Smith came with me.

Q Mr. Smith went with you on that occasion? A Yes, and Mr. Harney said he liked the place very much, and it appears as good security, but that he felt that in case he should die or something, that he would like all his papers all to show each loan by itself, and that it would be necessary to have an appraisal by a professional appraiser, and, well, I asked him who it was and he named a man.

Q Whom did he name? A Mr. Snyder, Herbert Snyder, of 37 Liberty street, and said that he was a good appraiser and that the estate felt that they could rely upon his statements of appraisal.

Q Did you go with him or did he go with you to see Snyder? A Mr. Smith and I went down to see Mr. Snyder and had a little preliminary talk with him, and then Mr. Smith went back the next

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day and made arrangements --

MR. HAIRE: I object to what Mr. Smith did in the absence of the defendant.

THE COURT: All right, yes.

MR. EDWARDS: Well, I submit that is proper, for the witness to testify that Mr. Smith went to Mr. Snyder and came back and had a talk with him, but not to say what he said.

THE COURT: Very well.

Q Is that the fact, Mr. Smith went to see Mr. Snyder and then returned to see you? A Yes.

MR. HAIRE: How does he know if he didn't go with him? I move to strike out the answer.

THE COURT: By the way, who is Mr. Smith?

MR. EDWARDS: Mr. Smith is a real estate broker that Mr. Cummings ^{had} applied to for this loan, and who afterwards took him to Mr. Harney. He will be a witness here so that all the connection that is necessary will be provided.

THE COURT: Very well, but under the defendant's objection this witness cannot state that Mr. Smith actually did go to Snyder's office.

BY MR. EDWARDS:

Q Well, Mr. Smith left you and returned again after you had had a talk with him? A Yes. I then went to Mr. Snyder

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afterwards with Mr. Smith and we arranged a day --

MR. HAIRE: I object to what he arranged.

Q Do not tell us what you said, but you had a talk with him? A Yes.

Q Did you give him anything?

MR. HAIRE: That I object to unless the defendant was present.

Q Yes or no.

THE COURT: Oh, no, because if the defendant and Snyder were acting in concert with each other for the consummation of the same preconcerted end, namely, the larcenies of money by false representations or by trick and device for a general scheme to get money from this complainant, what Smith said during the consummation of the common design may be stated, especially if the defendant referred the witness to Smith.

MR. EDWARDS: That is the case here. The witness has already so testified.

MR. HAIRE: There is no such claim, no such theory could be held by the prosecution under the indictment very well, as to the collusion between Snyder and the defendant.

THE COURT: Well, I understodd from the District Attorney's opening and in my short summary of it that that was the charge against the defendant.

MR. EDWARDS: The specific charge here, the money

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charged specifically in the indictment is the money paid to the lawyer and not to the appraiser, but in this particular branch of the case my contention is --

THE COURT: (Interposing) That would show, however, the intent.

MR. EDWARDS: Inasmuch as Harney, the defendant, sent this witness to the appraiser to get the appraisal, and as it will develop as I go on, that the fact that ~~he~~ it had been procured was discussed with the defendant, I claim the right to prove that this witness did exactly what Harney told him to do.

THE COURT: Can you show these facts by the testimony of this witness, so far his relations with Snyder were concerned, that that was afterwards brought home to the defendant in any way?

MR. EDWARDS: Yes, sir.

THE COURT: Very well, objection overruled and you may have an exception.

MR. HAIRE: I take an exception.

BY MR. EDWARDS:

Q Now, then, if you will go right on, you went with Mr. Smith to Mr. Snyder's office as you told us, and I ask you if you gave him anything?

MR. HAIRE: That is objected to.

THE COURT: Objection overruled. All this goes to

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the question of intent.

MR. HAIRE: I take an exception.

A No, sir.

Q Not at that time? A I didn't give him anything.

Q Did you see Mr. Snyder again after that? A Oh, yes, because at this time Mr. Smith and Mr. Snyder and myself arranged --

MR. HAIRE: I object to the arrangement between these three people.

Q Do not tell us what you said. Did you see Mr. Snyder again, and if so, where? A I met him on the train.

Q On the way to Vermont? A On the way to Vermont.

Q Did you go to the premises which were owned by your wife and upon which you were trying to procure this loan with Mr. Snyder? A Yes.

Q Did Mr. Snyder make an appraisal? A Yes, he did.

Q Did he furnish you with that appraisal? A He did give me a copy of it.

Q Is this the appraisal which I now show you? A Yes, sir.

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

(Marked People's Exhibit 1 for identification).

Q Now, after you had been to the premises with Mr. Snyder did you all return to New York again? A Yes, sir. He was there two days.

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Q And after that did you pay Mr. Snyder for the appraisal?

MR. HAIRE: That is objected to as not binding upon the defendant.

Objection overruled. exception.

A No, sir.

Q Did you draw a check to his order? A No, sir.

Q Did you pay that money to anyone for the appraisal, Mr. Cummings?

MR. HAIRE: That is objected to.

MR. EDWARDS: Oh, I withdraw that. I was in error myself as to that. I can do this eventually.

THE COURT: Very well, then.

MR. HAIRE: Exception.

THE COURT: Well, I ruled in your favor.

MR. HAIRE: Then I withdraw the exception.

Q Did you see Mr. Harney after you received this appraisal?

A Yes, sir, as soon as I got it I took it right around to his office.

Q And you showed him this appraisal? A Yes.

Q Did you have a talk with him about it? A Yes, sir.

Q Can you give us that conversation in substance? A Before Mr. Snyder went up there Mr. Harney said that if the appraisal would run \$125,000, about \$125,000 that that would be sufficient, and when I brought the appraisal back of \$200,000 he was very pleased as well as --

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MR. HAIRE: I object to what he was.

THE COURT: If he expressed himself so it would be all right.

Q Did he express himself as pleased? A Yes.

MR. HAIRE: I object to that. Let him state what he said.

BY THE COURT:

Q Well, state what he said? A He said, "I am pleased, that was very nice, and I see no reason now why the loan can't go right through, in fact, I am just as anxious as you are to make the loan, and now that I have got this appraisal why it is all right."

BY MR. EDWARDS:

Q Did he read, did he look through this while you were there, People's Exhibit 1 for identification? A Yes, sir.

Q Did you see him with it in his hands? A Yes.

Q And you saw him read it through? A Yes.

Q Did he discuss the facts in it with you at any time?

A Yes, he looked over it and as I say, he said, "I am pleased that my judgment was sustained and I have this paper."

MR. EDWARDS: Now, I offer the appraisal in evidence.

THE COURT: Very well.

(Marked People's Exhibit 1 in evidence.)

MR. HAIRE: I do not object to that, your Honor.

Q Now, will you go on and tell us what other conversation

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you had with him at that time with respect to this loan?

A Mr. Harney now said, "Of course I feel quite confident that your title is all right, and so forth, but naturally we have to make a search as being the proper thing", and I said, "Yes, the title is all right, but that would be perfectly natural, and there are no title insurance companies up in those smaller New England towns, and the chain of title is always done by one of several representative lawyers in that section."

MR. HAIRE: Excuse me, who said this?

Q Yes, this is what you said to Harney? A This is what I said to Mr. Harney and Mr. Harney said "That's all right, Mr. Cummings", but we must have our own lawyer do that; it would be like a judge sitting on his own case, as it were." Well, I said, "I don't see how we could get any better lawyers than those who are familiar with the whole country right around there and have lived there all their lives", but he objected and he said there were two men that were, that the estate would take. One of them is a man by the name of Baker.

Q Do you recollect his address? A I do not. It was on the west side of Broadway about, I should say, 115 or something like that.

Q And who was the other one? A The other was a man by the name of Mr. Van Damm, and that is at 320 Broadway.

Q Now, did you suggest the name of any particular attorney in Vermont to the defendant? A I don't think so.

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Q Now, just go on in your own way, Mr. Cummings, and tell me what happened? A Well, finally we decided on Mr. Van Damm to search the title.

Q Did you go with him to see Mr. Baker first? A Yes.

Q Mr. Harney went with you? A Mr. Harney went with me and introduced me, and Mr. Smith also.

Q Introduced you to Mr. Baker? A Yes, Mr. Baker.

Q The attorney on Broadway? A Yes, the attorney on Broadway.

Q What did you say to Harney about Baker, if anything, about his employment? A Well, my impression of Mr. Baker was not --

MR. HAIRE: Well, I object to that.

Q Just what did you say to him, did you tell him --

MR. HAIRE: What he said to Mr. Harney I have no objection to.

MR. EDWARDS: That is what he is giving, that is what I asked him.

A I said to Mr. Harney that I did not care so much about Mr. Baker, and also I told that to Mr. Smith, but Mr. Baker as I recollect it said he was very busy or something. At any rate I never went there again.

Q You did not employ him? A I did not employ him.

Q Then where, if anywhere, after you left Baker's office did you go with Harney? A I didn't go anywhere that day with

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him.

Q Not that day? A No, sir.

Q When did you see Mr. Harney again? A Because Mr. Harney left me in Mr. Baker's office.

Q Oh, he did? A Yes.

Q I see. Then after that when did you next see Harney?

A I think it was next day.

Q And again at his office? A Again at his office.

Q And did you that day go to Van Damm's office? A No. It was several days, I tried to get Mr. Harney, or I asked Mr. Harney if he would not let me employ some New York lawyer and if he did not want some Rutland lawyer, that I thought that the amount was excessive, and I thought equally good work --

Q What do you mean by the amount was excessive? A The amount that Mr. Baker had asked.

Q Had he mentioned an amount to Harney and you? A Yes, he had mentioned an amount.

Q What amount was that? A I think it was \$300.

Q And then you had this conversation with Mr. Harney in a day following at his office about allowing you to get a lawyer, for you thought the price was too much? A Yes.

Q How long after that did he introduce you to Mr. Van Damm? A I should suppose it was about, well, I don't know. I went there so many, many times.

Q Well, about, was it a week or ten days? A I think it

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was about a week, but I went there so many, many times I can't tell.

Q Did Mr. Harney go with you to Mr. van Damm's office?

A No, sir.

Q He did give you Van Damm's name, however, and address?

A Oh, yes, he gave me Van Damm's name and address and said he thought he would be satisfactory.

If

Q Did you employ him to search the title it would be satisfactory to him? A Yes.

Q Then did you go to see Van Damm? A Yes.

Q Who went with you, if anyone? A Mr. Mercelis.

Q Is that gentleman in your employ? A I employ him more or less.

Q And you saw Mr. Van Damm and had a talk with him, did you? A Yes.

Q Did you finally employ him to search the title? A Well, after I told him I thought it was too much and then I left him.

Q What price did he ask you? A \$300.

Q And you eventually did employ him, did you? A I eventually employed him.

Q Did you pay him? A Yes, sir.

Q Did you pay him in cash or by check? A By check.

Q Did you pay him before or after he provided you with an abstract of title? A If my memory serves me I paid him \$100 and then \$200 afterwards when he gave me the search.

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Q I show you a check and ask you what that check is?

MR. HAIRE: That is objected to, payments made to Mr. Van Damm without the knowledge or presence of the defendant.

THE COURT: But was it in pursuance of a request on the part of the defendant?

MR. EDWARDS: Yes, sir.

THE COURT: Did the defendant send him to Van Damm?

MR. EDWARDS: Yes, sir.

THE COURT: And was the check paid in pursuance of that?

MR. EDWARDS: Of Van Damm's employment made by Mr. Cummings at the suggestion of the defendant.

Objection overruled. Exception.

A Yes, sir, this is the check I gave to Mr. Van Damm.

Q Is that the first check of \$100 you gave him? A Yes.

Q Was that paid on or about the date on its face? A Yes, sir.

MR. EDWARDS: I offer that check in evidence.

MR. HAIRE: That is objected to, not being the check referred to in the indictment and having no connection with it.

THE COURT: Well, it is on the question of intent, what was the intent of the defendant.

MR. EDWARDS: Your Honor will notice I am proving this in chronological order, but I could do it --

THE COURT: There is no such objection as that, be-

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cause that is all discretionary.

Objection overruled. Exception.

(Marked People's Exhibit 2 in evidence.)

BY MR. EDWARDS:

Q Now, what if anything did you give to Mr. Van Damm at the time you employed him, I mean in the way of papers, or anything of that kind? A I gave him some papers relating to the title.

Q To the title? A Yes.

Q Then when did you next see Mr. Van Damm? A I should say three or four days after that -- well, that is before I got the abstract, I mean.

Q Yes. A Three or four days after that because I was very anxious.

Q You went in to see if he had got it? A Because I was in a hurry to get my money.

Q Now, at a subsequent time did you see him and receive the abstract of title? A Yes, sir.

BY THE COURT:

Q The abstract of title? A Yes, sir.

BY MR. EDWARDS:

Q And this the abstract which you so received (indicating)?

A Yes, sir.

Q And can you recollect the date about which you received it? A In the very early part of September.

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Q And after receiving it --

MR. EDWARDS: First I ask to have it marked for identification.

(Marked People's Exhibit 3 for identification)

Q (Continuing) After receiving it did you pay Mr. Van Damm any further sum of money? A Yes, sir.

Q Did you pay that in check or in cash? A By check.

Q I show you a check and ask you if that is the next check you paid Mr. Van Damm?

MR. HAIRE: That is objected to, in no wise connected with the defendant or connecting the defendant with the transaction, and not properly introduced at this time.

THE COURT: What is the check?

MR. EDWARDS: This is the specific check charged in the indictment.

THE COURT: Objection overruled.

MR. HAIRE: I take an exception.

A Yes, sir.

Q And that was paid to Mr. Van Damm by you in return, as compensation for the search which you had employed him for at Mr. Harney's suggestion? A That's right.

Q On the date that the check bears date, September 4th?

A That's right.

MR. EDWARDS: I offer that in evidence.

MR. HAIRE: Same objection as to offering that in evi-

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dence.

Objection overruled. exception.

(Marked People's Exhibit 4 in evidence.)

Q Now, after you had received this abstract from Mr. Van Damm what did you do with it? A I immediately took it to Mr. Harney.

Q And you showed it to him? A Showed it to him.

Q Did you leave it with him? A Oh, yes, we looked over it.

Q Together? A Together, and then Mr. Harney says, "Now, that is the best gotten up abstract that I have had in my various transaction in the loans which I have made." "Now", he said, "however, I must now take this abstract of title to Mr. Beekman.

Q Had you heard of Mr. Beekman before, had he ever spoken of him? A Yes, he had spoken of him quite a number of times, of Mr. Beekman being the particular lawyer for this Harraway Estate.

Q Did he tell you where Mr. Beekman's office was? A Yes.

Q Whereabouts? A It was either 111 or 115 Broadway. In fact, he took me there.

Q Did you there see and talk to Mr. Beekman? A Yes, not about business, in a casual way.

Q Now -- A (Interrupting) Then Mr. Harney said, "Now, its all right, Mr. Cummings, it's all right now, certainly tomorrow or next day you can have the money, and just put that out of your mind, it is fine, but I must take this now to Mr. Beek-

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man, however." Well, then I went in the next day to his office, and Beekman hadn't been around. Then I went next day.

Q That is, he told you Beekman had not been around? A Yes.

Q Yes. A Well, he said, "Well, I can't see Mr. Beekman, I am very sorry, Mr. Cummings." So I suppose that went along for a week perhaps, and finally Mr. Harney said, "Now, I go out to Bound Brook every night, and we go out in a club car, and Mr. Beekman lives out that way, and I am going to take these papers which I have in my hand, and I will certainly be able to see him tonight, as we go out in the train together." And so then as usual I came around the next day, and he said that Mr. Beekman had the papers, had the abstract and was going over it. Then in a day or two again I came around and he said that Mr. Beekman had found one or two faults in the abstract.

Q Do you recollect what those were?

BY THE COURT:

Q (Interposing) What did he say they were? A Why, he said one was a mortgage which had not been discharged of record, a mortgage back in 1838.

BY MR. EDWARDS:

Q Was that the Johnson mortgage, so-called? A Well, now, I can't tell -- I will have to refresh my memory by looking at some of these papers.

Q I show you a paper and ask you if you can refresh your recollection from that and then tell me the title of the mort-

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gage? A Yes, sir.

Q Well, was it the Johnson to Fenn mortgage? A Yes, sir.

Q Now, what was done with respect to that Johnson to Fenn mortgage? A Why, I went with Mr. Harney to Mr. Van Damm at that time.

Q Yes. A And I said, "Now, let us take this thing up, and it seems to me that the abstract shows where the thing was cured", which it really proved to be afterwards.

Q That is, there were certain -- A (Interrupting) And Mr. Van Damm said, "I think that you are right, Mr. Cummings, I think that it is not necessary, I think that the laws of the State of Vermont cure that themselves."

Q This was all said in Mr. Harney's presence? A In Mr. Harney's presence, we three were there. Then Mr. Harney said, "Well, I have, and I am sorry, but I feel obliged that I have to satisfy Mr. Beekman, and I do not want to put any hardship upon you, Mr. Cummings or delay this thing any longer, but" he says, "I do feel that Mr. Beekman's objections should be considered." So thereupon there were two items -- thereupon I asked my brother to leave here --

MR. HAIRE: Well, I object to that.

Q Well, you had a talk with your brother? A I had a talk with my brother.

Q And then your brother, do you know whether or not he left New York after that, your brother? A May I not say that

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I asked him to go?

Q No, you may not say what you said to him? A Not what I said to him?

Q After that do you know of your own personal knowledge that he left New York? A Yes, sir.

Q When did you see him again, your brother? A In about three days.

Q Did he bring you any papers at that time? A Yes.

Q Among them was this certificate which I now hand you (indicating)? A Yes, sir.

MR. EDWARDS: Right here before I forget it, if the Court please, I offer in evidence the abstract which has only been offered for identification.

MR. HAIRE: No objection.

(Marked People's Exhibit 3 in evidence.)

Q This paper which I have now shown you and refer to as a certificate, when you received that what did you do with it?

A Why, I took it to Mr. Harney.

Q Did you show it to him? A Yes.

Q What did he then say? A He says, "That's fine?"

MR. EDWARDS: I offer this certificate in evidence.

MR. HAIRE: No objection.

(Marked People's Exhibit 5 in evidence.)

MR. EDWARDS: I will read this to the jury, as I think they will then understand the subsequent testimony.

THE COURT: Yes.

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(Mr. Edwards reads People's Exhibit 5 to the jury.)

Q Now, what was said after you showed that to Mr. Harney?

A Mr. Harney says, "That's fine now," he says, "that does away with everything, and now, well, we must get down to business, and tomorrow or next day, why, I will have this money". He says, "I have got it all waiting for you, I have had it for a long time, but now," he said, "I have, I think tomorrow or next day we can fix it up." -- in fact, so much so -- no, then, next day I saw him, and then he said "Tomorrow" and so much so that I then had Mrs. Cummings over at his office waiting.

Q That is, you got your wife to come into town and she was here waiting on the day that Harney had set for the closing?

A Yes, sir.

Q What occurred on that day? A Oh, I think --

Q (Interrupting) Well, I think we are running a little ahead of the story. Just one moment. Prior to that time had any bond and mortgage been prepared? A Yes, sir.

Q And who had those prepared, you or Mr. Harney? A Mr. Harney, that was at Mr. Harney's direction.

Q Well, I just want to have you tell the jury just how that was done; what directions did Mr. Harney give? A Well, the money was by this time already to be paid.

Q That is, Mr. Harney told you that? A Told me the money was already to be paid over, and now it was to prepare a mortgage. So Mr. Harney wrote down on a piece of paper the names

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of how to make out the mortgage. One was Charles Harraway, another Augustus Harraway --

THE COURT: Well, have you not got the mortgage here?

MR. EDWARDS: We are just building the mortgage up now, showing what directions the defendant gave with respect to it.

Q He wrote this on a slip of paper? A Yes.

Q What did he do with that slip of paper? A He gave it to me and asked me to take it to Mr. Van Damm.

Q Did you do so? A Yes.

Q Then did Mr. Van Damm prepare a bond and mortgage?

A He took the slip of paper. First he telephoned to Mr. Harney.

Q You heard him telephone to Mr. Harney? A I did. He said, "I have to verify this, Mr. Cummings" and he telephoned to Mr. Harney.

Q Did you know Harney's telephone number at that time?

A Yes.

Q Did you hear him ask for it over the telephone? A Yes.

Q Then you heard him talk over the telephone? A Yes, sir.

Q Then what was done? A Why, then he made out this bond and mortgage.

Q Did you wait there while he was doing it? A I did. Then I said I would like to take that and take it down to my attorneys to have them look it over.

Q And did you take it away with you? A I did.

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Q Now, I show you two papers and ask you if those are the bond and mortgages so prepared as you have described? A Yes, sir.

Q And are the names filled in there of the mortgages the names that were written by Harney on a slip of paper as you have described and given by you to Van Damm at his request?

A Yes, sir.

Q They are identical with those names, are they? A Well, now, at the time that Mr. Van Damm was making this mortgage out we both compared them.

Q Yes, with the slip of paper? A With the slip of paper that Mr. Harney had given me.

Q So that you know they were correct? A Yes, so that they were identical.

Q Now, after that you say you took that bond and mortgage to your attorney? A Yes.

MR. EDWARDS: I ask to have these marked for identification at this point, or, I will offer them in evidence now.

MR. HAIRE: No objection.

(Marked People's Exhibits 6 and 7 in evidence.)

Q Now, I note that on the face of People's Exhibit 6, which is the mortgage, it says, "Party of the first part and Charles A. Harraway and Augustus Harraway, Executors of the Estate of Charles A. Harraway, deceased" -- Is that what you referred to when you said the names in this mortgage were the same as the names on the slip? A Yes, sir.

Q And all that I have read you there beginning with the

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name Charles A. Harraway, the one first stated and ending with the word "deceased" was on that slip that Mr. Harney gave you when you took it to Mr. Van Damm at his request, is that right?

A Yes.

Q And the same refers of course to the bond, People's Exhibit 7? A Well, there was only one slip, I gave it to Mr. Van Damm.

Q Well, it was the same? A Yes, sir.

Q He retained it, did he? A I never saw it again.

Q After your lawyer had looked over this bond and mortgage did you again see Mr. Harney? A I did see Mr. Harney, and Mr. Harney together with myself went up to Mr. Van Damm's office.

Q Yes. A With the papers.

Q The bond and mortgage? A With the bond and mortgage, and together with Mr. Van Damm we talked over the different terms.

Q You mean the provisions with respect to interest and so on? A Yes. Mr. Harney was not quite satisfied with some of them that Mr. Van Damm had drawn up, and asked Mr. Van Damm to change them, and at that time Mr. Van Damm did change them in his own handwriting.

Q That is you refer to the changes made on the third page of People's Exhibit No. 6, the mortgage? A Yes, sir.

Q Those changes were made in your presence by Mr. Van

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Damm at Mr. Harney's suggestion, were they? A Yes, sir.

Q Yes. A We talked the matter over and finally it was then actually all finished and done, ready this time, sure, so Mr. Harney said.

MR. HAIRE: I object to that statement, that it was all actually done and finished.

MR. EDWARDS: He says, so Mr. Harney said.

BY THE COURT:

Q You say Mr. Harney said so? A Yes, sir, when we got through with it.

MR. HAIRE: Well, if he ^{said} so I withdraw the objection.

THE COURT: Yes, very well.

BY MR. EDWARDS:

Q Then at that time you left Mr. Harney, I suppose?

A Yes.

Q How long a period after that was it that you had Mrs. Cummings ready to close this with Mr. Harney? A Oh, I should say a day or two.

Q And then when you got down to Mr. Harney's office on that day what, if anything, did Mr. Harney say to you? A Well, he said, "Now, we finally got the appraisalment and now finally we have got through the abstract of title, that is satisfactory and then we have got through the terms of the mortgage and that is satisfactory". "Now," he said, "I would like to know something about you personally, I would like to know, I would like you to give me some references." Well, I said, "I think we have been

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talking about loaning the money, that it would have been two months ago, instead of me coming here every day, two months ago you could have very easily started this up two months ago." Well, he said, "That is the way I feel and I want some references." Well, so I gave him some references.

Q Do you recollect to whom you referred him, Mr. Cummings?

A I think one or two banks, bankers.

Q Can you mention the banks? A Yes.

Q Will you do so, please. A One was the Harriman National Bank, 44th street and Fifth avenue.

Q Yes. A Another was a bank, I think it was the Clement Bank in Rutland.

Q Rutland, Vermont? A Yes.

Q And did you give him any individual references, too?

A I think so, I think I referred him to R. G. Dun & Company.

Q And did he express himself as satisfied with the number of references you gave him, that is, did he think they were enough, I mean, or did he ask for more? A No, he did not ask me for any more.

Q When did you next see him after that? A Two or three days, I came around to see whether he had got answers.

Q To his letters? A To his letters.

Q Well, did he receive any answers, did he tell you whether he had received any answers or not? A Yes, but he said, "They are not definite enough."

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Q Did he show you letters? A Yes, one or two of them.

Q Do you recollect what they said, in substance? A Yes, sir.

Q Will you state it?

THE COURT: Well, you have not got the letters?

MR. EDWARDS: Have you got the letters?

MR. HAIRE: I think I have. We will produce them if we have.

MR. EDWARDS: Will you produce them?

MR. HAIRE: Yes, if they are at my office I will produce them.

MR. EDWARDS: We will drop that then until the morning, then.

THE COURT: Very well.

BY MR. EDWARDS:

Q Then, Mr. Cummings, what happened next? A Well, he said that he wanted to know about his money, about his interest, how he was going to get his interest paid. Well, I said, "Now, for goodness sake, what do you want?" I said "Put it down in writing". Well, he said, "I can't do that, but I will see Mr. Beekman".

Q Yes. He said, "You come in again tomorrow." So I came, I went into his office again next day and he said "Well, I would like a statement from you under oath of your assets and liabilities and exactly where you draw every particle of your

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income."

Q You mean from what source you draw it? A Yes, sir.

Q What did you say to that? A Why, I said I considered it impertinent and beside that I said I was not borrowing on a note or anything, and he was perfectly satisfied with my collateral and his own lawyers and his own appraisers had done it, and why, and had gone all through it. Well, he says, "That is what I require." Well, I then left him and he asked me to come back next day, which I did, with another gentleman and I said "Now, Mr. Harney, you are satisfied with your security, you are satisfied with your title, and I will give you a bond of a bonding company to guarantee you the interest." Well, he says, "That's fine, that is all right now."

Q Did you specify what bonding company? A I did not. He says, "That's all right, that's fine now", he says, "that's satisfactory, and I must see Mr. Beekman again." So the next day I saw him and he said, "I will tell you now", he said, "it is all right, and in a few days you are going to have your money, but" he said, "I think that I should write out to this Harraway boy in Omaha, Nebraska; this is a large loan for us and I don't like to assume all the responsibility, so I will write out to the Harraway boy and post the letter and he will telegraph me." Well, I said "Is that all the excuse you can give, you can now find, Mr. Harney, for not paying me the money?" Well, he says, "Now, I feel I should do that", and so

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I got up and I never went back again.

Q Did you say anything to Mr. Harney at that time with respect to other things that he told you about the Harraway boy in the past? A Oh, yes, sir.

Q Just tell us what those were, Mr. Cummings, I think they will throw a little light on the case? A Well, he had told me that these were two young boys and the mother was very ignorant.

Q Now, excuse me, Mr. Cummings, I want you to tell me what you said to Mr. Harney at the time he told you he must write to Harraway, as closely as you can recollect it? A Well, I merely said, now that it has gone along for months and he had had one lawyer after another, and one lawyer to back up another, and then another man to back him up, and we never had seemed to come to the end of it, and it was quite complicated, and then at the finish why he wants to write a short letter to a boy that he tells me is uneducated, so that the boy can make the decision as to whether the loan should go through, after all these weeks and weeks, and I said I thought it was practically now got to be a farce.

Q So then you went out and never went back? A Yes, sir, I wrote him several times.

Q You wrote him after that, did you? A Wrote him several times.

Q You never saw him again? A Well, I didn't see him again until --

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Q Until after his arrest? A Yes.

Q Now, in your early talks with Mr. Harney did he say anything to you about whether or not he had ever made any loans?

A Oh, yes.

Q What did he say in that regard? A Told me he had made, I think he said, thirty or forty.

Q On what class of property? A All on out of town real estate.

Q And within what period of time? A Oh, within the past three or four months.

Q And did he tell you anything about the amount of money that he had on hand to loan at the time you made your application? A Several hundred thousand dollars.

BY THE COURT:

Q How did you find the defendant, how were you first introduced to him? A This Mr. Smith.

Q Smith first introduced you to him? A Yes, sir.

THE COURT: Suppose we suspend now, or, one moment.

BY THE COURT:

Q Was it by advertisement at all, did you see any advertisement? A I didnot, no, sir.

THE COURT: Suppose we suspend now until 10:30

o'clock tomorrow morning.

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, February 6th, 1913, at 10:30 o'clock A. M.

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New York, February 6th, 1913.

GEORGE K. CUMMINGS, a witness for the People,
resumes the witness-stand.

DIRECT EXAMINATION CONTINUED BY MR. EDWARDS:

Q Mr. Cummings, yesterday you told us of Mr. Harney's trip to Vermont to inspect the property of your wife on which you sought a loan. Did you pay his expenses for that trip?

A Yes, sir.

Q Now, when Mr. Harney stated to you that he represented the Harraway Estate of Pittsburg, as you testify he did, and that he had the money of that estate which he controlled for loan on out-of-town property, and that he made thirty to forty loans in a period of the past few months, and would loan on this property of your wife's if the title were good, did you believe those statements? A I certainly did, sir.

Q And when you paid this money to Mr. Van Damm, as you testified, for the purpose of searching the title, did you rely on those statements? A Absolutely.

Q Did Mr. Harney show you any letters which he received in reply to the references which you gave him in reply to letters which he wrote to those persons? A I think he did.

Q I show you a letter from the Harriman National Bank, and ask you if Mr. Harney showed you that letter as having been received by him in reply to a letter written by him to that bank, to whom you referred? A I think he did, Mr. Edwards.

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MR. EDWARDS: I ask to have that marked for identification.

MR. HAIRE: No objection to offering it in evidence.

(Marked People's Exhibit 8 for Identification.)

Q I show you a letter from the Clement National Bank of Rutland, Vermont, dated September 7th, 1912, addressed to Mr. Halsey, of 50 Church street, and ask you whether or not he showed you that letter as one received by him in reply to one written by him to that bank, to which you referred him? A Yes, sir.

MR. EDWARDS: I ask to have that marked for identification.

(Marked People's Exhibit 9 for Identification.)

Q I show you -- did you refer Mr. Harney to Bradstreet's or Dun's commercial agency? A I think it was to R. G. Dun & Company.

Q Did he ever show you a report from Bradstreet's that he received? A No, sir.

Q Never did? A No, sir.

CROSS-EXAMINATION BY MR. HAIRE:

Q You said you were introduced to the defendant Harney by Mr. Smith? A Yes, sir.

Q What was Mr. Smith's first name? A Edgeworth.

Q Where does he live? A I don't know.

Q How long have you known him? A Well, four or five

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months, four months.

Q Where did you become acquainted with Mr. Smith?

A In July.

Q Where? A At my office.

Q That was before you had met Mr. Harney? A Yes, sir.

Q Now, is it not a fact that you introduced Smith to Mr. Harney? A It is not.

Q What was your object in going to Mr. Harney's office on the first occasion? A To see if he would entertain a loan on some property.

Q You had made efforts before to obtain a loan upon this property, had you not? A Yes.

Q And you did not succeed? A No.

Q How long had you been endeavoring to get a loan upon this property before you went to Mr. Harney? A About a month.

Q Do you know a gentleman by the name of Mays? A Yes.

Q Did you go to the office of Mr. Harney with Mr. Mays? A I did not.

Q Did you ever see Mr. Mays at his office? A Quite a number of times. That's where I met him first.

Q Did you go with Mr. Mays to various trust companies or title guarantee companies to see if they would search the title of your property in Vermont? A No, sir.

Q How? A No.

Q Did you go with Mr. Harney? A I went with Mr. Harney.

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Q To title companies? A To a title company.

Q And make inquiry as to whether they would search the title in Rutland? A Yes.

Q What did they tell you? A I did not have any talk with them at all. It was all Mr. Harney.

Q Well, were you present? A I was.

Q Did they tell you they could not make the search there? A They said they never had made any searches in Vermont.

Q And did they say they would not? A Yes, sir.

Q Yes; now, what date was that? A Well, I couldn't remember, Mr.--

Q When did you first meet Harney, about what date?

A The latter part of July.

Q The latter part of July? Well, wasn't this the latter part of July? A A few days after that..

Q Yes, shortly after? So then the question of the search of the title was taken up, the question of the title was taken up shortly after you met Mr. Harney? A Yes.

Q Yes; then he did not take up as you detailed yesterday first his visit to the property, and say nothing about an appraisal, and then suggested an appraisal, and then afterwards a search of the title? A I beg your pardon, it was exactly as I stated. The question of the search of the title was not taken up except very tentatively, about ten minutes, that he

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went and said, "Now, I have got to go over to this title company and I want you to come along with me", and we did, and nothing more was said about that for, oh, two or three weeks.

Q Well, you knew at the very beginning that he would make no loan or would not consider a loan unless the title was guaranteed, did you not, or it had been searched? A It had been searched.

Q Yes? A Naturally.

Q You understood that from the beginning? A Yes.

Q Did he ever refuse to make the loan? A He has never made it.

Q Did he refuse to make it? A The last time I saw Mr. Harney was, he said to me, he says, "It's all right now, Mr. Cummings, don't be worried, be a little more patient and you will have the money in two or three days.

Q Did he ever refuse to make the loan, answer yes or no, please. A I have not seen him since, I have written him.

Q Did he ever refuse to make the loan, can you answer that? A Why, he has not specifically told me that he would not make the loan. The last time I saw him he said he was going to make it.

MR. HAIRE: I ask your Honor to direct the witness to answer the question.

MR. EDWARDS: I submit that that is a complete and full answer.

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THE COURT: Yes.

MR. HAIRE: I ask if Mr. Harney ever refused to make this loan.

THE COURT: By word or deed, which do you mean? You are asking him a conclusion.

MR. HAIRE: I ask if he ever refused or ever said he would not.

THE COURT: You are asking him a conclusion.

MR. HAIRE: I will change it and I will ask if Mr. Harney ever told him he would not make the loan.

BY THE COURT:

Q Did Mr. Harney ever tell you that he would not make the loan? A No, sir.

BY MR. HAIRE:

Q The last time he spoke to you about it he told you it would be all right in a few days, did he? A Yes.

Q You swore to the complaint in t his case in the Magistrate's Court, did you not? A Yes, sir.

Q Do you remember the day in November? A I do not.

Q Just before swearing to this complaint, the day, the day before did you telephone to Mr. Harney? A I did.

Q At the time you telephoned to him had you been to the District Attorney's office? A Yes, sir.

Q And had your complaint been prepared? A Yes, sir.

Q And was it submitted to you to be signed and sworn to?

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A It had been submitted to me, yes, sir.

Q And did you decline at that time to sign it? A No.

Q You refused to sign it? A No.

Q It was at your desire that you did not sign it, then, was it not? A I said I would sign it later.

Q Now, later you telephoned Mr. Harney? A Yes, sir.

Q And what did you telephone him for? A I asked him to come over to my hotel in Brooklyn.

Q What did he say to you in reply? A He said he wanted to know what I wanted to see him for.

Q What did you say? A I said that I didn't think that we would attempt to discuss it over the telephone, as he was not very glad to come why he had better stay where he was.

Q What did he say to you? A He said all right, he would stay.

Q Now, as a matter of fact, you telephoned Harney for the purpose of having an interview with him in regard to this loan, did you not? A I did not.

Q What did you telephone him for, then? A As I told Mr. Leo at his office, that I thought this was a very serious thing, about signing a paper that charged a man with larceny, and I wanted to see Mr. Harney, that if there was one chance out of a thousand that he could prove to me that he was honest, I should not want to do it.

Q And when you say Mr. Leo, you mean Mr. Leo sitting here,

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from the District Attorney's office? A I do; yes, sir.

Q And it was after you made that statement to Mr. Leo --

A (Interrupting) No, you asked me the reason, you asked me the reason I telephoned to Mr. Harney, now I gave it to you.

Q I am saying that it was after you had, or you made the statement which you just stated you made to Mr. Leo, that you telephoned Mr. Harney? A I did not make that statement to Mr. Leo -- I made --

Q Well, you said you made a statement to Mr. Leo, didn't you? A I did.

Q Yes; well, after making that statement to Mr. Leo, you telephoned to Mr. Harney, didn't you? A I did.

Q Yes. Then when Mr. Harney would not come to see you as you requested him, you went back and signed your complaint, didn't you? A I did.

Q Now, how long has your wife owned this property in Vermont? A Since 1899 or 1900.

Q Free and clear? A (No answer.)

Q Was the property clear from mortgage or incumbrance?

A No, it was free and clear.

Q That property you occupied as a residence during a portion of the year? A Yes.

Q It was not a property that brought in anything? A It was a country estate.

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Q Yes; in other words, you were deriving no income from it, or your wife? A No.

MR. HAIRE: Will you let me see Exhibits 6 and 7, the bond and mortgage?

Q Now, when was it, Witness, that Mr. Harney first said to you that he wanted references or a statement as to your income? A Oh, that was the latterpart of September, the middle or latter part of September, last year.

Q Wasn't it before that? A Well, it is very difficult for me --

Q Do you remember the date when you say you were at Mr. Van Damm's office and the bond and mortgage were prepared by Mr. Van Damm? A That was the early part of September.

Q How long after that was it that you furnished references to Mr. Harney? A I really couldn't tell you, Mister.

Q Do you remember of giving any other references than the ones you testified to yesterday? A I don't remember, no.

Q Do you know the Rev. Dr. Johnson? A Yes.

Q Living in Sparta, New Jersey? A I know a Dr. Johnson, yes, a Mr. Johnson.

Q Did you give him as a reference? A No.

Q How? A No, there are lots of people I did not give as references.

Q Now, you had had dealings with Mr. Johnson, hadn't you? A Oh, yes.

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Q You had been connected with a fruit company, or something, in Porto Rico? A Yes, sir.

Q And Mr. Johnson sold stock for you, did he? A He did not.

Q Did he persuade his parishioners to buy stock in your company?

MR. EDWARDS: I object to that, what Mr. Johnson did, has no possible connection with this case, and is irrelevant and immaterial.

THE COURT: What has that to do with this case?

MR. HAIRE: The next question will disclose.

THE COURT: Then I guess you had better ask the next question.

MR. HAIRE: Well, I will withdraw that for the present.

Q Did you know that the Rev. Dr. Johnson reported to this defendant in regard to you, that you had ruined him and his entire congregation by selling him fake stock in a fake company in Porto Rico?

MR. EDWARDS: I object -- well, I will not object to it.

THE WITNESS: Shall I answer that question?

BY THE COURT:

Q Yes, you may answer it. A I did not know that Mr. Johnson had said that.

BY MR. HAIRE:

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Q That is all. A And don't believe that he did, and it is not a fake.

Q What is your present business? A Cereals.

Q Where is your place of business? A 82 Wall street,

Q Is that the shipping office or headquarters of your company? A It is the office of the company.

Q Have you a shipping office somewhere, or a warehouse?
A We have not now.

Q In what manner do you handle cereals? A We had a factory in Brooklyn and we shipped from there.

Q You had a factory? A Yes, sir.

Q How long since you had it? A About four months.

Q Has your company gone out of existence? A No, sir;

Q Out of business? A No, sir.

Q How many different companies have you been connected with that went out of business and failed, within the last five years? A I have never been with any, connected with any business that either owed money or failed.

Q Your business in Porto Rico failed, didn't it, your company? A It did not.

Q Doing business now? A No, sir; the company never owed a dollar, always discounted its debts, always discounted its bills, perfectly solvent and still owns property there and holds it.

Q People still hold the stock of the company? A Well,

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now, you have said that two or three times.

Q Don't they, don't people still hold stock of the company? A I say, you have said that two or threetimes, I tell you that there was never a share of stock sold to anybody of any company that I ever was in, in Porto Rico, and the only stock that is held or ever has been held --

THE COURT: (Interposing) By the way, what case are we trying?

MR. EDWARDS: I am a little at a loss to know, but I thought I would give the defendant all the latitude he wanted, without making objections.

MR. HAIRE: Well, the gentleman has talked a good deal about morale of this case, or the loan.

THE COURT: No, I don't think he did. I understood him to say that the defendant did.

MR. EDWARDS: Yes, sir; that is true.

THE COURT: My recollection of what his testimony was is that he said that the defendant said something about the moral risk of the loan. He did not agree with him at all. I thought he expressed that very decidedly and told him why didn't he say something about that two or three months ago. I do not understand it this way.

MR. HAIRE: He did, to the extent of giving references.

THE COURT: Are you not transporting us down to the

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tropics just now, and I very much prefer to remain right here and try this case. You know, if we deflect the issue by going into some of our new possessions in the tropics, very soon we will get to a discussion of the policy of holding those possessions, and we are not interested in that at all, not at all. The question is, did this defendant obtain money from the complaining witness through false representations. That is all there is to it, absolutely. It is a very simple issue, and we will not wander any further afield in discussing Porto Rico or eventually the Philippines. That will not do at all. I do not think this is the forum for that.

MR. HAIRE: If your Honor please, you will give me the benefit of an exception to the language of the Court in the comments.

THE COURT: Certainly.

BY MR. HAIRE:

Q What was the date when you visited Mr. Van Damm's office? A When?

Q The first time? A The middle or latter part of August.

Q Did Mr. Harney go with you on your first visit to Mr. Van Damm? A No, he asked me to go up there and gave me his name and address.

Q That was after you had called at Mr. Baker's office? A Yes, sir.

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Q And Mr. Baker had told you that he did not want to bother with the search of a title in Vermont? A I didn't have much talk with Mr. Baker. Mr. Smith had the talk with Mr. Baker.

Q Well, was that in substance what he said?

MR. EDWARDS: Objected to, unless the witness heard the conversation.

MR. HAIRE: Well, he was there with Mr. Smith, he said.

MR. EDWARDS: He did not say that.

THE COURT: He may answer that if he knows.

A I was only in there a few moments, and I went out and left Mr. Smith there, and I think that Mr. Smith went back alone next day, that's my recollection.

BY THE COURT:

Q Well, did you hear the attorney say that, or words to that effect? A No, sir.

BY MR. HAIRE:

Q Did you hear Mr. Baker say anything? A He was very nice, and, "How do you do", and said, he told us about some searches that he had made for Mr. Harney.

Q Well, did you hear him say anything to the effect that he did not want to make a search up there? A I did not.

Q I understood you to testify yesterday that he said he did not care anything about making a search of that prop-

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erty? A That's what I understood from Mr. Smith.

Q Oh, you understood that from Mr. Smith? A Yes.

Q Is Mr. Smith in court to-day? A Yes.

Q Was it the same day that you went to Mr. Van Damm? A Oh, no.

Q How long afterwards was it? A I should think it was probably a week or more than a week before I went to Mr. Van Damm's, after I had been to Mr. Baker's.

Q What was the cause of the delay after seeing Mr. Baker? A Could not find a lawyer. Lawyers were all busy or "Come around to-morrow", or "I could not get in town to-day", or "I had to stay out yesterday".

Q Is that what the lawyers all told you? A No, this is what Mr. Harney told me.

Q Did you go to see various lawyers to see if they would make a search? A I went to one firm of lawyers and asked them and they said they would be very glad to, they said they were not so busy that they could not.

Q Now, you had your own firm of lawyers here in New York, didn't you, at that time? A Yes.

Q Who were they? A Messrs. Stroock & Stroock.

Q And did you go to them to ask about Mr. Van Damm? A I went to one of their clerks.

Q And made inquiries about Mr. Van Damm? A Yes.

Q And it was satisfactory?

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MR. EDWARDS: That is objected to, what inquiries he made of a law clerk in another office. A statement by a third party has no bearing on the case.

MR. HAIRE: Well, it was in regard to Mr. Van Damm, whom he said made the search.

THE COURT: Then that does not mean anything.

MR. HAIRE: Exception.

Q Did you tell Mr. Harney that your attorneys said Mr. Van Damm was all right? A I told Mr. Harney --

Q Can't you say yes or no to that? A I say no.

Q You made inquiry to satisfy yourself that Mr. Van Damm was all right before you went to him, didn't you?

MR. EDWARDS: Objected to as immaterial.

THE COURT: What do you mean by "all right"?

MR. HAIRE: That he was a proper person to make this search, and a competent person.

THE COURT: Well, put it in that way.

BY THE COURT:

Q Did you satisfy yourself before you went to Mr. Van Damm that he was a proper person to make the search?

MR. EDWARDS: I submit, if the Court please, that that is entirely immaterial in this case. It does not matter what inquiries he made or what satisfaction he received in that respect. The question is whether or not Mr. Van Damm and Mr. Harney were all right under the facts

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in this case. It does not make any difference what recommendation he may have had.

THE COURT: Suppose, Mr. Haire, that this gentleman you speak of, the lawyer, Mr. Van Damm, is his name?

MR. EDWARDS: Yes, sir.

THE COURT: That he was thoroughly competent to search titles, I do not believe that is an issue in this case, because there is no dispute about that. You do not deny either one way or the other?

MR. EDWARDS: No, sir.

THE COURT: It is not material to the issue, whether or not Mr. Van Damm is skilled in real estate law and is a proper person to search titles. I do not believe that has anything to do with it. Was he? If he was, let us put it upon the record, that Mr. Van Damm was a proper person to search titles.

MR. EDWARDS: I do not know anything about it.

THE COURT: Well, put it on the record if he was. That does not make any difference, does it? In other words, Mr. Haire, there is no dispute here as to Mr. Van Damm's legal abilities to search titles?

MR. HAIRE: Mr. Van Damm is named in this indictment as having received this money, if your Honor please.

THE COURT: Quite true.

MR. HAIRE: Now, what were the motives that prompted

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this man to give his money to Mr. Van Damm? Is it not proper for this court and jury to know whether, before he went to Mr. Van Damm and employed him for the purpose of searching this record, that he ascertained to his satisfaction that Mr. Van Damm was an honest and capable man?

THE COURT: Well, as I say, you may ask him the question.

THE WITNESS: What shall I do?

BY THE COURT:

Q I do not know what you did. A I can explain exactly what I did.

BY MR. HAIRE:

Q Did you satisfy yourself before employing Mr. Van Damm the that he was a proper person to make the search in your behalf?

A I went to --

Q Now, can't you answer that yes or no?

MR. EDWARDS: I submit the question is so framed as to be very misleading. He said "the proper person".

THE COURT: No, "a proper person", if you will read my question, it was, "a proper person", not "the proper person".

MR. HAIRE: Well, I will amend it by substituting "a", the indefinite article.

A They told me that he had done some work for them and it had been satisfactory, and I had no other choice to have any other

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lawyer except Mr. Van Damm, so I took him.

Q Will you please answer my question yes or no?

MR. EDWARDS: I submit that is an answer.

THE COURT: I think that is an answer. You may take an exception.

MR. HAIRE: I take an exception.

THE COURT: You may ask him further details in regard to it; it seems to me that that is an answer so far as it goes.

Q Did you request Mr. Harney to allow your lawyers to make the search? A Yes, sir.

Q When did you do that? A Why, before we went to Mr. Van Damm or Mr. Baker.

Q Did the defendant Harney mention other people besides Baker and Van Damm who might make the search? A He did not.

Q Now, whom did you do business with, Mr. Albert Van Damm? A Mr. Albert Van Damm.

Q How many times did you visit him at his office before you decided to employ him? A I should say two or three times.

Q And you eventually agreed to pay him for the search the sum of \$300, did you? A Yes, sir.

Q And you paid him \$100 down, as witnessed by your check for that amount introduced in evidence? A I did.

Q And you agreed with him to pay him \$200 when the search was completed, is that right? A I said I would give him \$300,

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that's all, and handed him \$100.

Q Well, that left a balance then of \$200, didn't it?

A Yes, sir.

Q Now, your check is for \$210? A Yes, sir.

MR. HAIRE: I think that is Exhibit 2, is it not?

MR. EDWARDS: Exhibit 4.

Q Now, what was the \$10 for? A Why, he said for telegrams and extra disbursements.

Q Well, it was for long-distance 'phoning, wasn't it?

A Telephoning.

Q Yes, you 'phoned from Mr. Van Hamm's office to Rutland, did you? A No, Mr. Van Damm did.

Q Well, Van Damm 'phoned there? A Yes.

Q At your request? A At my request.

Q To try and hurry up the search?

A Yes.

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Q And the \$10 was for those long distance phones, wasn't it? A I presume they were included in that, yes, I have no doubt.

Q There was more than one long distance phone, wasn't there? A I think only one, when I was there, but I think Mr. Van Damm told me that he did telephone when I was not there.

Q Had you given him instructions to telephone? A Oh, I said "Yes, hurry it up as fast as you can".

Q You were much pleased with the manner of making the search by Mr. Van Damm, were you not? A I was pleased that it had gotten through and I was that much nearer to getting the loan.

Q You thanked Mr. Van Damm for the courtesies extended? A Certainly.

Q The real contract with Mr. Van Damm was made -- with Mr. Van Damm for the searching of the title for you was made from the date of the first check of \$100, wasn't it? A I think it was, yes, sir, either that day or the day before that.

Q That check was dated August 9th, people's Exhibit 2-- no, August 23rd.

MR. EDWARDS: Yes, that is quite a difference.

MR. HAIRE: I only looked at the "g".

Q August 23rd then it was -- your arrangements were completed with Mr. Van Damm either on August 23rd or August 22nd, is that right? A That's my remembrance, yes, sir.

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Q And the price then agreed upon to be paid him for the labor to be performed by him was \$300? A That's right.

Q And this check Exhibit 4 was the final payment made in accordance with that agreement? A That's right.

Q Together with the additional amount of \$10 for disbursements, is that correct? A Yes, sir.

Q At the time you gave Mr. Albert Van Damm the check for \$210, had you received from him the abstract? A Yes, I think I had.

Q You had that in your possession at that time, had you?
A Yes, sir.

Q Did you hand that check to Mr. Van Damm or did you send it to him through the mail? A I can't recollect, sir.

Q Did you meet Mr. Van Damm's father? A I saw him.

Q Raphael Van Damm? A I saw him in the office.

Q You understood him to be an attorney and counsellor at law, or a practicing lawyer? A Why, I didn't understand anything about Mr. Raphael Van Damm until the abstract came back. Then, when the abstract came back, Mr. Albert Van Damm told me that he was not a lawyer, and that he wanted his father to write on the bottom of this abstract, and he says "I will take it into my father", which he did, in the other room, and that was the first time I knew that Mr. Albert Van Damm was not a lawyer and that his father was a lawyer.

Q Did you know of Mr. Raphael Van Damm or Albert Van Damm

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either sending a telegram to the lawyers in Vermont just as soon as you made the arrangements for the search? A Mr. Van Dam told me that he had arranged for the search.

Q Did he give you the names of the parties with whom he had arranged? A Yes, sir.

Q They were personally known to you, were they? A I don't think I know the gentlemen personally but I know, I have always known of their families up there.

Q You knew of them? A Yes, sir, and always known very favorably of them.

Q This abstract introduced in evidence here --

MR. HAIRE: I have not seen it as yet, Mr. Edwards.

MR. EDWARDS: That is here.

Q I presume that contains that report made by this firm of lawyers, doesn't it? A Yes.

Q And you saw it and read it at the time? A I did.

Q I presume you examined this abstract very carefully, did you not? A Yes.

Q Was it inasmuch as there was a cloud on the title which you say your brother went up and got removed --

MR. EDWARDS: That is objected to on the ground that it embodies a conclusion.

MR. HAIRE: Well, I withdraw the question.

THE COURT: Well, he says that the defendant claims there was but that he told the defendant there was not.

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MR. EDWARDS: And that the defendant agreed with him or the defendant's lawyer agreed with him.

Q Well, there was something on the title which you got removed by a certificate from the County Clerk, didn't you?

A Yes, sir.

MR. EDWARDS: The City Clerk, Mr. Haire.

MR. HAIRE: Well, I have not seen this.

MR. EDWARDS: This is it (indicating).

Q That defect in the title as claimed by Mr. Harney related to a mortgage given by two Johnsons to one Stephen Fenn, didn't it? A Yes.

THE COURT: In what year?

MR. EDWARDS: 1838.

MR. HAIRE: 1838. It was discharged of record September 16th, 1912.

Q I understood you to say yesterday that you were in the office of Mr. Van Damm at the time the bond and mortgage were prepared, is that right? A Yes, sir.

Q Did you see them prepared? A No, I did not.

Q Didn't you testify yesterday that you saw them prepared? A I don't think so.

Q If you did, it was a mistake?

THE COURT: Well, I would not put it that way because he said he does not think he did.

Q Now, why do you say that you were in the office when

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they were prepared? A Mr. Van Damm has two offices, one is 57
a private office where I sat and we talked over the question
of the mortgage, and in the other room he has a stenographer,
and he left one room and went into the other room and told me
that he instructed his stenographer to draw out these papers.
Then I presumed he did, because in a little while when I waited
there he brought them back again.

Q From the time you went there to have the bond and mort-
gage prepared, that is from the time you reached Mr. Van Damm's
office, you did not leave it until you had seen them, did you?

A That's right.

Q Do you know what date that was? A No, I couldn't
tell you, Mr. Haire.

Q Now, the mortgage being People's Exhibit 6, is either
printed matter or typewriting except as to the date "3rd" and
the word "September" which is written in. I now show you that
and ask you if you know by whom the figure "3" and the word
"September" was inserted? A I think, Mr. Haire, that that
is Mr. Van Damm's own handwriting, Mr. Albert Van Damm's own
handwriting, that's my remembrance.

Q I notice in the same connection that that same date,
that is as to the day and month, is written in in the body
of Exhibit 7, being the bond, and also in the acknowledgment.
Have you any recollection of that being written, by whom?

A I think that is Mr. Albert Van Damm's personal handwriting.

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Q Well, have you any recollection of that being put in, in your presence? A I think it was.

Q On this same day when they were drawn at Mr. Van Damm's office? A No, I think that was, as I remember it, the date was blank first, then I think on that day, the 3rd of September, I think I was up there again, I think Mr. Van Damm wrote that in himself, because I think that that was the day to be the closing day, or something like that.

Q You spoke of your wife being in the city. Do you know what date that was, for the purpose of executing the bond and mortgage? A Well, it was soon after that date.

Q It was not on the 3rd? A It might have been. I can't tell you.

Q Did she go to the office of Mr. Van Damm? A No.

Q She was not at the office at all of Mr. Van Damm?

A No, it was at Mr. Harney's office where the closing was going to be.

Q I understood you to say yesterday that Mr. Harney, the defendant, wrote the name or names to be inserted in the bond and mortgage, is that right? A Yes, sir.

Q Where was he when he did it? A I think it was in his office.

Q Who was present? A I was.

Q He wrote that down on a slip of paper? A Yes, sir.

Q What did he do with it? A Handed it to me and told me

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to go up and take it to Mr. Van Damm and have the bond and mortgage drawn up.

Q And was that about the 3rd of September? A That I couldn't tell you, sir.

Q What conversation did you have with Mr. Van Damm in regard to the names after you reached his office? A I said; I asked him to make up the bond and mortgage, and those were the names to be filled in.

MR. HAIRE: Is Mr. Albert Van Damm in court? Stand up.

Q Is that the gentleman? (Indicating person standing)

A That's the man.

BY THE COURT:

Q That is Mr. Van Damm, Jr., is it? A Mr. Albert Van Damm, yes, sir, that's the one I had the dealings with.

Q And he is not a lawyer? A No, sir.

BY MR. HAIRE:

Q Are you sure that you handed him a paper with the words "Charles A. Harraway and Augustus Harraway, Executors of the Estate of Charles A. Harraway, deceased"? A Those are the names as I remember them, that were on that paper, yes, sir.

Q Well, wouldn't you remember them after reading them over? A Why, it sounds so to me. I could say yes, those are the names.

Q Had you had any occasion before that to familiarize

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yourself with the names? A Mr. Harney had spoken quite a number of times about the Harraway estate and the two Harraway boys, of Pittsburg, Pennsylvania.

Q But you would not have remembered the names without this writing? A No, sir.

Q Now, Mr. Cummings, isn't it a fact that when you applied to Mr. Albert Van Damm and asked him to prepare a bond and mortgage, he asked you to give him the name or names of the mortgagees, and didn't you say to him upon that occasion that you did not know the names? A No, sir, I did not. I had the paper with me.

Q Wait a moment. That is sufficient. Are you positive of that? A Yes, sir.

Q Positive that you handed him a paper with the names on? A Yes, sir.

Q Isn't it true that Mr. Van Damm while you were in the office, in your presence and hearing called up the office of Mr. Harney and made inquiry as to the name of the mortgagee to be inserted? A Mr. Van Damm --

Q Yes or no?

MR. EDWARDS: I submit that it may well be possible that the witness cannot answer that question yes or no in its form.

BY THE COURT:

Q The question is, do you know whether Mr. Van Damm, Jr.,

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while you were in his office, rang up the office of the defendant and asked the defendant what names to insert in the proposed bond and mortgage as mortgagees?

THE COURT: Is that it?

MR. HAIRE: Made inquiry over the phone to that effect, yes.

BY THE COURT:

Q Well, can you answer that? A I can't answer it exactly by yes or no.

Q Well, you mean to say that some part of it is correct and some part not? A Yes, sir.

Q Well, all right.

BY MR. HAIRE:

Q Well now, tell us what part is correct? A Mr. Van Damm said, when I told him about this, he said "Well, of course Mr. Cummings, I will have to ring up Mr. Harney", and I said, "That's perfectly correct that you should do so". He said, "Because I want to verify your statement. Well, I ought to do that whether I am authorized." Well, I said "Here are the names" and so he did call up in my presence and called up Mr. Harney and said "Now, is this correct to make up this mortgage" so and so and so and so? Or "Is it correct to make up this mortgage, shall I go ahead with this and are these the names to be inserted?" And he said yes, that is, I presume the reply came yes, because Mr. Van Damm hung up the receiver

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and said "All right, I will go ahead and make it out."

BY MR. HAIRE:

Q Now, Witness, isn't it a fact that you at that time knew the number of Mr. Harney's phone, you knew the number, didn't you? A Yes.

Q And you know that Mr. Van Damm called that number up, don't you? A Yes, sir.

Q And that was upon the occasion when you were there to have the bond and mortgage prepared? A That's right.

Q Don't you know that after Mr. Van Damm called up the number which you knew to be that of the defendant, that he told you that Mr. Harney was not in the office and he could not get him? A No, sir.

Q Positive of that? A Because he went and made out the bond and mortgage.

Q Wait a moment. Are you positive of that fact?

A That is the best of my recollection, sir.

Q Is it not also a fact that you went away, left the office before this bond and mortgage were prepared, and came back later in the day or next day to get it? A No, I waited for it.

Q Did not Mr. Van Damm in your presence instruct a young man in there, or a boy, to call up the office of Harney again, and get the name of the mortgagee? A No, sir, not to my knowledge.

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Q You still insist, or you still are sure that you remained in the office until these papers were prepared?

MR. EDWARDS: That is objected to as already covered.

MR. HAIRE: I am only asking him to give him a

chance --

A Well, that is the best of my remembrance. I was a great many times at Mr. Van Damm's office, and a great many times at Mr. Harney's office, a great many times.

Q Well, sir, I am not trying to find any fault with you at all. I am only trying to get the facts. A I understand, and at the same time that is what I am trying to give you, are the facts, and it is very difficult for me to segregate one visit from another.

Q That is your best recollection, that you remained there? A Yes, sir.

Q That is as far as you can testify, isn't it? A Yes, sir.

Q Did you see any of the correspondence between Mr. Van Damm and the lawyers in Rutland? A I did not.

Q Do you remember the occasion when the bond and mortgage, the time when you say they were prepared in Mr. Van Damm's office, as to whether there was a young man there or not? A I don't remember, sir.

MR. HAIRE: Excuse me just a minute, your Honor.

That is all.

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MR. EDWARDS: Mr. Haire, will you produce the letters written by Mr. Cummings to this defendant subsequent to the 3rd day of September, 1912?

MR. HAIRE: If I have them. What date did you say?

MR. EDWARDS: After September 3rd, 1912.

RE-DIRECT EXAMINATION BY MR. EDWARDS:

Q I show you a letter dated September 25th, 1912, addressed to Mr. William Harney, 50 Church street, and ask you if that is the letter you dictated and which was signed by some one in your employ at your request and sent to Mr. Harney?

A yes, sir.

Q Did you ever receive a reply to that letter? A No, sir.

Q Did you write him any other letters? A Yes, sir.

Q Were they similar in contents?

MR. HAIRE: I object to that, were they similar.

MR. EDWARDS: I withdraw the question.

Q How many letters?

THE COURT: Well, unless you produce the letters, the District Attorney requested you yesterday to produce them, so therefore gave you notice, and if you do not produce them, then he can testify from his memory, and the best he can as to the contents.

MR. HAIRE: This is the first time, your honor, he has asked for any other letters from Mr. Cummings.

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MR. EDWARDS: They were other letters I asked for yesterday, your Honor. This morning I have called for these letters and Mr. Haire says he has only one and produces only one. I offer this particular letter in evidence.

MR. HAIRE: No objection. We will give you anything we have.

(Marked People's Exhibit 10 in evidence)

Q Did you write other letters in addition to this People's Exhibit 10 in evidence to Mr. Harney after the 3rd of September, 1912? A Several.

Q Did you receive an answer to any of those letters?

A Not one.

Q Have you a recollection now of the contents of those letters? A Yes, sir.

Q Can you state the dates on which you sent them? A No, sir.

Q Have you letter press copies of these letters? A No, but I think I made copies of them as I sent them, I think so, some of them at least.

Q Have you got those copies with you? A No, sir.

Q Will you look them up and produce them here during the day? A To-day?

Q Either to-day or to-morrow morning? A Yes, if I can find them.

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Q Well, we will wait until you look them up.

MR. EDWARDS: That is all of this witness for the present. I will read this letter to the jury.

(Reads People's Exhibit 10)

MR. EDWARDS: That is all of this witness, Mr. Haire,

MR. HAIRE: No further questions.

B E R T L. S T A F F O R D, called and duly sworn as a witness on behalf of the People, testified as follows:

(Witness states he lives at Rutland, Vermont)

DIRECT EXAMINATION BY MR. EDWARDS:

Q Mr. Stafford, you are a practicing attorney and counsellor at law in Vermont, are you not? A Yes, sir.

Q And have been for how many years? A 6 years.

Q You are also State attorney, are you not? A Yes, sir.

Q Do you recollect in August of 1912 receiving a communication from Mr. Van Damm, a lawyer in this city? A Yes, sir.

Q As a result, or have you that communication with you?

A (Witness hands paper)

Q This is a typewritten telegram on a night letter blank of the Western Union, that was received by you through the telegraph office? A Yes, sir.

MR. EDWARDS: I offer that telegram in evidence.

THE COURT: Show it to Mr. Haire.

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MR. HAIRE: No objection.

(Marked People's Exhibit 11 and read to the jury by Mr. Edwards)

Q Now, did you reply to that, Mr. Stafford? A Yes, sir.

Q Have you a copy of your letter in reply? A We sent a telegram.

Q You sent a telegram in reply?

MR. EDWARDS: Have you that telegram, Mr. Haire?

MR. HAIRE: Yes.

Q I show you a telegram and ask you if that is the telegram that was sent in reply to the one that was just introduced in evidence as People's Exhibit 11? A Yes, sir, it is.

MR. EDWARDS: I offer that in evidence.

MR. HAIRE: No objection.

(Marked people's Exhibit 12 and read to the jury by Mr. Edwards)

Q Now, did you then reply, or did you receive a reply from Mr. Van Damm to that telegram? A yes, sir.

Q Was that in the form of a letter or telegram? A I think it was in the form of a letter.

Q Have you that letter with you? A (Witness hands paper)

MR. EDWARDS: I offer that letter in evidence.

MR. HAIRE: No objection.

(Marked People's Exhibit 13 and read to the jury by

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Mr. Edwards)

Q Now, after receipt of that letter, Mr. Stafford, did you search the title? A I did.

Q And did you send to Mr. Van Damm an abstract of title?

A Yes, sir.

Q Bearing a certificate of yours on the last page?

A Yes, sir.

Q I show you People's Exhibit 3 and ask you if that is the abstract that you so sent to Mr. Van Damm? A Yes, sir.

Q Now, did you render Mr. Van Damm a bill for your services in that matter, Mr. Stafford? A Yes, sir.

Q Can you tell us the amount of the bill? A Yes.

Q Will you do so, please? A 57.50.

Q And that was paid by Mr. Van Damm? A Yes, sir.

Q That was all that you received for your services for searching the title? A That is from Mr. Van Damm. We received \$10 later, but I think that came from Mr. Cummings.

Q That is, that was in connection ~~xxx~~ with getting a cancellation of record of this Johnson mortgage that we have been talking about? A Yes, sir.

Q This \$57.50 covered both services and disbursements connected with the searching of the title? A Yes, sir.

Q Did you have any further conversation with Mr. Van Damm?

A Mr. Van Damm, or some one stating that he was Mr. Van Damm

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called us by telephone, I think twice, possibly three times, I won't undertake to say.

Q From New York? A From New York.

Q And asked you questions with reference to the search and its progress and so on? A Yes.

THE COURT: If there is no question but that that was Mr. Van Damm who spoke to Mr. Stafford --

MR. EDWARDS: We do not raise any question. Mr. Cummings said he spoke to him once.

MR. HAIRE: We admit that such is the fact.

THE COURT: Then go on.

Q Now, you met Mr. Cummings's brother later on, did you, at Rutland?

A Yes.

Q And at his request you took certain proceedings --

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MR. HAIRE: That is immaterial. I will withdraw the objection, however.

THE COURT: Very well.

Q What I want to direct your attention to particularly, Mr. Stafford, is the existence of this mortgage back in 1838 on the record as shown by the abstract, which was afterwards cancelled of record, and this certificate People's Exhibit 5 procured, showing such cancellation; did you have charge of the proceedings that resulted in that cancellation? A I did.

Q Now, at the time when those proceedings were commenced, what was the legal status of that mortgage under the laws of your State, Vermont? A Well, I think in my report, the abstract of title, that we did not regard that as a serious encumbrance at all.

Q You have certain statutes, haven't you, in Vermont, which regulate the Statute of Limitations, bond and mortgage, of that kind? A Yes, sir.

Q And am I right when I say that such statute had run against that mortgage at that time? A Oh, yes.

THE COURT: Run against the foreclosure.

Q Yes, run against the foreclosure? A The mortgage, if my recollection serves me correctly was about seventy odd years old, and our statute of limitations against real estate mortgages runs in fifteen years.

Q So that it was not an enforceable lien against the

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property at that time? A No, we did not regard it as so.

BY THE COURT:

Q What was the amount of the mortgage? A Some five thousand, I believe. I may not be accurate in the amount, I think it was five thousand.

BY MR. EDWARDS:

Q Now, the method that you adopted for clearing the record there was the statutory record of the appointment of an administrator De bonis non, wasn't it? A Yes.

Q And that resulted in a court decree which authorized the cancellation of the mortgage of record as that certificate shows? A Yes, sir.

Q I think that covers it.

CROSS EXAMINATION BY MR. HAIRE:

Q As a matter of fact, this is a mortgage, this Johnson mortgage was a cloud on the title rather than a serious encumbrance? A That is just what it was, yes.

Q And the Statute of Limitations runs in connection with adverse and uninterrupted possession of property? A Yes.

Q I suppose the expenses in connection with the search of titles in this matter were not heavy? A I think they were five dollars.

BY THE COURT:

Q Disbursements? A Yes, sir.

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BY MR. HAIRE:

Q That is all, counsellor.

THE COURT: Now, do you think either side will need Mr. Stafford any more?

MR. EDWARDS: I do not think we will. Do you, Mr. Haire?

THE COURT: Do you want to go back to Vermont right away, Mr. Stafford?

THE WITNESS: Yes, sir.

THE COURT: He is a public official there and I think we ought to oblige him.

MR. HAIRE: We will not need him any more.

MR. EDWARDS: We will not need him any more and we are very much obliged to Mr. Stafford.

HENRY M. T. BEEKMAN, called and duly sworn as a witness on behalf of the people, testified as follows:

(The witness gives his residence as 111 Broadway.)

DIRECT EXAMINATION BY MR. EDWARDS:

Q Mr. Beekman, you are a practicing attorney and counsellor at law admitted to practice in this State, are you not? A I am.

Q And have been such about how many years? A About eighteen years.

Q You have offices where? A 111 Broadway.

Q Do you know Mr. Harney, the defendant, Mr. Beekman?

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A I do.

Q Have you known him long? A A great many years.

Q And you knew his father, did you not, before him? A Yes, I have been a member of the New Jersey bar 32 years last June, and I used to do some business for his father in Jersey City. That is a good many years ago, probably fifteen years ago.

Q Have you ever done any business for this Mr. Harney?

A I think I did, about ten years ago.

Q Have you done any recently, Mr. Beekman? A No, not in the last nine or ten years.

Q Did Mr. Harney at any time bring you this abstract of title, People's Exhibit 3 in evidence, and have you go through it for the purpose of examining that title, and determining whether or not there were any flaws or exceptions to it? A No, never.

Q Did you ever see that paper before? A Never.

Q Have you ever acted as counsel to the Harraway Estate of Pittsburg, Pennsylvania, of which Mr. Harney was a trustee? A Never heard of any such estate.

Q And you of course then have never acted as counsel for it? A Never.

Q Have you ever acted as counsel for any other estate which Mr. Harney represented? A Not to my recollection. No, never for any estate he represented, anywhere.

Q That is all.

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MR. HAIRE: That is all.

MR. EDWARDS: If your Honor please, Mr. Beekman is not very well and wants to get away. If Mr. Haire does not require him we would like to have him go.

THE COURT: Very well, neither side needs him and he may go.

EDGEWORTH SMITH, called and duly sworn as a witness on behalf of the People, testified as follows:

(The witness gives his address as 55 Liberty street.)

DIRECT EXAMINATION BY MR. EDWARDS:

Q Mr. Smith, what is your business? A Real estate.

Q Do you know Mr. Cummings? A I do, sir.

Q Did you introduce Mr. Cummings to Mr. Harney? A I did.

Q How did you come to take Mr. Cummings to Mr. Harney?

A Do you mean how did I first?

Q How did you come to meet Mr. Harney, how did you get to know of him? A Mr. Van Roden told me that he --

Q Well, do not tell what Mr. Van Roden said. It was after a conversation with Mr. Van Roden, is that right? A It was after a conversation with Mr Van Roden.

Q Can you recollect what time you first went to see Mr. Harney with Mr. Cummings? A I recollect it was after the first of July.

Q Can you tell us what occurred at that meeting, what

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conversation was had between you, Mr. Cummings and Mr. Harney?

A I took Mr. Cummings in and introduced him to Mr. Harney and told Mr. Harney that Mr. Cummings was a principal in the question of a mortgage in Vermont, which I had already taken up through Mr. Van Roden.

Q Well, you had seen Mr. Harney before that, had you, had you seen Mr. Harney before that time? A I wouldn't be positive whether I had or whether Mr. Van Roden had seen him.

Q That is, you are not sure whether you had had a talk about that Rutland loan with him yourself, or whether it was Mr. Van Roden? A No.

Q Well, go on, and tell us what occurred at that conversation? A Mr. Harney told Mr. Cummings at that time that he represented an estate. He said it was an estate of a deceased gambler and that he had a very --

BY THE COURT:

Q (Interposing) Harney told him it was the estate of a deceased gambler? A Yes, sir.

Q All right. A He said he had a very distinct recollection -- excuse me, he had a very warm recollection of the treatment that he had received from this man, this deceased.

BY MR. EDWARDS:

Q Yes. And that he had absolute power to handle the funds, I think he said something or other about handling funds, that he was anxious to place this money to the best advantage, to

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bring in six per cent. interest, and to do that he had decided that country mortgages gave the best returns, and he said this was a larger mortgage than he had often considered; he said that it seemed to be sufficient equity in the property for him to go up and look at it, but that he could not say what he could do until he went and looked at the property himself.

Q Now, did you go to Vermont when they went up to look at it? A I did not.

Q Did you go again with Mr. Cummings to see Mr. Harney after they returned from Vermont? A I did.

Q About when was that? A Well, that was I should say within a week after the first interview.

Q Now, was that before or after you and Mr. Cummings had been to see Snyder, the appraiser? A That was before.

Q Now, can you tell us what occurred at that second conversation at Harney's office? A Mr. Harney --

BY THE COURT:

Q (Interposing) As loud as you can talk, that last juror wants to hear you, you cannot make it too loud. A Mr. Harney said that, being more or less in a fiduciary position with this estate -- I don't recollect whether he said he was actually trustee or executor or what, that he required an appraisal to confirm his own judgment, and he said he wanted that appraisal gotten from Mr. Herbert R. Snyder, and asked me, that is, asked either Mr. Cummings or myself to arrange it, and I said to

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Mr. Harney "I will have to pay for this appraisal myself under my agreement with Mr. Cummings."

BY MR. EDWARDS:

Q That is, you were the broker to whom Mr. Cummings had first applied for the loan? A I was the broker in whose hands the loan was and with whom the authorization was signed. I said, "Before I pay this I would like to know what amount of appraisal will carry this loan with you, that is, on how much value you will be satisfied to make a loan of \$60,000.", and Mr. Harney told me that if the appraisal was \$150,000 he would be satisfied to make the loan, so I then went to see Mr. Snyder. Do you want me to go right ahead?

BY THE COURT:

Q yes, tell us everything in as loud a voice as you can. A I then went to see Mr. Snyder and took him, I went to him before Mr. Cummings and myself went there, I went to Mr. Snyder first and I took him photographs of the place, the dimensions of the property and whatever description I had. I told him that the land value --

MR. HAIRE: Wait a minute. We object what he told Mr. Snyder.

BY MR. EDWARDS:

Q Well, you discussed the question of appraisal with Mr. Snyder? A Discussed the question of appraisal with him in the view of finding whether there was a reasonable chance that

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he could make it.

BY THE COURT:

Q Well, he directed you to Mr. Snyder, did he? A Yes, he directed me to Mr. Snyder and he also told me that he thought it not advisable to tell Mr. Snyder whom I came from.

BY MR. EDWARDS:

Q Mr. Harney told you that? A yes, Mr. Harney told me that.

BY THE COURT:

Q The defendant told you not to tell Snyder where you came from, that is, that you came from him? A Yes, he told me that it was more advisable -- he did not insist that I should not.

BY MR. EDWARDS:

Q Who told you? A Mr. Harney, the defendant said it was more advisable that I should not tell the appraiser who ordered the appraisal.

Q Did you act on that suggestion, did you tell Mr. Snyder whom you came from? A I did not tell him.

Q Did you make arrangement with Mr. Snyder employing him to make the appraisal for Mr. Cummings? A I did.

Q And did you pay Mr. Snyder? A I did.

Q How much did you pay him?

MR. HAIRE: That we object to as immaterial.

Objection overruled. Exception.

THE COURT: It goes to the bonafides of it, and the

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intent.

A I paid him \$200.

BY MR. EDWARDS:

Q Did that cover the expenses to Vermont? A That covered everything.

Q And then were you present when he turned over the appraisal to Mr. Cummings? A We gave the appraisal to me.

Q And you gave it to Mr. Cummings? A I have it.

Q And were you with Mr. Cummings when this appraisal was shown to Mr. Harney? A It is my recollection that I took it to Mr. Harney.

Q I show you People's Exhibit 1 in evidence and ask you if that is the appraisal which Mr. Snyder furnished? A That is not the original.

Q That is a copy of it? A That is a copy of it.

Q Did you know that he furnished a copy to Mr. Cummings as well as the one you took to Mr. Harney? A I heard Mr. Cummings say so.

BY THE COURT:

Q In other words it was made in duplicate, was it? A I have the original. I never compared them. I have never seen that one.

BY MR. EDWARDS:

Q This is the one that you took to Mr. Harney? A Yes, sir.

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MR. EDWARDS: They are in fact duplicate originals. Will that be conceded, that they are duplicate originals, to avoid both being put in evidence?

It is conceded by defendant's counsel that the appraisal produced by this witness and the one marked People's Exhibit 1 in evidence yesterday are duplicate originals, both alike.

THE COURT: Very well. This is not in evidence, then.

MR. EDWARDS: I do not want to put both in evidence. They are exactly the same thing. I do not see why we should encumber the record with some of the same documents.

Q In what form did you pay Mr. Snyder, by check or in cash? A By check.

MR. HAIRE: That is objected to and move to strike out the answer.

THE COURT: No, objection overruled.

MR. HAIRE: I take an exception.

Q Have you received from the bank the return voucher cancelled? A I have.

Q Have you it with you? A Yes, sir.

MR. HAIRE: It may be understood this is all subject to my objection and exception?

THE COURT: All subject to your objection and exception.

THE WITNESS: One of these was before and one after.

THE SECOND JUROR: I would like to ask who employed

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this witness, Mr. Smith?

MR. EDWARDS: Mr. Cummings.

BY MR. EDWARDS:

Q Now, you handed me two checks. You paid him in two installments, did you? A I did.

Q One before he went to Vermont and one after he returned, is that right? A Yes, sir.

MR. EDWARDS: I offer in evidence the two checks.

MR. HAIRE: The same objection as heretofore.

THE COURT: Yes, the same ruling and exception.

(Marked People's exhibits 14 and 15 in evidence.)

Q Can you by reference to the dates on those two checks tell us about the time that Mr. Snyder went to Vermont, to Rutland to make this appraisal? A The first check is August 6, and Mr. Snyder received this check in the afternoon, and he told me he was going up there that night.

Q Then you saw him again on the 9th when you paid him the second check? A I saw him again on the 9th when I paid him the second check.

Q Now, did you after that go again to see Mr. Harney about this loan at any time? A Yes, sir.

Q Did you go alone or with Mr. Cummings? A Why, probably both, in fact, certainly both. I went there several times.

Q Do you recollect any other conversations that you had with Mr. Harney with respect to the loan at any stage of the

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proceedings? A Why, I think I probably stopped in two or three times to inquire whether Mr. Harney was ready to go ahead.

Q And what did he say? A And Mr. Cummings might or might not have been with me on those occasions, I wouldn't be sure.

Q Well, what did Mr. Harney say on such an occasion when you called there?

MR. HAIRE: I would ask that you fix the dates.

A Well, they were practically consecutive days, or a day or two apart.

Q Close to the time of the appraisal or right after?

A Right after the time of the appraisal.

Q What did Mr. Harney say at such times you were in?

A Mr. Harney said that, the substance of what he said was that he would be ready to take up the matter with his attorney very shortly. He said he had one attorney that he wanted to ^{use} ~~see~~ but probably couldn't.

Q Did he say who that was? A No, not to me.

Q Mr. Smith, did you at any time see the bond and mortgage that was prepared in this matter? A I did.

Q Who showed you those? A Mr. Cummings.

Q People's Exhibits 6 and 7 which I nowhand you, are those that bond and mortgage? A Yes, sir.

Q Now, I call your attention to the names of the mortgagees appearing there, Charles A. Harraway and Augustus Harraway, executors of the Estate of Charles A. Harraway, de-

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ceased. Had you ever before seeing those exhibits 6 and 7 heard the names of those mortgagees? A Yes, sir.

Q When was that? A That was one day shortly before this mortgage was drawn, I won't say just how long, it might have been the day it was drawn, that Mr. Cummings dropped in and he was keeping me posted on the situation.

MR. HAIRE: I move to strike out the answer "He was keeping me posted."

THE COURT: Very well, we will strike that out.

MR. EDWARDS: All right.

Q Mr. Cummings dropped in? Well, did he at that time show you anything? A We showed me a piece of paper.

MR. HAIRE: Wait a moment. I object to his stating what was on that paper.

THE COURT: This is in evidence here?

MR. EDWARDS: It has been testified to by Mr. Cummings that it was provided to him by Mr. Harney with these names written on it, that he took it at Mr. Harney's request to Mr. Van Damm.

MR. HAIRE: The defendant was not present, this man sees a piece of paper in the hands of Mr. Cummings, we claim that is incompetent.

THE COURT: Well, where was this?

MR. HAIRE: At the office of this witness.

MR. EDWARDS: The witness is now testifying to the

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piece of paper that Mr. Cummings showed him in his office one day when Mr. Cummings came in and spoke to him about this transaction. It was a day or two before --

BY THE COURT:

Q Could you tell in whose handwriting it was? A No, sir.

MR. EDWARDS: I just want to show its contents, that's all. In the light of the cross examination that Mr. Haire conducted of the complaining witness I perhaps received an erroneous impression, but my impression was that the defendant was going to question the fact that Mr. Harney ever gave that piece of paper to Mr. Cummings, and this question was asked for the purpose of showing that such paper at least was in existence, and was shown to others by Mr. Cummings, before its presentation to Mr. Van Damm, with whom it was left.

MR. HAIRE: We still object, your Honor. That would be a very strange rule of law to introduce evidence of a paper.

THE COURT: In whose handwriting was it?

MR. EDWARDS: Mr. Cummings stated it was written by Mr. Harney.

THE COURT: But this witness cannot tell in whose handwriting it was.

MR. EDWARDS: Well, I will not press it if Mr. Haire objects.

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THE COURT: Well, is it very important? While we are discussing the matter of the names inserted in the mortgage, what is the name?

MR. EDWARDS: Harraway.

THE COURT: Does that make any difference?

MR. EDWARDS: I do not think it makes any difference whether it was suggested over the telephone or by writing by this defendant, as long as it emanated from him.

THE COURT: No, all right.

MR. EDWARDS: That's all.

BY THE COURT:

Q What was the amount of the first check paid Mr. Snyder?

A \$100.

Q And the next check was \$100.

MR. EDWARDS: Each check was for \$100.

THE ELEVENTH JUROR: I would like to ask Mr. Smith whether in his opinion the fee of \$200 was the fair or an excessive one for making the appraisal.

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MR. EDWARDS: Do you object to that?

MR. HAIRE: I do not.

A I think that it was more than I would have had to pay if I had been free to negotiate.

BY MR. EDWARDS:

Q That is, to pick your own appraiser, you mean? A To pick my own appraiser.

Q Do you believe that you could have procured an equally competent appraiser with Mr. Snyder, for a less fee, is that what you mean? A Yes, sir.

MR. EDWARDS: No further questions.

CROSS-EXAMINATION BY MR. HAIRE:

Q Well, Mr. Snyder is a well known, a recognized and well known real estate appraiser, isn't he? A Why, I heard of Mr. Snyder before I went to him, yes.

Q And fees vary, do they not, for appraisers? A Why, not very much, no.

Q Well, one will ask more than another, will they not, very often, there is no uniform scale of prices, is there?

A There is no actual schedule of prices.

Q And this was a piece of property out of the state? A Yes.

Q And valued by him at \$200,000? A Well, it was a valuable piece of property.

Q Yes; now, do you think that is an excessive fee, a charge of \$200 for a valuation of property worth \$200,000?

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A Yes, sir.

Q Don't you know that appraisers here in the city of New York, appraising property which only takes them half an hour to appraise, often charge \$700, \$750? A No, sir.

Q You don't? How long have you been in the real estate business? A About two years.

Q How old a man is Mr. Snyder? A I don't know.

Q Well, he is a much older man than you are, isn't he?

A I think he is about the same age.

Q And how long has he been in the business, do you know?

A I know he has been in the business several years; I don't know how long.

Q Now, you have told all that you remember in regard to conversations with Mr. Harney, haven't you? A No, sir.

Q You were asked to tell all that you knew, all the conversations you had with him? A Why, we got off -- I did not finish telling; the only other one I did not tell was the conversation in Mr. Baker's office.

Q That was Mr. Baker, the attorney at 115 Broadway?

A 115 Broadway, yes.

Q Well, at that time, did Mr. Baker say he did not care to make the appraisal, or the search? A No, sir.

Q Well, did you tell Mr. Cummings that Mr. Baker said he did not care to make the search? A Mr. Baker never told me that. I won't be sure --

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Q Well, you heard Mr. Cummings testify to-day, didn't you? A Yes, sir.

Q That you told him Mr. Baker did not care to make it? See if you recollect. A I wouldn't be sure whether I told him that Mr. Baker was not willing, or whether Mr. Harney told him, or whether word came to me from Mr. Harney.

Q You heard something of that kind? A I heard something of that kind, but not at first hand.

Q Well, anyhow, Mr. Cummings decided he did not want to employ Mr. Baker, didn't he? A I think it was the other way.

Q What way was it? A Mr. Baker decided he did not want to take the matter up.

Q Oh, that is it? A I think that is it.

Q All right.

BY THE COURT:

Q Just a minute. You are a real estate man in New York, are you? A Yes, sir.

Q Are you acquainted with what is known as the Real Estate Board of Brokers? You know what that is? A Yes, sir.

Q Well, now, is that the established board of real estate men in the city? A It is an absolutely reputable board, I know.

Q Well, do you know of anything better in this city?

A You mean any appraisal that would carry more weight?

Q Yes. A I suppose Douglas Robinson & Brown.

Q Well, aren't they members of the Real Estate Board of

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Brokers? A Their appraisal is not the same.

Q Well, now, do you know the most expensive real estate appraiser in the city? Can you pick out a few of those that would charge more and have the greatest reputation in the city? You know Joseph P. Day? A Joseph P. Day, Horace S. Ely & Company, Cruikshank.

Q You say Douglas Robinson & Brown? A Douglas Robinson & Brown.

Q Aren't they about the most expensive? Well, now, is there a regular rate with both well known and noted real estate appraisers? Do they have a regular rate for charging? A I think not, your Honor. I wouldn't say positively whether they have or not, I don't think so.

Q Does it make any difference as to the value of the property, as to what the appraisal is? A As to the cost?

Q As to the cost of appraisal, yes? A I think they fix it partly on the size of the lot and partly on the value.

Q Well, now, can you tell whether or not there is a regular standard price for the very best class of appraisers all over the city? A Well, I should say that \$10 for a small appraisal was the usual price, an appraisal under \$50,000.

Q Well, suppose the appraisal is \$212,500 on a lot in the city of New York measuring 118 feet by 100 feet; now, would that give you any idea of the ordinary prevailing rate among the very best class of appraisers? A I should not say it ought

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to be over \$50, your Honor. I wouldn't be sure of that.

THE COURT: I think you ought probably to get somebody who knows what the prevailing rate is of the very most expensive appraisers in the city.

MR. EDWARDS: The only difference is that this is an out-of-town appraisal, and of course I think that Mr. Smith wouldn't state that ordinarily an appraisal can be had even on a \$200,000 piece of property right here in New York for fifteen or twenty dollars.

MR. EDWARDS: Can't it, Mr. Smith? Haven't you seen --

MR. HAIRE: I do not think this witness is qualified.

THE COURT: No, probably not. He does not know.

THE WITNESS: My work is chiefly in Westchester County, and it is only occasionally that I order appraisals in New York.

BY MR. HAIRE:

Q Do you know James W. Smith -- or James W. Wells, real estate appraiser in the city of New York? A I know of him.

Q Do you know what his rates are for appraising property? A I do not.

MR. HAIRE: I move to strike out this witness's testimony in answer to your Honor's questions as to his --

THE COURT: Very well, strike them all out. Strike out those in regard to appraisal in New York city, that I

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put to him in regard to an appraisal, because the witness states that he is not in the habit of getting appraisals in New York City. Very well.

MR. EDWARDS: That is all. Mr. Smith, one moment.

BY MR. EDWARDS:

Q You stated on your cross-examination, Mr. Smith, that you had not given us the conversation in Mr. Baker's office. Will you do so, please? A Why --

MR. HAIRE: Is that when Mr. Harney was present?

Q When Mr. Harney and Mr. Cummings and you were all present, at that time, were you? A Yes, Mr. Cummings and myself arrived first at Mr. Baker's office, and in accordance with Mr. Harney's request the day before, we were to meet him down there, and we talked to Mr. Baker on general subjects for a few minutes and then Mr. Harney came in, and the question of fees was brought up, and Mr. Baker stated that he would charge, I wouldn't be sure of the exact amount, I think it was four or five hundred dollars, and that question was not negotiated at all, because Mr. Cummings was in a great hurry and after a short talk he went out, he had another engagement. Mr. Harney had been a little late, and he did not wait.

Q A little louder? A And after Mr. Cummings went out I told Mr. Harney that I thought he ought to give me something in writing to indicate acceptance of the loan subject to good title before I ordered and committed myself to the expense of

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this search. Mr. Harney said that he would not do it, that he never had done it, and he had made a great many loans without it. I said that was very peculiar and I did not like that sort of arrangement.

Q Did you tell him that that was not the custom in real estate business? A I told him that was absolutely not the custom, and that I had never done it before and I did not like to do it. Mr. Harney said, "Well, you are not the principal, you are the broker, and you better go back and talk to your principal". So that was the last time I saw Mr. Harney.

Q That is all.

MR. HAIRE: No questions.

T H O M A S H . S . V A N R O D E N, called and duly sworn as a witness on behalf of the People, testified as follows:

(The witness gives his residence as 207 West 144th Street.)

DIRECT EXAMINATION BY MR. EDWARDS:

Q Mr. Van Roden, what is your profession? A Practicing law.

Q And you have been admitted to practice for how long?

A 1877.

Q Mr. Van Roden, when did you first meet Mr. Harney?

A I think in the month of July last.

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Q How did you come to meet him? A I had a client who desired a loan on some property in West Virginia, and he sent me a clipping from a paper, an advertisement.

Q An advertisement? A Yes, with the suggestion that I call, and I called.

Q What was that advertisement, if you recollect? A Well, I don't remember the substance of it, except I remember the beginning of it, "Out of Town".

Q How was it signed? A I couldn't tell you.

Q As a result of reading that advertisement, you went somewhere? A I called on Mr. Harney.

Q Where did you go? A To his office, 50 Church street.

Q And you met Mr. Harney? A I met Mr. Harney.

Q And after that did you go again to Mr. Harney with Mr. Smith and Mr. Cummings? A I went with Mr. Smith, I think I was there on an occasion afterwards when Mr. Cummings and Mr. Smith were both there.

Q These gentlemen cannot hear you? A I went with Mr. Smith, I think; I went either with Mr. Smith or suggested that Mr. Smith go there, either one or the other, I don't remember that. I remember being present on one occasion with both Mr. Smith and Mr. Cummings.

Q Did you ever have any talk with Mr. Harney about a loan he was negotiating concerning with Mr. Cummings in Vermont? A Yes.

Q Well, now, can you tell us about when that conversation

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was? A If I remember, it was in July last.

Q And what was the substance of that conversation, if you recollect it? A I think Mr. Smith furnished me with a general description of the property and photographs.

Q Yes? A And I took them to Mr. Harney.

Q You will have to speak more distinctly. I, even knowing what you are saying, can hardly hear you, and these gentlemen I am quite sure cannot. A I had a description of the property of Mr. Cummings, together with the photographs; I took and submitted them to Mr. Harney.

Q Yes. A Mr. Harney looked them over and he thought they looked pretty well, but he said he wished to see the principal.

Q And after that you sent Mr. Cummings to him? A Mr. Smith went in the meantime, and I understood Mr. Smith introduced Mr. Cummings.

Q Now, what I want to get at is whether later on you had a talk with Mr. Harney with respect to this particular loan to Cummings? A I had a talk with him in reference to the closing up of the matter.

Q About when was that? A In August.

Q In the latter part of August? A Latter part of August.

Q What was that conversation? A He told me that the examination of the title had been made, that there was a cloud upon the title but that they were about having it removed.

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Q Yes? A And he says, "I have a certified check in my safe for \$60,000, I am ready when it is cleared up".

Q And was that the last talk that you had with Mr. Cummings about that particular loan, with Mr. Harney, I should say? A I met him once afterwards, I think in the hall of the building, 50 Church street.

Q Did he at that time say whether or not the Cummings loan had been closed? A No, I did not understand from him it had.

Q You did not understand that it had? A No.

Q That was the last time you saw him? A Yes.

Q That is all.

MR. HAIRE: No questions.

THE COURT: Suppose we now suspend until ten minutes after two? Or can we be back by two sharp?

MR. HAIRE: I would prefer ten minutes after, your Honor.

THE COURT: Very well. Gentlemen, we will now suspend until ten minutes after two.

The same admonition holds throughout all the case, you are not to make up your minds as to the guilt or innocence of the defendant until you have heard all the evidence, and receive _____'s charge.

(The Court then took a recess until 2:10 o'clock P. .

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Q Yes? A And he says, "I have a certified check in my safe for \$60,000, I am ready when it is cleared up".

Q And was that the last talk that you had with Mr. Cummings about that particular loan, with Mr. Harney, I should say? A I met him once afterwards, I think in the hall of the building, 50 Church street.

Q Did he at that time say whether or not the Cummings loan had been closed? A No, I did not understand from him it had.

Q You did not understand that it had? A No.

Q That was the last time you saw him? A Yes.

Q That is all.

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(The Court then took a recess until 2:10 o'clock P.

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AFTER RECESS. TRIAL RESUMED.

WILLIAM DOUGLAS MOORE, called as a witness on behalf of the People and duly sworn, testified as follows:

(The witness gives his residence as Bloomfield, New Jersey.)

DIRECT EXAMINATION BY MR. EDWARDS:

Q Mr. Moore, what is your profession? A Attorney and counsellor at law of the State of Pennsylvania and also the State of New York.

Q When were you admitted to practice in the State of Pennsylvania? A February, 1889.

Q Are you familiar with the official laws of the State of Pennsylvania, the publication thereof? A Yes, sir.

Q I show you a book and ask you what that book is? A It is an official copy of the laws of the State of Pennsylvania of 1832.

Q Are those statutes still in force in the State of Pennsylvania? A Yes, sir.

Q I call your attention particularly --

BY THE COURT:

Q (Interposing) 1832, is that? A Yes, sir.

BY MR. EDWARDS:

Q I call your attention to page 135 of this volume entitled number 80, an Act relation to Registrars and Registers!

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Courts, and ask you whether or not that statute is now in force in Pennsylvania? A Yes, sir, I understand it to be, with several modifications.

MR. HAIRE: I move the answer be stricken out as not responsive, that he understands it to be, he don't know.

MR. EDWARDS: I think that is about all any lawyer can testify to as to the condition of any statute law of any State.

THE COURT: Yes.

MR. EDWARDS: I offer that act in evidence.

THE COURT: Well, the substantial part of it, or that particular part of it you refer to, ask him if that is still in force and effect. It may be that all the statute is not material to this case. I do not know what the statute is.

MR. EDWARDS: I refer particularly to that portion of the statute providing for the keeping of records by the Register.

THE WITNESS: That is still in force.

MR. HAIRE: I object and move to strike out the answer.

Objection overruled. Exception.

Q That portion of the statute is still in force? A Yes, sir.

Q I now show you page 190 of this same volume, entitled number 99, an Act relating to Orphans' Courts and ask you

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whether or not that act is still in force in the State of Pennsylvania?

Same objection, same ruling and exception.

A Yes, sir.

THE COURT: Is that the laws of 1832?

MR. EDWARDS: Yes, sir, the same volume. I offer these two acts in evidence.

MR. HAIRE: Objected to.

THE COURT: Well, what part of the acts?

MR. EDWARDS: The portions which I refer to in the first act, number 80, relating to Registers and Registers' Courts, those portions which refer particularly to the duties of the Register to keep certain records with respect to estates, testate and intestate, and as to letters testamentary and trusteeships and so on.

MR. HAIRE: Objected to as incompetent and not properly proved.

THE COURT: What is the ground of the objection?

MR. HAIRE: It is not properly proved, not properly verified as being the law.

THE COURT: Well, does the book itself purport to be issued by authority of the Secretary of State of Pennsylvania?

MR. EDWARDS: It is entitled "The Laws of the General Assembly of the State of Pennsylvania passed by

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the Session of 1831 and 2, in the 56th year of independence, and then follows the name of the publisher and the date, and the witness has testified that this is an official publication of the State of Pennsylvania.

BY MR. EDWARDS:

Q That is correct, is it not? A That is correct.

MR. HAIRE: I still object, your Honor, on the same grounds.

BY THE COURT:

Q And that volume for instance would be admitted in evidence under the laws of the State of Pennsylvania? A Yes, sir.

MR. HAIRE: That question is objected to and I take and exception.

THE COURT: Yes, objection overruled and exception.

MR. EDWARDS: I now offer in evidence the act entitled number 99, the act relating to Orphans' Courts on page 193 of the same volume.

MR. HAIRE: Objected to as not properly proven.

Objection overruled. Exception.

(Received in evidence respectively as People's Exhibits 16-A and 16-B.)

BY MR. EDWARDS:

Q I show you another volume and ask you what that is?

A That is an official copy of the laws of the Commonwealth of Pennsylvania for the year 1844.

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Q. I call your attention particularly to page 527 of that volume entitled number 342, an Act requiring Registers for the Probate of Wills and granting letters of administration to keep a docket for certain purposes, and ask you whether or not that act is still in force in the State of Pennsylvania?

MR. HAIRE: Objected to, the witness is not qualified to give such testimony.

THE COURT: Well, you may examine the witness in regard to his competency as an expert, as an attorney and counsellor at law for the State of Pennsylvania. Is there any other way to prove the law except by the volumes themselves purporting to be issued by authority of the State, or by the testimony of men learned in the law of that particular state? I think probably we will admit that the laws of the various states are different, and we cannot depend upon the laws of New York to determine what the laws of Pennsylvania or Vermont may be. That is sound law, is it not, or do you dispute that? Objection overruled.

MR. HAIRE: Exception. I do desire to examine, if your Honor please, as to his competency.

THE COURT: Yes, as to his qualifications, go right ahead.

BY MR. HAIRE:

Q. When were you admitted in the State of Pennsylvania as an attorney and counsellor at law? A. February, 1889.

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Q How long did you practice in that state? A About three or four weeks.

Q Three or four weeks, and then you moved where? A New York.

Q And you have been there ever since? A Yes, sir, that is my general practice and business has been here.

Q You practiced in how many cases, how many did you have in that three or four weeks in Pennsylvania? A You mean cases to try in court?

Q Yes. A None.

Q And were you a graduate of a law school or college? A No, sir.

Q You studied in a law office in Pennsylvania? A Yes, sir, that was the custom in those days.

Q How long did you live in Pennsylvania previous to your admission? A Since 1866 when I was born.

Q And you have not practiced any there since leaving there? A Not directly.

Q Have you ever had a case there involving any of the propositions of law which you have referred to in the books? A Yes, sir.

Q When? A Last February.

Q What was that, what kind of case? A Probate of my father's will, or not last February, 1910.

Q Did you handle it personally or did you have a local

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lawyer in Pennsylvania handle it for you? A A local lawyer, Mr. E. Clinton Rhodes of Pennsylvania.

MR. HAIRE: I submit, your Honor, the witness is not qualified.

MR. EDWARDS: May I go a little further?

THE COURT: Yes.

BY MR. EDWARDS:

Q Since you have been practicing in New York have you acted as counsel in Pennsylvania matters? A Quite a number of times.

Q And during the entire period since you came to New York have you done that? A Off and on, various times, I have had a number of matters.

Q And in that way have you kept yourself familiar with the statute law of Pennsylvania and what statutes were in force and were not in force? A Yes, sir.

Q And you are familiar with the official publication of the laws such as these that we have produced here? A Yes, sir.

Q And you know whether or not these volumes which we have referred to in your testimony are official publications of the laws in the State of Pennsylvania? A Yes, sir.

Q And that they are generally accepted and admitted as evidence of those laws in that State?

MR. HAIRE: I object to that question, generally accepted.

THE COURT: Well, what the Courts of Pennsylvania

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accept as official statute law --

MR. EDWARDS: (Interposing) May I change the form of the question a little bit?

THE COURT: Yes.

Q Are these volumes the volumes of the laws which are commonly admitted in evidence of the existence of the law in the courts of Pennsylvania?

MR. HAIRE: That question is objected to.

THE COURT: Why?

MR. HAIRE: The word "commonly".

MR. EDWARDS: Your Honor, that is the language of the Code of Civil Procedure under which we are examining this witness.

THE COURT: Objection overruled and exception.

MR. HAIRE: I take an exception.

A Yes, sir.

MR. HAIRE: I still renew the objection.

THE COURT: If the witness is a member of the bar of Pennsylvania, a member of the bar of New York and of New Jersey --

MR. HAIRE: Not of New Jersey.

BY THE COURT:

Q Are you not a member of the bar of New Jersey? A No, sir.

THE COURT: Why, if he has run down these laws to see

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whether they still, to see whether those particular parts of them are still in force and effect, in that event his testimony would be competent.

BY MR. EDWARDS:

Q Have you at the request of this office run down those laws, Mr. Moore? A I have.

Q And how have you found, that they are still in force?

A Yes, sir.

MR. HAIRE: I renew my objection on the same ground.

THE COURT: No, objection overruled, and you can have an opportunity at any time to point out any error by running down the law yourself.

MR. HAIRE: Exception.

BY MR. EDWARDS:

Q I now call your attention again to page 527 of the volume of the Laws of 1844 of the Commonwealth of Pennsylvania, entitled number 342, an Act requiring Registers for the Probate of Wills and granting Letters of Administration to keep a docket for certain purposes, and ask you whether or not that act is still in force in the State of Pennsylvania?

MR. HAIRE: Same objection as to the competency of the witness.

Objection overruled. Exception.

A Yes, sir.

Q Do you know whether or not the various counties, the Orphans' Courts of the various counties and cities have taken

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advantage of the various provisions of this last act?

MR. HAIRE: I object to that.

THE COURT: Well, that may be a conclusion.

MR. EDWARDS: I asked him whether or not he knew, that calls for yes or no.

THE COURT: If they have done certain things under it, you may ask him that.

MR. EDWARDS: Well, I ask to have that act marked in evidence.

MR. HAIRE: Objected to as incompetent, immaterial and irrelevant and not properly proven.

Objection overruled. Exception.

(Number 342 on page 527 is received in evidence as People's Exhibit 17.)

Q Mr. Moore, have you in the course of your practice had occasion to search the Registers' Records of the State of Pennsylvania with special reference to probate proceedings? A Yes, sir, quite frequently while I was studying law and afterwards, after I was admitted.

Q And are you familiar with the form in which those records are kept in the Register's Courts? A Yes, sir.

Q Can you tell us briefly how that is done?

MR. HAIRE: That is objected to. It pertains to various counties. It does not necessarily follow that the practice is the same in all the counties.

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THE COURT: Well, if that is a general law, if the law is general to the State I think we will have to assume that it is general to all of the counties, if it is a general statute, is it?

MR. EDWARDS: Yes, sir.

MR. HAIRE: Then, in that case, how is this question material?

THE COURT: For instance --

MR. EDWARDS: Of course your Honor appreciates I have to call another witness who searched the records and I simply want to show that proper records were searched when that witness comes on the stand.

THE COURT: Yes, objection overruled.

MR. HAIRE: Exception.

(Last question repeated by the stenographer)

MR. HAIRE: The further objection is, that that calls for the interpretation of the law or the manner of carrying it out by certain individuals in courts of record, and is not the proper manner to prove that.

THE COURT: No, objection overruled and exception.

A The Register of Wills in each county keeps a book which is called an index of wills and an index of letters of administration. In some counties it is kept, the record is kept in one volume. In some counties they have a separate volume, as in Philadelphia, where there is a lot more business, for wills,

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a separate volume for letters of administration. In those volumes of indexes the names of decedents are kept in alphabetical order and written in across a line, usually a good sized book, and following that are columns under which are the place, the date of the grant of letters testamentary, of the grant of letters of administration, and in case of administration, the amount of the bond, the nature of the sureties, a further blank for the date of the filing of the inventory, and several other matters of that nature in relation to the final adjustment of the estate.

THE COURT: Well now, is not the important part that in each county the Register has a record of the wills, of the letters of administration, letters testamentary and so forth? Is that not about it?

MR. EDWARDS: That is the point, sir.

THE COURT: All right.

MR. EDWARDS: That is all.

CROSS EXAMINATION BY MR. HAIRE:

Q What county have you made a search in lately? A Philadelphia.

Q What other place? A Northampton.

Q Yes, where else? A Well, not recently, but some years ago in Lehigh.

Q Yes, any besides those three? A No, sir.

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Q Never in Pittsburg? A No, sir.

Q You do not know anything about the manner of conducting a search there, do you, from experience? A Not from experience, no, sir.

MR. HAIRE: 2Now, let me see the two volumes that you introduce.

Q By whom were you employed to look up the law in this matter, in this particular case? A I don't know that I would call it an employment. It was a request that I do it.

Q By whom? A By Mr. Leo, and subsequently by Mr. Edwards.

BY THE COURT:

Q By Mr. Leo, Assistant District Attorney here, assisting in the conduct of this case? A Yes, sir.

BY MR. HAIRE:

Q Now, did Mr. Cummings see you in regard to it? A No, sir, I am not acquainted with him.

Q When of late was your attention first called to Act number 342 referred to in the Laws of 1844? A Directly when I was in Philadelphia last Friday I entered the office of Mr. E. Clinton Rhodes, a friend of mine, an old acquaintance, and examined the volumes in his office, first looking up Purden's Digest, which is a standard work, a recognized authority in Pennsylvania. I had the edition of 1910, which I understand is the latest edition published. That called my attention to that Act. It is printed there in full.

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Q Haven't there been any amendments of this Act since the 29th of April, 1844? A Not that I know of.

Q Now, there are three sections -- A (Interrupting) That is not specifically stated ^{to be} ~~the~~ amendments to the act.

Q Now, there are three sections, one two and three in this Act? A Yes, sir.

Q Have you examined for the purpose of ascertaining whether there were any amendments to Section 1? A Yes, sir.

Q Have there been any amendments? A No, sir, I found none.

Q How? A I found none.

Q As to Section 2, any amendments in regard to that?

A No, sir.

Q How? A No, sir.

Q How about Section 3? A No, sir.

Q No amendments? A No.

Q Then according to your best judgment this Act of the 29th of April, 1844 has never been amended? A I say that not directly as an amendment. There have been other laws passed which have amplified and modified the methods of conducting these offices in some slight degree, but no modification, and that rule still holds and is in practice in all the counties.

Q Has not any part of it been superseded by other Acts?

A No, sir, not that I know of, and I am satisfied that it has not.

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Q Did you examine so that you know and are prepared to swear that there has been no amendment or modification of this Act? A Yes, sir, not so far as those records are concerned, the method of keeping the records. I would say that it has been amended in this way or modified, what I referred to before, there is an Act, I think it was in 1850 something, which provided that the Register of wills of the City of Philadelphia should keep a special record in which he was required to enter all matters pertaining to the collateral inheritance tax. That was a special Act referring to this. There have been some other Acts which I found modifying or amplifying these laws which have been marked in evidence here, but nothing which has superceded them.

Q You have none of those books here showing any of these modifications, have you? A No, sir.

Q Now, Act number 80, Laws of Pennsylvania, enacted at the session of 1831 and 32, you have identified, haven't you? A Yes, sir.

Q Now, do you know how many sections there are in that act? A I have not charged my memory with the number.

Q Any idea? A Well, it would be merely a guess. It is a long Act. I couldn't tell you.

Q Well, give us a guess?

MR. EDWARDS: I object to that.

THE COURT: No.

Q Well, give us your best judgment?

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MR. EDWARDS: I object to that.

THE COURT: You have it in your hand, why can you not tell him?

MR. HAIRE: Your Honor, this man is attempting to testify as to these Acts and whether they have been amended or not. Now, I want to know to what extent, and I am testing thereliability of his testimony.

THE COURT: Well now, Colonel Haire, suppose you were put on the stand as an expert, as you could be with regard to the laws of New York, and they should ask you about the laws affecting Surrogates or Registers records, and you know just what they are, but if I should ask you how many chapters are there or how many sections, you would be all at sea. I would not charge my memory with that, I would not care a fig how many sections there were in regard to the Register's office, and yet I know it, and I have searched titles hundreds of times, and so have you, and we know just where to go and get the facts and how many laws there are in regard to it, yet I do not know how many sections there are.

MR. HAIRE: But here is a case where the witness has lately been called upon to look it up and see whether there have been any changes or modifications of the law, ninety years of age or eighty odd.

THE COURT: Well, he says he does not know how many

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sections there are there and we won't have him guess at it because we do not want that sort of testimony. Suppose you then argue to the jury that he does not know what he is talking about, because he does not know the number of sections, you would have all the advantage of that.

BY MR. HAIRE:

Q How many of these sections have been modified by Acts of the Legislature since 1832? A I cannot tell you because I looked up this Act for the special purpose of seeing whether there had been any modification of the method of registering, docketing and indexing the records of wills and administration. Further than that I did not go. The Act applies to other matters.

Q Now, Section 99, this Act 99 which you have testified in regard to, did you make an examination to see what changes had taken place in that connection? A I can't say, because I don't know what Section 99 is or refers to. I would have to have the book before me to do that.

(The witness is handed book.)

THE COURT: If it does not have reference to the keeping of records there Colonel Haire, I would not go into that.

MR. HAIRE: Well, it has been introduced in evidence, and I take it for granted it must be material.

THE WITNESS: If Section 99 does not refer to the

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matter of indexing records I did not look it up, because as I said before I only looked up with reference to that.

MR. EDWARDS: The only reason I offer that particular Act was for the purpose of showing that the Orphans' Court of Pennsylvania was a court of record.

BY MR. HAIRE:

Q Do you mean to say that those two books introduced here are the latest acts of the Legislature of the State of Pennsylvania, so far as you know, in relation to the method of docketing wills? A Not all of them, no, sir.

Q Oh, not all of them? That is all.

REDIRECT EXAMINATION BY MR. EDWARDS:

Q But they are the statutes still in force with respect to the particular class of records we have been discussing here?

A Yes.

Q They do not amend the Acts, I take it, as frequently in Pennsylvania as they do in New York?

THE COURT: Well, if they did, I presume we could go back further than that in regard to filing of wills, could we not? And records of deeds, we might go back more than a hundred years.

MR. EDWARDS: Yes, sir.

MR. HAIRE: Now, I move to strike out the entire testimony of this witness upon the ground that it is in-

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competent.

THE COURT: No, I think that under Section 942 of the Code of Civil Procedure, that the books may be received in evidence and the testimony of the counsellor is that he, as an admitted practitioner saw, and that he has run down specially these statutes, and he has referred us to Furden and so forth, and he has told us how he did, and I think that the evidence ought to stand.

MR. HAIRE: Give me an exception.

THE COURT: Yes, you have your exception.

LEOPOLD LEO, called and duly sworn as a witness on behalf of the People, testified as follows:

DIRECT EXAMINATION BY MR. EDWARDS:

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

A Yes, sir.

Q Admitted to practice in the courts of record of the State of New York? A Yes, sir.

Q And have been for how many years? A Ever since October, 1880.

Q You are at present a deputy assistant district attorney in the office in this county? A I am, sire.

Q Did you go to Allegheny County, City of Pittsburg in Pennsylvania and examine certain records there? A I did, sir.

Q Did you examine the record of the Register of Wills and

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the clerk of the Orphans' Court in that City?

MR. HAIRE: I object, if your Honor please. The proper person to prove the contents of the records would be some officer in the Department of Records where such things should be properly kept.

MR. EDWARDS: I submit that under the authority of this statute, a negative certificate from such official is not evidence.

THE COURT: Yes, we had that recently where records in Fairfield County, where an official certificate of search by the Clerk of Fairfield County in Connecticut was admitted in evidence, and it was held by the Appellate Division in that case that the person who made the search ought to have been put upon the stand so as to give the defence an opportunity to cross examine him.

MR. EDWARDS: I will state that I have a certificate and here, if Colonel Haire would prefer that manner, I will be very glad to offer it, and save examining the witness.

MR. HAIRE: Will you give me an opportunity to read this?

THE COURT: Certainly.

MR. HAIRE: I object to the introduction of that paper in evidence, not upon the ground --

MR. EDWARDS: (Interposing) If Colonel Haire objects to it I will not offer it.

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THE COURT: Well, you offer it and then, you offer in evidence the official search of the, what is it?

MR. HAIRE: I simply object to it as being incompetent as a piece of evidence in this case, that is all, and object to its materiality, but I do not object to its form, nor to its authenticity as coming from there. I only object to it as to its materiality.

MR. EDWARDS: You have no objection to it as to its competency, nor upon the ground that I haven't produced the witness who made the examination?

MR. HAIRE: No, sir, we waive those grounds.

THE COURT: Then the defendant does not object to it upon the ground, or because the officer who made the certificate is not present in person. That is about what he waives.

MR. EDWARDS: And he specifically waives that objection?

THE COURT: Yes, and you offer it in evidence and it is received in evidence.

MR. HAIRE: Your Honor overrules my objection?

THE COURT: Yes, I overrule your objection and you take an exception.

(The paper is marked People's Exhibit 18.)

MR. EDWARDS: Do I understand that obviates the necessity of my further examining Mr. Leo, who is now on

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the stand and who has actually searched these records?

MR. HAIRE: We waived the production of the witness who examined the records.

THE COURT: Well then, that is all right. I do not think then you need anybody else.

(Mr. Edwards reads People's Exhibit 18 to the jury.)

MR. EDWARDS: Mr. Haire, do you make any question as to the sufficiency of the proof that Pittsburg is in Allegheny County, Pennsylvania?

MR. HAIRE: No.

THE COURT: I think these geographical questions, the Court will take judicial notice of, and at the same time there is no question, I assume, but that Pittsburg, Pennsylvania is in Allegheny County, Pennsylvania.

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EDWARD D. SPEER, called and duly sworn as a witness on behalf of the People, testified as follows:

(The witness states that he resides at 609 West 137th street.)

DIRECT EXAMINATION BY MR. EDWARDS:

Q Mr. Speer, what is your business? A I am retired from business, Mr. Edwards.

Q Have been retired for some years? A About seven years.

Q A little louder? A About six or seven years ago last October, 1906 it was, the first of October.

Q Have you ever met this defendant, Mr. Harney? A Yes, sir.

Q Can you state about when you first met him? A I think about the latter part of July of 1912, this last July.

Q Where did you meet him? A At his office.

Q How did you come to go to his office? A I went there to get a loan on my daughter's property in Yonkers.

Q What I mean is, how did you come to go to Mr. Harney?

A I went there to get -- oh, I was sent there to him by a broker in the Singer Building, to go to Mr. Harney's for a loan on this property of my daughter's in Yonkers.

Q Did you see an advertisement in the paper at all? A I did not; no, sir.

Q When you got there to Mr. Harney's office, what if any conversation did you have with him? A I went to him and told him what I wanted, a loan of \$8,000 on this property of

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my daughter's.

MR. HAIRE: Your Honor, I object to this as in no wise connected with the case at bar.

THE COURT: It goes to the bona fides of the transaction in question, and the intent with which the defendant entered into and carried out the arrangement with the complaining witness in the case at bar, only on the question of intent and bona fides.

MR. HAIRE: Exception.

THE COURT: Now, the theory of it is this: Of course, no man can enter into the mind of another man and tell what he is thinking about; the only way to do is to get at his intent ^{by the} ~~and~~ surrounding circumstances.

MR. HAIRE: Exception.

Q Now, Mr. Speer, will you go on and tell us what conversation you had with Harney at that time? A I went to him and told him that I had been referred to him, and asked about making a loan for \$8,000 on my daughter's property in Yonkers, and he stated to me that he was the representative of an estate, of a rich gambler's estate in California, worth several millions of dollars.

Q In California, he said? A In California, yes, and that they had this money to loan, that it was to be put out for the interest of the widow and her son, that the estate was in California and that --

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Q Did he give you the name of the estate, Mr. Speer?

A I beg pardon?

Q Did he give you the name of the estate? A He did not.

Q Did he tell you how much he had on hand, in funds of the estate, for loaning purposes?

MR. HAIRE: I object to that as leading.

THE COURT: Well, yes objection sustained. Ask him what was further said.

Q Yes; just go on and tell us what further was said by Mr. Harney? A Mr. Harney said he was representing the estate, and he had about a million dollars to loan, and that the estate belonged to the widow and her son, but he did not state where they lived or anything of the kind. He stated the widow and her son, and asked me where the property was situated. I gave him a description of the property. He asked me the value of it and I told him approximately what I thought the value was. Well, he said he thought that would be all right, he thought he would go and look at the property.

Q Now, at that conversation, Mr. Speer, did he say anything to you in respect to whom he would deal with? A Yes, he said he would not deal with any broker.

Q Yes? A He wanted to deal directly, he would not deal through any broker whatever.

Q Did he say anything --

MR. HAIRE: Now, I object to these questions. It is

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easy enough to ask a witness what Mr. Harney said. When he has exhausted his memory, possibly --

THE COURT: Yes, all right.

MR. EDWARDS: Mr. Speer was passing on to another conversation, and I assumed I had exhausted his recollection.

THE COURT: Yes.

Q Do you recollect anything else that Mr. Harney said to you at that first conversation, Mr. Speer? A Nothing special, Mr. Edwards, at all, that I remember, that I can call to mind just now.

Q Do you recollect whether or not he said anything on the question of what the charges would be? A He said that there would be no charges whatever. He told me he would make no charges whatever for the loan. He wanted to make this loan independent of brokers. He would not deal with them at all.

Q And there would be no charges for his services? A No charges for his services whatever.

Q Did he tell you from what source he received his compensation?

MR. HAIRE: I object to these leading questions.

MR. EDWARDS: I have already exhausted the witness's recollection, so he tells me, on this transaction, on this conversation.

BY THE COURT:

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Q *Can't* you tell us all that was said and all that happened between you and the defendant? A Well, he told me that he got his compensation from the estate, that he would make no charges at all for himself, and he got his pay through the estate.

Q No brokerage? A No brokerage.

BY MR. EDWARDS:

Q Now, what was next done? A And he asked me the location of the property, and I gave him the location of it, and then he said he would go up and look at it himself personally.

Q Well, did he go and look at it? A Then some days after that he went up and looked at the property, and my daughter 'phoned me and stated that he had been there, I think it was on Sunday, if I am not mistaken -- yes, I think it was Sunday.

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

Q How long after that did you see him? A I saw him the next day, I think it was, after that.

Q Did you have a talk with him then? A Yes, sir; he told me he had been up there to look at the property, and that it was a beautiful spot, that he liked it very much, and he thought, he said he would make the loan if the papers were all correct, he would make the loan.

Q What was the next thing that was done or said? A Well, then he told me, he said that it would be necessary in that case, that there would have to be an appraisal made, and he

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referred me then to Mr. Herbert Snyder on Liberty street or Broadway somewhere, I couldn't tell you the number now.

Q Did he say anything else to you about your going to see Mr. Snyder? A When he gave me Mr. Snyder's number, I forget where it was, if, wherever his office was, but not to say that he sent me there, he particularly enjoined me upon that, not to say he sent me there. So I went back to my office and I called up Mr. Snyder by 'phone.

Q Yes? A This was on Saturday, and I told Mr. Snyder--

MR. HAIRE: Well, I object to that.

Q Well, do not tell us that. Did you finally employ Mr. Snyder to make an appraisal? A I did.

Q Did he make it? A He did, next day.

Q Did you pay him his compensation for making the appraisal? A I did.

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Q What did you pay him? A \$25.

Q After the appraisal had been made did you see the appraisal? A I saw the appraisal.

Q Had you received it from Mr. Snyder? A Mr. Snyder came to my office and delivered it to me at my office. I gave him a check for it.

Q Then where did you go with the appraisal? A I took the appraisal immediately, well, within an hour or two afterwards down to see Mr. Harney.

Q Did you show the appraisal to him? A I showed Mr. Harney the appraisal. Mr. Harney made this remark, "Why" he said, "that's a singular thing," he said, "that's just exactly what I appraised it". The amount was \$14,000, appraised for, but he said "My appraisal on the property was \$4,000 or \$5,000" -- there was a difference of \$1,000 more on the house than it was before the last, but the appraisal was exactly the same as he had set the figures on, \$14,000.

Q That is, the total was the same, but the amount he had allowed for the land and house differed a little from what Mr. Snyder made it? A yes. Then he told me "That suits me exactly, Mr. Speer." He said "I will make the loan if the papers are all right."

Q What was done with the appraisal? A Then he wanted me immediately to take the papers over to his attorney, Mr. Baker, at 115 Broadway, I think it was, and I went over to my attor-

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ney's office, Mr. Maginnis, of Maginnis & Blackwell, and they had the papers, searches, title and deeds and everything in their office, and he came over with me to Mr. Harney's office and he saw Mr. Harney and Mr. Harney told him --

BY MR. HAIRE:

Q In your presence?

BY MR. EDWARDS:

Q You were present when he said it to Mr. Maginnis?

A Yes, I was present. I heard Mr. Harney tell Mr. Maginnis the same story, that he told me, representing an estate of a million dollars, the same story exactly.

MR. HAIRE: I object to "the same story".

THE WITNESS: He asked Mr. Maginnis to take the papers over to Mr. Baker's office and give them to him, and if Mr. Baker found the papers all right he would make the loan. Then from there we adjourned, and Mr. Maginnis goes down to Mr. Baker's office and I went to my office. We left, we parted right outside the door and I went back to my office.

Q Now what was done with the appraisal, Snyder's appraisal, that was in writing, wasn't it? A Oh, yes, regular lithograph appraisal.

Q What was done with that? A Well, Mr. Harney has got that. He took it back from me, refunded me the money back on that.

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Q Yes, he has that appraisal now?

MR. EDWARDS: Have you got that appraisal?

MR. HAIRE: Yes.

BY THE COURT:

Q Mr. Maginnis was your lawyer, was he, Mr. Speer?

A Yes, sir.

MR. HAIRE: That memorandum don't go with that.

MR. EDWARDS: I would like to have that memorandum marked for identification.

MR. HAIRE: I object to that.

THE COURT: No, that is a private note.

MR. EDWARDS: Well, will the Court look at it first before you rule on it?

MR. HAIRE: That is a private memorandum.

MR. EDWARDS: It was pinned right on to that appraisal. I ask to have it marked for identification before it is returned to Mr. Haire.

THE COURT: Well, I will look at it. If it is any private memorandum you may have it.

MR. HAIRE: I do not know what it is. I did not see it. I did not intend to hand it over to him.

MR. EDWARDS: I can well believe that.

MR. HAIRE: It is something I have never seen as far as I know.

THE COURT: (After reading) I guess you will not ob-

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ject to it after you see it.

MR. EDWARDS: May I have it marked for identification?

THE COURT: No, not if Colonel Haire does not want that.

MR. HAIRE: I will consent to your putting it in evidence.

MR. EDWARDS: I will do so without any question. Will you mark both of these for identification, handed me by Mr. Haire?

(Marked People's Exhibits 19 and 20 for identification respectively)

MR. HAIRE: Why don't you offer it in evidence?

MR. EDWARDS: Because I do not want any question raised.

BY MR. EDWARDS:

Q I show you People's Exhibit 19 for identification and ask you if that is the appraisal which you have referred to?

A That is the thing exactly.

Q That is it? A That is it.

MR. EDWARDS: I offer the appraisal in evidence.

MR. HAIRE: No objection.

(Marked People's Exhibit 19 in evidence)

Q Now, we have reached the point where Mr. Maginnis had gone down to Mr. Baker's office? A Yes, sir.

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Q What was the next transaction that you had in connection with this loan? A The next transaction was, Mr. Maginnis phoned me from Mr. Baker's office what was doing down there.

MR. HAIRE: I move to strike that out.

MR. EDWARDS: Consented to.

Q Did you subsequent to that time employ Mr. Baker to search this title? A Did I?

Q Yes? A never.

Q Did you have any talk with Mr. Baker? A I had a talk with Mr. Baker, I believe after my finale with Mr. Harney.

Q Not until then? A never.

Q When next did you see Mr. Harney? A When next did I see Mr. Harney?

Q yes, sir? A I saw him the next day afterwards, after this talk, after Mr. Maginnis went down to see Mr. Baker.

Q What conversation did you have with Mr. Harney at that time? A I went down to see Mr. Harney and I told Mr. Harney what Mr. Baker had done, Mr. Baker said.

Q Just tell what you said to him? A I told him Mr. Baker had told Mr. Maginnis that the papers were all right, but he demanded of me \$80 in advance, and I refused to pay the \$80 until the loan was made.

Q Did you tell Mr. Harney anything further about what was said to Mr. Baker? A I told him that Mr. Baker -- I told him that Mr. Maginnis had gone down there and accepted the

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papers and said they seemed to be all right in every way, shape and form.

Q That is Mr. Baker had accepted the papers and said all right? A Mr. Baker said they were all right.

Q Yes. A And that he wanted me to advance him \$80. So Mr. Maginnis called me up on the phone. That's what I told Mr. Harney.

Q Yes? A And Mr. Maginnis called me up on the phone and told me Mr. Baker wanted \$80 in advance. I said "I won't pay in advance", but I said "I will guarantee the \$80, I am perfectly responsible, he can soon find out my responsibility, and whether I am good for the \$80 or not, I will pay the \$80 if the loan is made but I will not pay it in advance." Then I asked for Mr. Baker to come on the phone.

BY MR. HAIRE:

Q Is that in Mr. Harney's office? A (No answer)

BY MR. EDWARDS:

Q This is what you told Mr. Harney? A This is what I told Mr. Harney, that I told Mr. Baker to come to the phone, and I had a talk with him on the phone, and Mr. Baker told me he wanted \$80 in advance and I said "This is a very strange proceeding that you want \$80 for something you are not doing any work on; you are Mr. Harney's attorney." Well, he said, "I don't do my work for nothing, I want \$80 in advance." Then I said "We will call the deal off." Then, this is what I

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told Mr. Harney and Mr. Harney said, "Well," he said, "this is a very strange thing" he says, "I don't like that for Mr. Baker to ask \$80 in advance that way, and that is a very strange thing that he would do a thing of that kind." He seemed very much grieved over it. He says "I tell you what to do, Mr. Speer, you go down and have your attorney take the papers down to Mr. Van Damm" -- I believe that is the name, 320 Broadway, Mr. Van Damm, I think is his name, he says "You have Mr. Maginnis go down to Mr. Van Damm and give him the papers and things will be all right then."

Then I went up and saw Mr. Maginnis, and Mr. Maginnis goes down to see Mr. Van Damm, and Mr. Van Damm, I don't know what you call him, Mr. Van Damm gave him some song and dance, what it was I don't know --

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MR. HAIRE: Well now, wait.

Q Well, when did you next see Mr. Harney? A Then I saw him, after the papers were returned from Mr. Van Damm's office again, I went down to see Mr. Harney again. Then Mr. Harney says, "Now, Mr. Speer, I like that property and I will make that loan, but of course I have to go through red tape things with my client, the parties I represent, and they want some lawyers in it" or something of the kind, and he said "I will get another attorney" and I says, "When will you do that?" Well, he said, he would take action on that right away.

Then I go down and see him again, and then I seen him again, and again and again, and it is attorney now and attorney again, and he is all the time putting me back, and never coming to a conclusion, so I got tired, disgusted and worn out. It went on for several weeks, and then I wrote him a letter, or calling him by phone I told him I wanted to see him in my office very particularly and he said he would come up there and he came up. Now, do you want to know what took place then?

Q What conversation did you have with him then? A He came to my office, and I says, "Mr. Harney you have been temporizing with me for weeks and weeks, and I am getting tired and disgusted with the whole thing". I says, "You are not only trifling with me, but you are trifling with others." Now, I said, "I tell you what I propose, I propose that you pay me back that \$25 that I paid Mr. Snyder for that appraisal, and I pro-

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pose if you don't do it I will make it pretty hot for you."

Well, he said, Mr. Speer, if you feel that way I will give you \$25". I says "That's all right." Well he says, "Where is the appraisal?" I says, "I am very sorry, I have not got the appraisement here with me, the appraisement is down at Mr. Westervelt's office on Broadway. I was trying to negotiate a loan down there. well, he says, "I want the appraisal". Well, I says, "Mr. Harney you know me enough to know that I will return the appraisement to you tomorrow." He says, "No, I want the appraisement first before I give up \$25." I says, "All right then, I will get you the appraisement," and then he left the office, and he hadn't barely got down to the street cars or if he took a street car or the subway, whatever it was, my son-in-law came in the office and I told him the circumstances, I says --

MR. HAIRE: Wait a moment.

BY MR. EDWARDS:

Q Wait a moment. You had a talk with him? When did you finally get back the appraisal? A Now, I am telling you --

Q But you must not tell me what you said to anyone else when Mr. Harney was not present? A Oh, Mr. Harney was not present. Well, I sent my son-in-law down there and he couldn't get it because he wanted Mr. Snyder's bill for it. To get the appraisement from Mr. Westervelt I gave him an order for the appraisement and then he wanted the bill. He came back to

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the office and told me, and then I goes down to Mr. Harney's office myself. I took the appraisement with me and I handed him the appraisement and when I handed him the appraisement he gave me \$25 back.

Q I now show you People's Exhibit 20 for identification and ask you if you know what that is? A Well, I think I know, that is my handwriting, September 27, 1912.

Q Well, do not read it, Mr. Speer. What is it? A Let me read it. It is \$25 refunded me for that appraisement.

Q Well, is that the receipt you gave him for the \$25?

A That's the receipt I gave him.

MR. EDWARDS: I offer the receipt in evidence.

MR. HAIRE: No objection.

(Marked People's Exhibit 20 in evidence.)

THE COURT: That is produced by the defendant?

MR. EDWARDS: Yes, produced by the defendant.

MR. HAIRE: That don't include the memorandum down at the bottom.

THE COURT: No, you had better tear that off.

MR. EDWARDS: Well, if you want to tear it off.

MR. HAIRE: Yes, I do not know what it means anyhow.

(Mr. Edwards Reads People's Exhibit 20 to the jury.)

BY MR. EDWARDS:

Q Now, Mr. Speer, when did you next see Mr. Harney?

A When Mr. Harney handed me the \$25 I put it in my pocket. I

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said "Mr. Harney, a word to the wise is sufficient, I want you to come to my office and see me tomorrow". I believe he took the hint, he came up the next day.

Q What conversation did you have with him then, Mr. Speer?

A Well, I will give you the conversation, I said, "Mr. Harney" I says, "you accepted this loan on my daughter's property, you told me dozens of times that you would accept it, you were almost ready to pay the money repeatedly, and you have been dilly-dallying and fooling with me so long you not only told me that, but you told Mr. Maginnis, you told Mrs. Briggs, you told my son-in-law, Mr. Herter that you would accept the loan" and I said "The consequence is that I paid \$160 for commissions out on the --

Q On the loan? A On the loan, yes, \$160 commission on the loan, "And I propose right now" --

Q You referred then to commissions you had paid your own broker who introduced you to Mr. Harney? A Yes, the brokerage was \$160, and I said, "I propose right now that you pay me back that one hundred and sixty". I says, "I am on to your scheme thoroughly". I says "More than that, a good many others are on to it. I propose with them to commence proceedings against you criminally and also against your attorneys for disbarment in this matter".

Now, he says "Mr. Speer, I will tell you, if I pay you back that \$160, will that end the matter?" Well, I says,

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"Mr. Harney, so far as I am concerned I am perfectly willing, it will end the matter so far as I am concerned", and he says, "Now, you seem to be a pretty fair kind of a man". I says "Yes". He says, "Is there anyone around here in the office?" I said "No one at all, not a soul." He says "Pull down that window, please, will you, I want to make you a confession."

I pulled down the window and he drew his chair up to me and says "Mr. Speer, I tell you, I have been a sharp^{er} and a crook for a long while." He says, "I have made a great deal of money for myself and confederates in this matter", and he says "You are the first man that ever got on to it," and he says "I will tell you", he says, "I am willing to pay you back this \$160 in a week from now if that is satisfactory to you".

He says, "Mr. Harney, that is perfectly satisfactory, provided you keep your word in the matter. You have never kept it in any other matter". He says "I will do it, I will pay you a week from now." I says "That's all right." Now, he says, "I will tell you once more", he says "I don't represent any estate whatever, I never made a loan" and he says "It's the easiest thing in the world to get in the suckers on this" and he says, "I would like you to join me in on it."

MR. EDWARDS: Your witness, Mr. Haire.

CROSS EXAMINATION BY MR. HAIRE:

Q You had to tell Mr. Harney a falsehood to get him to loosen up, didn't you? A Had to tell what?

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Q Had to tell him a falsehood? A Had to sell him? I don't understand you, Colonel.

Q You had to tell Harney a falsehood, didn't you, about that \$160? A Had to tell him a falsehood?

Q Yes. A Indeed I did not.

Q You mean to say that you, before any loan was made or acceptance of it given even that you advanced \$160 to a broker?

A I paid \$160 right straight out to a broker.

Q To whom did you pay it? A To the broker.

Q Who is the broker? A Mrs. Beebe.

Q Has she paid you that money back? A Never in this world.

Q Did you ask her for it? A Never did.

Q You wanted to blackmail this man out of \$160, didn't you?

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

THE COURT: Well, he may ask it.

MR. EDWARDS: The characterization of blackmail is what I object to, not anything else.

THE COURT: Oh, no, he asks him that question.

MR. EDWARDS: But I submit he is not entitled to characterize the transaction in that way.

BY THE COURT:

Q Well, did you endeavor to blackmail the defendant, is the question put you? A Never in this world, your Honor. God forbid anything of the kind, I don't have to blackmail any man.

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BY MR. HAIRE:

Q Did you say to him "We are going to expose this in the paper and you are going to get a thorough ventilation unless this money is returned to me"? A Not "Unless this money is returned to me". I says "We are going to make a thorough expose of this of you criminally and disbarment proceedings against your different attorneys. That's what I told him.

Q But you told him if he paid it within a week it would be all right? A We proposed to pay it within a week. I said "Yes, it will be all right."

Q You made an affidavit in connection with the application for the warrant in this case, did you not? A Yes, sir.

Q I show you this paper and ask you if that is the affidavit you then made signed by you? A Well, what about this, Colonel?

Q Did you sign that and swear to that affidavit? A That's my signature, yes, sir, I stand right by it.

Q And you swore to it? A Yes, sir.

Q Now I read from the police court or magistrate court record, page 7.

THE COURT: Is it in evidence?

Q Being affidavit admitted to have been made and signed by the affiant.

THE COURT: Well, do you offer it in evidence?

MR. HAIRE: Well, I will offer the whole thing. I was only going to cross question the witness regarding certain matters in it.

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MR. EDWARDS: I have no objection to his offering it in evidence.

THE COURT: Yes, if you offer it in evidence you can read any part of it.

MR. HAIRE: Well, I am willing to offer the whole affidavit in evidence.

THE COURT: Very well, mark it.

(Marked Defendant's exhibit A.) pages 1 to 8.)

Q I call your attention to your affidavit, page 5, near the top, second line and ask you if you remember swearing to this, "When he" -- referring to Harney -- "When he came I said to him, Mr. Harney, I you have been temporizing with me for about six or eight weeks or longer and I am tired of you" -- is that right? A That is my first interview, yes, sir.

Q "I think I am on to your game in every manner and form. I am in possession of facts now that you not only trifled with me but with others, and I propose right now that you pay me back the \$25 that I paid for this appraisal of yours. If you don't do it, I will make it very hot for you. He said, 'Mr. Speer, if you feel that way, I will be willing to pay you the \$25', he said he wanted to pay me the \$25 but first asked me for the appraisal of Snyder. I did not have it with me" is that right so far? A That's correct. I believe that's my testimony right now verbatim, almost.

Q Well now, go to the top of page 6, after telling about

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the appraisal and where it was and so forth, and getting possession, you said "I then immediately called said Harney up on the telephone and caught him in and told him that Mr. Snyder had never given me a bill for this appraisal; that he handed me the appraisal and I turned to my check book on the Corn Exchange Bank and gave him my check for \$25" -- Do you hear me? A I hear you, yes, sir.

Q (Reading) "Knowing that his endorsement would be the receipt for the money; that I did not want any more parleying about this and I wanted my \$25. Said ^{Harney} immediately then told me to bring it down to the office and he would give me the \$25. I immediately went down to said Harney's office and said Harney handed me \$25 and he took Mr. Snyder's appraisal." -- That is the twenty-five for which you gave this receipt it it?

A That is the receipt.

Q Was that up in his office or your office? A That was at Mr. Harney's office.

Q Well, I see it is on your letter paper. Had you written a receipt before you left the office? A I wrote the receipt up there, understand?

Q At Harney's office? A Now, wait one minute, please, I wrote the receipt up at my office and gave it to my son-in-law to take down to get the \$25. He took it down and he wouldn't give me \$25, because he couldn't give him \$25 because he didn't have Mr. Snyder's bill.

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Q Well, never mind about that. A Then I took it and went down myself and it is on my letter head.

Q "I immediately went down to said Harney's office and said Harney handed me \$25 and he took Mr. Snyder's appraisal. After putting the money in my pocket I said to said Harney these words, 'Mr. Harney, a word to the wise is sufficient, I think it is greatly to your interest to come to my office and have a consultation with me'" -- Is that right? A That's correct, yes, sir.

Q Now, why after getting all you had demanded from Mr. Harney did you tell him you thought it was wise for him to come to your office? A Do you want to know why?

Q Yes. A Just because I wanted to tell him about this \$160, I proposed he should pay it back.

Q \$160 brokerage that you had paid for a loan before it was ever made? A The loan, when a loan is accepted you are supposed to pay the brokerage.

Q You swear to that? A When he had accepted the loan I paid the brokerage. They demanded, I paid it.

Q That is what you swear to? A Yes.

Q And you never had an acceptance of this loan, did you? A Yes, sir, I did.

Q In writing? A No, sir, he wouldn't give anything in writing.

Q Because he simply told you he would make the loan you

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went and gave this woman \$160? A We supposed Mr. Harney was a man of his word.

Q How did you pay this \$160? A Paid it right out in checks.

Q Have you got them? A I have the checks, yes.

Q What is the lady's name? A Mrs. Beebe. There were two checks and the balance was in, she preferred to use about twenty-five or thirty in cash and I have the other two checks right on the Corn Exchange Bank.

Q What dates did you pay them these various sums? A I couldn't tell you now. I can get the checks and show them to you. I offered to show them to Mr. Harney when he was there.
BY THE COURT:

Q Did you show him the cancelled checks before he paid you, refunded you the \$160? A I beg pardon?

Q Did you show the defendant Harney your cancelled checks for \$160 that you had paid Beebe before he paid you or refunded you the \$160? A Oh, he never refunded the money.

Q He never refunded the \$160? A Oh, no. I want to finish my story.

MR. EDWARDS: \$25 is all he refunded.

MR. HAIRE: Well, Harney paid him back or returned him the amount of twenty-five which he had paid for the appraisal after he got that.

THE WITNESS: I did not finish my story about the

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one hundred and sixty before Colonel Haire commenced to cross examine. That part has never been paid. I want to tell you about that. I didn't finish my story of the one hundred and sixty which he agreed to pay at the end of the week. Would you like to hear that, Colonel?

BY MR. HAIRE:

Q Witness, I am going to hear all you have to say under the rules of the Court.

BY THE COURT:

Q He will ask you questions.

BY MR. HAIRE:

Q If you let me follow my way you can talk about that later. You were careful, were you not, to put the \$25 in your pocket before you said anything to Mr. Harney about having paid any brokerage? A Exactly, you are right.

Q Then it was your purpose to tell him the trouble that was going to be made by you and others, and the exposure, in order to compel him to pay you the \$160? A I intended to make him pay the one hundred and sixty if I could. I never succeeded. He promised to do it, like all his promises, they are as transient as arrows in the wind, they never come to time.

Q (Reading) "I think it is greatly to your interest to come to my office and have an consultation with me. You can do just as you choose about it, come or not." Is that what you said to Harney? A Yes, exactly what I said to him.

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Q (Reading) "And then said Harney said 'Mr. Speer I will come up tomorrow morning at 12 o'clock' and at 12 o'clock he came to the office, and he sat down in my chair and I said to him, 'Mr. Harney, you accepted this loan for \$8,000 on my daughter's property, you did not only tell me repeatedly so, but you told Mr. Maginnis the attorney, you told Mrs. Briggs the same, you told Mr. Peter Werter, the husband of my daughter the same thing, and as a consequence I went to work and paid out \$160 in commissions on this, which was demanded for the acceptance of the loan. To give you the proof of that fact, I now show you my checks to that effect." A My check book.

Q "My checks" this says, "to that effect.

MR. EDWARDS: Go on, read the next sentence.

Q (Reading) "And I pulled down my check book and showed him the stubs?" A Yes.

Q Is that true? A I wanted to show him the stubs. Did I say I showed him the stubs or I wanted to?

Q You said "I showed him the stubs"? A Well, I pulled down the check book in order to show him the stubs, and he said he didn't want to see it.

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Q (Reading) "I said 'I propose to have that \$160 back or I will make it very hot for you'". A That's right, I said that exactly.

Q Now, what did you mean by saying you would make it very hot for him? A I mean just what I am doing right now, sitting right here; that's exactly what I meant, Colonel, exactly.

Q You consider by giving your testimony here that you are making it very hot for the defendant, do you? A How is that?

Q You consider that giving your testimony at the present time is making it very hot for the defendant? A I think it will be before he gets through.

Q And did you proceed to say, "I am on to your scheme, not only myself but a number of others, and proceedings are going to be commenced for disbarment of these various attorneys that you have been conniving with, and in addition to that action, with the snap-shot of you", "he stopped me there and said, "Was that the snap-shot taken of me when you came down"? A I didn't have a snap-shot, but I told him that all the same.

Q You told him you had one, did you? A Well, that's right, in the affidavit I told him that, that's true.

Q (Reading) "I said, 'We are going to expose this in the papers and you are going to get a thorough ventilation unless this money is refunded to me'". A That's right.

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Q In other words, you wish to convey the idea to him that if he returned you the \$160, why, it was all right?

A No, I did not. I told him as far as I was concerned.

Q (Reading) "Then said Harney, said to me, 'You appear to be a very fair man, will this be the end of it if I pay you the \$160?' And I said, 'As far as I am concerned it will be'".

A That's right.

Q You were not interested in the public welfare or other people's interests if you got your \$160 back, were you?

A Well, you see my check-book, what I pay out for charities every month and other things, you will find out I was interested in the public. I do a great deal for charity, Colonel.

Q You did not loan the lady \$8,000 on her property, did you? A No, I did not loan the lady \$8,000 on her property, that is all very true.

Q Then was the time he said, "Pull down the window, I am going to make a confession to you if it is absolutely confidential"? A That is it.

Q Where was your office at that time? A Right where it has been now for seven years.

Q Where was that? A In the Townsend Building, 25th and Broadway, Room 1020.

Q What floor? A Tenth floor.

Q Well, the windows open on the street? A Let me explain that to you, Colonel, probably it will interest you.

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Mr. Harney saw that window was open right out into the architect's office, fronts there one side, and the elevators are there, and people standing there all the time, and he wanted that window pulled down and I pulled it down to accommodate the gentleman.

Q You were willing that it should be confidential conversation? A How is that?

Q You were willing to have a confidential conversation with Mr. Harney? A Mr. Harney made the remark and said, "Mr. Speer, I want to make a confession", he says, "is there anyone in this room?" And I pulled it down for him -- to make his confession. He made his confession thoroughly. You heard the testimony right now, what it is.

Q Here you say, "He said to me, 'I am going to make a confession to you if it is absolutely confidential'"? A Exactly.

Q Well, now, I ask you if you are willing to have a confidential confession from him? A I never made any answer. If I had told him yes, you probably would not have heard from me on the stand here. I never answered his question. He made the remark that it was confidential. I never answered him. He proposed to me to join him in his crooked work. I never answered him.

Q (Reading) "I have been a sharper and a crook for a long time." Did he tell you that? A Yes, in addition to that --

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Q Wait a moment. (Reading) "I have made a great deal of money for myself and my confederates"? A That's right.

Q (Reading) "We got a system in this that it is a sure thing. You are the first man that ever caught on to it. You seem to know the deal. I am perfectly willing to pay you back the \$160 -- this was on Monday morning -- if you will wait until the end of the week -- Friday or Saturday" I said, "All right, I will wait until the week is out provided you will keep your word with me and pay the \$160". And he said that he would." He did not, did he? A Finish that.

Q Well, I will get to that later. A No, he did not pay it.

Q And when he did not you went to the District Attorney's office, didn't you? A No, finish reading that paper. You will find it. Let us get the whole story. Do not keep in the background anything, whether I blackmailed him or anything of the kind.

Q Well, I am keeping nothing back, but owing to the fact that he did not, you went to the District Attorney's office? A Yes, exactly, I went to the District Attorney's office.

Q (Reading) "Harney further said he had never made a loan, that he did not represent any estate, that there was no such estate with money to loan that he had control of, that he had no money to loan, that this scheme was a sure thing and he would like me to join him in it, and he would show me how

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I could make sure money out of suckers, and that loaning money on mortgages was an easy thing. The following Thursday night I wrote him a letter, a copy of which I have in my letter-book, and asked him to come to my office on Friday, the next day, at twelve o'clock; he didn't arrive, so I 'phoned him at his office and asked him if he had gotten my letter, and he said that he had, and that he intended to come up, but some business kept him and that he would come up there immediately. About an hour afterwards he arrived at my office and he asked me what I wanted. I said that I wanted my \$160. He said, 'Mr. Speer, I never got any of that \$160 that you paid out, and I don't see why I should pay you \$160 back.' I said, 'Mr. Harney, that is all very true, but Mr. Becker is in jail now for the murder of Mr. Rosenthal, and he claimed that he never got any money from any of his confederates at all, but it is the System that got it, and you are playing me this way that cost me \$160 in money, but I propose to have it.' He said, 'I don't think I will be responsible for it. I don't think I will pay.' I told him that he ~~not~~ would pay it, and he said, 'I won't pay it.' I said, 'All right, I will take action against you immediately and I will do my best to put you in the Tombs within twenty-four hours.' And he left me. That was the last I saw of him." A That's right. You got it right exactly.

Q Now, this loan that you said was a loan of \$8,000 on your daughter's property, wasn't it? A Yes, sir.

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Q That appraisal shows that Mr. Snyder happraised the building at \$9,000 and the real estate at five, don't it, for the land? A I couldn't tell. It was \$14,000 on that appraisal.

THE COURT: Is that material, Colonel? \$14,000 was the appraisal, so he says.

MR. HAIRE: Well, not very.

Q The total was \$14,000? A Yes.

Q Now, that property was already mortgaged, wasn't it?
A \$6,000.

Q And the interest was behind, the interest had not been paid? A Yes, the interest was all paid. I think up to that time, Colonel, I think I gave a check for the interest to my daughter. I think at that time the interest was all paid. I may not be positive about that. However, the interest would be paid, it was all right.

Q Now, there were liens on that property, in addition to the mortgage? A There was no liens. There is a second mortgage.

Q A second mortgage for how much? A \$1800, I think.

Q Well, the interest was behind on both mortgages, wasn't it? A No, there was nothing on the second mortgage at all, nothing on the first as I understand. I am under the impression now that the interest was paid. I ain't positive about it.

THE COURT: Well, it does not make any difference.

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Q Now, as a matter of fact, your daughter is a married lady? A Yes.

Q And her husband's means were limited, weren't they? A Yes.

Q And he was not able to pay the interest on that mortgage, was he, or your daughter, your daughter was not able to pay the interest if a loan had been made of \$8,000?

MR. EDWARDS: I object; it is perfectly immaterial.

THE COURT: Absolutely, Colonel.

MR. HAIRE: That was all discussed, and the very reason why the loan was not made.

THE COURT: Well, what difference does that make? What was the loan for except to take up the property? Suppose there were mortgages on it, wasn't that the very reason for getting a loan on it, to clear up all these obligations?

THE WITNESS: That is just what it was for, the clear off these obligations.

BY THE COURT:

Q Well, did you tell him that? A Exactly.

BY MR. HAIRE:

Q Yes, but didn't he tell you that it would be necessary, in order to protect the party making the loan, this not being a productive or producing property, one that was paying an income, it would be necessary that the party making the loan

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should be able to meet the obligation? A He never made such a remark in his life at all.

THE COURT: You mean the party receiving the loan?

MR. HAIRE: The party receiving the loan would not be able to meet the interest.

THE WITNESS: He never made such a remark, nothing that you could construe into anything like that.

Q Did you have a conversation with Mr. Baker in regard to that? A Mr. Baker?

Q Yes. A I believe Mr. Baker did make a remark over the 'phone to me or Mr. Maginnis, one of the two, about interest. I told him I would guarantee the interest.

Q Well, it was talked over and understood, wasn't it, that your daughter or her husband from his income would not be able to take care of the interest? A No, it was not talked over at all.

Q Well, then, how did you come to say that you would guarantee the interest? A Any more than Mr. Baker made the remark over the 'phone, and I told him I would guarantee the interest. I never saw Mr. Baker. Mr. Baker talked to Mr. Maginnis. Mr. Maginnis called me by 'phone, and he asked the question about interest and so on, and I says, "I will guarantee the interest and be perfectly responsible for it."

Q Then the matter of payment of interest was discussed?

A Well, I don't know as it makes any difference. Great Scott,

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the interest would have been paid. He knows it. That was not Mr. Harney's game at all.

Q Well, you do not talk any, Witness. How long since you have been in business? A I retired from business, Colonel, on the first day of October, 1906.

Q I notice your letterheading there has your name on it, "Inc." Is that for "Incorporated"? A No, I had the "E. D. Speer, Incorporated" as a holding company for several of my interests.

Q And you keep an office and conduct your own business? A I keep a private office, and have for years.

Q That's all.

THE COURT: That is all, step down.

H A R R Y A. S T O N E, called and duly sworn as a witness on behalf of the People, testified as follows:

(The witness gives his residence as 14 Ashburton street, Poughkeepsie.)

DIRECT EXAMINATION BY MR. EDWARDS:

Q Mr. Stone, what is your business? A I am circulation expert for publishers.

Q Do you know this defendant, Mr. Harney? A I do.

Q When did you first meet him? A During the last week in August, 1912.

Q How did you come to go to him? A In response to an advertisement that was called to my attention by a real estate man.

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Q Where did you see the advertisement, in what paper, I mean? A New York Herald.

Q What conversation did you have with him, Mr. Stone, when you first saw him? First tell me where you saw him? A At his office at 50 Church street, or 30 Church street.

Q That is the Hudson Terminal Building? A Hudson Terminal Building, yes.

Q Just tell me what conversation you had with him at that time? A I told Mr. Harney I was looking for a loan on a farm property near Princeton, New Jersey, and described the property to him, and he stated to me that he had money to loan, as he was acting as trustee for an estate, consisting of a widow and two sons, the widow being the relict of a Western gambling man or race-track man. He stated, I believe, that --

MR. HAIRE: Well, now, we do not want what the witness believed.

BY THE COURT:

Q Nothing that you are not certain of, only state what you are absolutely certain of, not what you believe. A He stated that he had funds to the amount of several hundred thousand dollars to loan at six per cent, and that there would be no brokerage fees for such loan, being compensated by the estate. After some conversation he agreed to come out and see the property. About September 7th or 8th he came out and examined the property and expressed himself as sat-

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isfied with its value to carry the loan to the amount I was looking for, \$6800, and stated that he would make the loan subject to a search showing clear title.

Later he said that he must have an appraisal made in order to satisfy his clients, and gave me the name, the name of Mr. Snyder. I endeavored to get into communication with Mr. Snyder, but failed, and later saw Mr. Harney again and he referred me to Mr. Wesley MacDonald of Newark as an appraiser who would be satisfactory to him. I secured the services of Mr. MacDonald and procured an appraisal from him.

BY MR. HAIRE:

Q What is that? A Secured an appraisal from him.

BY MR. EDWARDS:

Q What did you do with that appraisal, Mr. Stone? A I carried it to Mr. Harney and left it with him for some days.

Q Did you have any talk with him about the amount of the appraisal and so on? A Yes, he stated that the amount was entirely, that the appraisal was entirely satisfactory to cover the loan, and agreed to make the loan provided the title search was satisfactory.

Q And have y u got the appraisal, Mr. Stone? A I have a carbon copy of the original appraisal which was given me at the same time and was signed at the same time by the appraiser.

Q And the total of the appraisal was \$17,400? A \$17,400.

MR. EDWARDS: I offer this carbon copy of the original

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in evidence.

BY THE COURT:

Q Have you got the original, where is it? A I have since sold the property and the original passed out of my hands with the property.

MR. HAIRE: I object to all this testimony, but to this specifically.

THE COURT: It is admitted just like the others, on the question of the bona fides of the general scheme and intent.

MR. HAIRE: I am taking it for granted that one ruling is as good as a dozen.

THE COURT: Exactly, all throughout the case.

(The paper is marked People's Exhibit No. 21.)

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Q Did you pay this appraiser MacDonald for his appraisal?
A Yes, sir.

Q How much did you pay him? A \$50.

Q What was the next thing that happened? A I called at Mr. Harney's office several times, also called him on the phone several times trying to get the thing furthered a little bit. I also went to Mr. Baker's office with him. Mr. Baker made a price of \$200 for making a search. I told Mr. Harney I would not pay that amount and later after some further delay he referred me to Mr. Van Damm whom I subsequently employed in making a search, paying him \$135 in advance.

Q You paid him in advance? A Yes, sir.

Q Did he request that payment in advance? A He did.

Q Did you say anything to that? A Why, I protested slightly, I believe that I was in a hurry and let it go.

Q You were anxious for the loan? A I was anxious to close the matter up.

Q What happened after that? A Mr. Van Damm made a search which he returned to me and I immediately handed it over to Mr. Harney. Mr. Harney claimed some defects in the title and I immediately had them corrected, or took the steps that he said were necessary and then ensued delay of some weeks in which I tried to get the matter furthered but without success. Finally in the latter part of October Mr. Harney informed me that although he had agreed to make the loan and had

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been satisfied with his own appraiser that he had since then received a letter from a prominent man in my vicinity who said and the property did not measure up to the value that he felt that he could not make the loan, though personally he believed that the loan ought to be made, but his lawyer was unwilling to have him go ahead.

Q Did he tell you who that lawyer was? A He did not.

Q Did he tell you who the prominent citizen was? A He did not.

Q Have you since sold the property? A I have.

Q What did you sell it at?

THE COURT: No.

MR. HAIRE: That is objected to.

THE COURT: Yes, objection sustained.

MR. EDWARDS: If the Court please, my reason for that is this, the appraisal shows an appraisal of \$17,400. Mr. Harney's reason for refusing the loan was that the property he heard did not measure up to the value. I want to show whether it brought in the open market the value there.

THE COURT: Well --

MR. EDWARDS: Ordinarily I will concede the evidence would not be proper, but under those circumstances I deem it to be material and relevant and within the issue.

THE COURT: No, I do not think it is.

BY MR. EDWARDS:

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Q Did I understand you to say, Mr. Stone, that in the early part of your transaction with Mr. Harney that he went up to see your property? A He did.

Q Did you pay his expenses? A No, I did not.

Q He paid his own, did he? A Paid his own expenses.

Q Did you have any other talk with him at the early part of your negotiations beyond what you have told us that you now recollect? A Substantially nothing except along identically the same lines.

Q Do you recollect whether or not he told you anything about his compensation? A I think I already answered that there were no brokerage charges and that he was compensated by the estate.

Q Did he give you the name of the estate at any time?
A He said the Herrawin Estate as I understood it.

Q It sounded that way to you? A Sounded to me that way.

Q Did he tell you what state it was located in, the property? A To the best of my recollection he said the people lived in Chicago but as to where the estate itself was located I have no recollection.

Q That's all.

CROSS EXAMINATION BY MR. MAIRE:

Q This property you bought a loan on was farm property, wasn't it? A Farm property.

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Q How many acres? A 89 acres.

Q And it is located where? A About five miles from Princeton, New Jersey.

Q Five miles from Princeton? A Yes.

Q Do you know John A. French -- I will withdraw that.
know

Q Do you know Thomas E. Gibson, road supervisor of Princeton?

A I don't know Thomas E. Gibson of Princeton. I know Thomas E. Gibson of Franklin.

Q Road supervisor, is he? A No, sir.

Q I show you this letter dated October 21 and ask you if you know the writer of that? A I do.

Q Now? A Yes.

Q You do know him? A Yes.

Q Does he live near that property? A About two miles.

Q And what is his business? A He is a farmer, I believe.

MR. HAIRE: I offer this in evidence.

MR. EDWARDS: I object to this simply because of its indefiniteness. There is nothing specific about it.

THE COURT: Who is it from?

MR. EDWARDS: It is from a man that signs himself T. E. Gibson.

MR. HAIRE: He stated that Mr. Harney told him that he had received a letter from a prominent man there, and I have asked him if he knows the party that wrote that and he says yes.

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MR. EDWARDS: Yes.

MR. HAIRE: That he lives within two miles of the property.

MR. EDWARDS: I have not any desire to press the objection, if the Court please. I will withdraw it.

THE COURT: This purports to be an answer to a letter written by the defendant? Have you got a copy of that letter?

MR. HAIRE: No, sir.

THE COURT: Because it refers to the contents of that. All right.

MR. EDWARDS: It seems to me we should have the other letter. I withdraw my objection, however.

(Marked Defendant's Exhibit B.)

THE COURT: Have you got the envelope that came in so as to show the post mark, the date, because we do not know this man, he is not a witness here?

MR. HAIRE: Well, I am going to try and find out something more about it.

THE COURT: You see, that is such uncertain evidence, anybody could write a thing like that, and date it any day you want it, but if we only had him here then it would relieve it of what might be suspicion.

MR. HAIRE: Well, here is a statement that this witness has referred to -- I do not think it is so wonderfully

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material, but I think it ought to go in for what it is worth.

MR. EDWARDS: I have no objection to it at all unless the Court has of its own motion.

BY MR. HAIRE:

Q You read this defendant's exhibit B, did you? A Yes.

Q And you say you know the author of it, Mr. Gibson?

A Why, I know a Mr. Gibson. I suppose he is the author of it.

Q He is a farmer, you say? A He is a farmer.

Q And is he road supervisor, whatever that may be? A Not to my knowledge.

Q Well, was he such? A Not to my knowledge.

Q Well, you notice on this printed? A I see that, yes.

Q How far do you live from there? A About two miles.

Q Do you live on this property on which you were seeking a loan? A I don't now.

Q You did at the time? A I did at the time.

MR. HAIRE: I will read this.

(Reads defendant's exhibit B to the jury.)

THE COURT: Was that got anything to do with it, the fact that it is written on the Board of Freeholders' paper?

MR. HAIRE: No, it does not make any difference about that.

BY MR. HAIRE:

Q The stone farm mentioned in the letter doubtless referred to this property you were seeking a loan on, didn't it?

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A probably, yes.

Q That's all.

BY THE COURT:

Q How far, Mr. Stone, is that property, that farm from the nearest city or village? A Two miles from the nearest town.

Q What is that? A Kingston.

Q About where is that, in New Jersey? A That is close to Princeton.

Q How many miles are you from Princeton? A Four miles and a half.

Q From Princeton? Is property only worth, land, \$75 an acre, four miles and a half from Princeton? A I could not buy it at that.

Q All right.

REDIRECT EXAMINATION BY MR. EDWARDS:

Q Mr. Stone, I show you -

MR. HAIRE: (Interposing) There were just one or two questions I omitted.

MR. EDWARDS: Yes, all right.

BY MR. HAIRE:

Q Now, was Mr. O'Donnell, did you say, made the appraisal?

A Macdonald.

Q Well, Mr. Harney referred you to somebody else besides Macdonald, didn't he? A Snyder.

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Q Schlesinger? A He referred me to Mr. MacDonald at Schlesinger's at Newark and through some misunderstanding another man from Schlesinger's came out who was their regular appraiser, but Mr. Harney refused to accept the appraisal and insisted on MacDonald making the appraisal.

Q And they both appraised it then, did they? A They both appraised it.

Q That's all.

BY MR. EDWARDS:

Q You mean they appraised it together? A No, they appraised it at two different times.

Q Both reached the same figures? A No, there was some little difference in the figures.

Q Now, I show you this clipping from a paper and ask you if that is the advertisement that you saw in the New York Herald?

A As far as I could identify it, yes. I could not positively.

Q It was a similar one, was it? A Yes.

MR. EDWARDS: I ask to have that marked for identification.

THE COURT: Just show it to Mr. Haire. It might be there is no question about it.

MR. HAIRE: No objection.

MR. EDWARDS: I offer it in evidence.

(Marked People's exhibit 22.)

MR. EDWARDS: Now, I omitted to read to the jury this

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exhibit, People's exhibit 21, and I will do so now. (reads.)

BY THE COURT:

Q What was the amount of the loan you applied for?

A \$6800.

BY MR. HAIRE:

Q This property lay in two counties, did it not? A It lies in two counties.

Q And when it came to make a search it required a search made in two counties, what is your answer to that? A Yes, sir.

BY THE SECOND JUROR:

Q Did you write to that advertisement or did you go in person? A I wrote first and on receipt of Harney's reply went in person.

THE COURT: Shall we suspend now until 10:30 tomorrow, unless there is a short witness we could finish with very soon?

MR. EDWARDS: Well, there is no witness we could finish with within fifteen minutes.

THE COURT: Well, gentlemen, be here by or before eleven tomorrow morning, as we have some preliminary business to attend to first.

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, February 7, 1913, at 11 o'clock A. M.

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New York, February 7th, 1913.

TRIAL RESUMED.

ARTHUR O. GRANGER, called and duly sworn as a witness on behalf of the People, testified as follows:

(The witness gives his address as 320 Broadway.)

DIRECT EXAMINATION BY MR. EDWARDS:

Q Mr. Granger, what is your business? A I am interested in the Light Company.

Q And you have offices where? A I have an office in 320 Broadway.

Q Where do you live? A Cartersville, Georgia.

Q Mr. Granger, how long have you been living in New York and vicinity? A I have been here since last June.

Q Do you know the defendant Harney? A I do.

Q When did you first meet him? A The latter part of June.

Q Of this past year, 1912? A Last June.

Q How did you come to go to his office? A I went there, having heard from my real estate agent at --

MR. HAIRE: Wait a moment.

Q Do not tell us what he said. After a talk with your real estate agent? A Yes, subsequent to the talk.

Q And where did you call on Harney? A At No. 50 Church street.

Q That is the Hudson Terminal Building? A Yes, sir.

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Q Did you have any conversation with him at that first meeting? A Mr. Harney?

Q Yes. A Yes, sir.

Q Was anyone else there with you at that time? A Not with me.

Q Just tell us what conversation you had with him at that time?

MR. HAIRE: That is objected to.

THE COURT: With Mr. Harney, the defendant?

MR. EDWARDS: Yes.

THE COURT: Yes, objection overruled. We cannot tell yet what it is.

MR. HAIRE: Exception.

A I told Mr. Harney I had come there because my real estate agent, Mr. Arthur Anders of East Rutherford, New Jersey, told me that he had seen --

BY THE COURT:

Q Arthur Andrews? A (Spelling) A-n-d-e-r-s, Anders, told me that he had seen Harney's advertisement in the New York Sunday paper and called on him with reference to securing a loan, thinking that I might want one, as a year or so previous he had had a talk with me in regard to a loan, and that's why he called on Harney. Harney told him -- I told Mr. Harney this, that Mr. Harney had said he would deal only with principals, and so Mr. Andres told me, and I called on Mr. Harney

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the latter part of June. I think it was about the 20th or 21st, and I told him that I had three properties in Bergen County.

BY MR. EDWARDS:

Q New Jersey? A Yes, sir, a factory in Carlstadt, and mansion property in Woodridge and 120 town lots in Hasbrouck weights, and I would like to get a loan on those properties.

Q Did you state how much loan you would want? A I told him I would want about \$15,000.

Q Yes, what else? A And in the course of the talk he said the estate for which he was acting and for which he was the sole trustee didnot want to loan on factory property, but he would go out with me to see the other properties and then advise me further. We arranged to go out the next day. He went with me --

Q Just one moment. Yes. A He went with me the next day.

Q Now, have you told us all the conversation, all that first conversation that you now recollect? A Well, that was the substance of it. He said that, he told me that he was the trustee for a large estate, and I asked him --

BY THE COURT:

Q Did he say where the estate was? A Not at that time.

Q All right. A That he would make loans on the basis of six per cent, and would charge no commission, that he was paid one per cent. for his services out of the estate or by the

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estate. I told him that was satisfactory and I told him what the value of my properties, that the mansion property particularly was a very valuable property, that it had cost the original proprietors, the original owners, and builders, \$64,500, and built by a wine merchant in New York who had died before the property had been completed, the building of the house, and that his son had completed it and lived there and that his son, living in Woodridge now had told me that the property had cost them \$64,500, and that he had the bills and receipts to show that. Well, Harney says that was all right, and he would go out and look at the property with me, which was done, I think, the next day.

BY MR. EDWARDS:

Q And did you go with him on that day? A I went with him, paid the expenses of the trip. We looked over the mansion property, went over the ground, there is three or four acres of ground surrounding it. Then we went over to the town lots, which is the adjoining town of Hasbrouck Heights, and looked them over, and he said it was all right, that it looked very well to him.

On the way out, on the cars he told me that this estate for which he was acting was that of a race track gambler out in somewhere in the west, in Pittsburg he mentioned, and he also mentioned Indianapolis, and mentioned Chicago, mentioned Kansas City, and another time mentioned California. He said

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that he himself had been associated with this gambler for many years, was very intimate with him, that he himself, Harney, had been a bookmaker on the race track, and had made a great deal of money in that way. He told me about how the money was made, that they had what he called stool pigeons to set for them in bringing in men from the country, that they had emissaries out through the country to get people --

MR. HAIRE: Is this material, your Honor?

THE COURT: I think it is because this is conversation and statements he says were made by the defendant himself as an inducement for the negotiation, and I think it all ought to come out.

MR. HAIRE: I object to it as incompetent, and move to strike it out.

THE COURT: Objection overruled. As I said, like all these other matters, it goes to the bonafides and the intent with which the defendant entered into the contract with Mr. Cummings, the complaining witness in this case.

MR. HAIRE: Your Honor will give me an exception.

A Well, he went on to tell me the details of how they got these men from out in the country districts in various states all over the country, even went as far as North Carolina and brought men up here to bet on the races and had it all fixed up so that they were bound to lose, so that he made a great deal of money in that way, and that this race track gambler had

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great confidence in him, and it resulted in his going into a sort of partnership with him at the race track gambler's suggestion. This was conversation going out there and coming back on the car. I was, well, I won't say that I was surprised at his telling me all this, but --

Q Now, you say that Mr. Harney said that the property looked well to him? A Yes, sir.

Q Well now, what was the next thing said or done by either you or Mr. Harney with respect to further transaction leading to the loan? A Well, Mr. Harney said that it looked well to him and he would be glad to make the loan but he would want the property to be appraised. I told him that I could get it appraised by any of the lawyers out there familiar with the property. No, he said they wanted the appraiser in whom the estate and he would have confidence, and referred me to Mr. Herbert R. Snyder, of 37 Liberty street, told me to go and see him, and I did so the next day, which I think was a Saturday, and arranged with Mr. Snyder --

MR. HAIRE: I object.

Q Well, you had a talk with Mr. Snyder? A I had a talk with Mr. Snyder.

Q And the result of that talk? A The result of that talk was Mr. Snyder told me it would cost --

Q Do not tell us what Mr. Snyder told you. Did you employ Mr. Snyder? A I employed Mr. Snyder.

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Q Did he go and look at the property? A He went and looked at the property that day. I paid him \$30 in advance.

Q Did you pay him anything further than that? A No, sir.

Q Did he give you an appraisal? A He gave me an appraisal.

Q Have you got that with you? A Yes, sir. He gave me two appraisals, one for the town lots and the other for the mansion property.

Q And these two papers which you have handed me, are those appraisals? A They are.

Q Did you go with Mr. Snyder when he looked at these two piece of property? A Yes, sir, I went with him and showed him the properties, we went over them together.

BY THE COURT:

Q Snyder did? A Snyder went with me, yes, sir.

MR. EDWARDS: I offer the appraisals in evidence.

MR. LAIRE: I object to them on the same ground, as not connected, as incompetent, immaterial and irrelevant.

THE COURT: The same ruling and admitted for the same purpose and exception.

(Marked People's Exhibits 23 and 24.)

Q Now, after you received these appraisals from Mr. Snyder what did you do? A I took them to Mr. Harney the following week and showed them to him.

Q Mr. Snyder was on the property on Saturday and the next week you took them to Mr. Harney? A Yes.

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Q And did you show them to him? A I gave them to him, they were addressed to Mr. Harney. I had the appraisals addressed to Mr. Harney, as you will notice, and I delivered them to him.

Q And you discussed them with him? A Yes, sir, he looked them over and he said that was entirely satisfactory.

Q Was the amount of the loan again discussed at that time?
A Yes, sir.

Q What was that to be? A \$15,000.

Q And was it specified, was there anything said with respect to how much should be loaned on each piece of property?
A No, sir, he said he wanted to consider the matter for a day or two and would then advise me further and I could call in a couple of days, two or three days.

(Mr. Edwards reads People's Exhibits 23 and 24 to the jury.)

BY THE COURT:

Q What was the appraised value?

MR. EDWARDS: \$19,000. That was the residence property.

Q Where was that, Hasbrouck Heights? A Woodridge.

BY MR. EDWARDS:

Q Now, when did you next have a conversation with Mr. Harney? A Several days after that I called and he said that he had not been able to give it the full consideration that he

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wanted to. He wanted to talk with a lawyer and to come again in two or three days. I called again.

Q Did he mention the lawyers name? A No, sir, not that tie.

Q Yes. A Indeed, at any other time. He simply said he wanted to consult an attorney of the estate, and several days after I called again and then he said -- it was then sometime in July, it had gotten to be, I had called several times in the meantime -- that they, that the estate did not want to make any loans on town lots, vacant lots, but that he would loan me \$8500 on the mansion property. Well, I told him that that, for the operation I then had in mind, was not sufficient, and I just dropped the matter, let it run.

Then later on another proposition came up to me through a real estate agent, and I called on Mr. Harney and told him that he had offered to loan me \$8500 on the mansion property and he said yes, he remembered it very well, and he got down an envelope with papers and looked them over and found that was his memorandum there offering to loan \$8500, and I said

I would like to get that amount on that Woodridge property. Well, he said, "All right, I think we can arrange that without any difficulty. The property is satisfactory to me."

Q About when was this talk? A This was in July some time, and he said that the property, that he would make the loan of \$8500, provided the titles were all right. I said the titles

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are all right, I can assure you of that" and mentioned my lawyer's name in Rutherford, who would assure him of that fact. He said that they would have to have a lawyer satisfactory to the estate to examine the titles and for me to bring in my deeds.

Q Now, at this time, Mr. Granger, did you have any other mortgage on that property? A Yes, sir.

Q Did you say anything about that to Mr. Garney? A Yes, I told him that there was a blanket mortgage of in the neighborhood of \$12,000 held by a party in Philadelphia on all three of the properties.

Q And did you state what would be done with that in case this loan to you of \$8500 would be made? A Yes, I told him I wanted to pay off part of that loan.

Q And what was said with respect to releasing the mansion property from the lien of that mortgage, if anything? A Oh, we talked of that, of course, that it would have to be released in order to give him a first mortgage on the mansion property. We went all over those details and some days, or a day or two afterwards I brought him in the deeds to the property and he said all right, that just to leave them with him for a day or two and I did so. We said to call again and I called again, and he said that he was not ready just then to conclude the matter but to call again in a day or two. It was always calling again, and I did so, and then he said that the lawyer

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of the estate wanted more data than was conveyed by the deeds, and wanted a brief of title, an abstract of title. well, I said I would get that for him. I did so and brought it to him and then he said, take the papers to Mr. F. C. Baker, a lawyer at 115 Broadway.

I did so, took them over to Mr. Baker, Mr. Baker was out, and then I called again and found him, and Baker, I told him that Mr. Harney wanted to have a search made, that I was applying to him for a loan of \$85,00. we looked the papers over, he said, "They are all right", he would make the search. Asked when I wanted it made and I told him just as promptly as possible because I wanted to get the loan through.

Well, he said he couldn't do it next day, but would in a day or two afterwards. well, I said all right. Then he said that he would, that his fee would be \$100. Well, I said "We will take that out of the fund, the loan fund that I am to get from Harney." "No, no", he said, that would not be satisfactory to him. He said he only knew Harney very slightly and that was not his way of doing business, that he wanted his money in advance. Well, I told him that was rather unusual, but he insisted on it and I paid him.

Q Did you pay him by check or in cash? A Paid him by check.

Q Have you got the check there? A Yes, sir, somewhere here. There is the Snyder check and the Baker check (indicating)

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MR. EDWARDS: I offer this check in evidence.

MR. HAIRE: Objected to as in no wise connected with the defendant and the defendant was not present.

BY THE COURT:

Q How much did you pay Baker? A \$100.

THE COURT: It was in pursuance of the request that he go there by the defendant and get the title searched by Baker. Objection overruled and you have an exception.

Q How much did you pay Snyder? A \$30.

BY MR. EDWARDS:

Q Did you pay anybody else any money at the request of the defendant? A No, sir.

(The check is marked People's Exhibit 25.)

MR. EDWARDS: I offer the check drawn by A. O. Granger to Snyder in evidence.

MR. HAIRE: That is objected to, and I understand, your Honor -- the same objection as to the exhibit of Mr. Snyder.

Objection overruled. Exception.

(The check is marked People's Exhibit 26.)

BY MR. EDWARDS:

Q What was the next step in this transaction?

THE COURT: By the way, Colonel Haire, you do not object because the bank is not brought here in these cases to show the checks were paid?

MR. HAIRE: Oh, no.

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THE COURT: We assume the checks were paid through the Clearing House.

Q What was the next step, Mr. Granger? A The next step was I called on Mr. Baker once or twice. He was not ready to make his report. He said that he was working on it, and I called on Mr. Harney and told him that I had been to see Baker and that he was arranging to complete his report and was expecting to have it in a day or two. On September 19, I think it was, yes, September 19, that I called on Mr. Baker and found from him --

MR. HAIRE: I object to that statement, what he found.

A (Continuing) Well, Mr. Baker told me.

Q Did you go there with Mr. Harney or alone? A No, sir.

Q Mr. Harney with you? A No, not at that time.

Q Well, did you go there at all with Mr. Harney to Baker's office? A Later; Mr. Baker gave me his report on the case. He had written out two copies. He said he would give one to Mr. Harney and the other he gave to me.

Q Have you the copy he gave to you? A Yes, sir.

Q Did you after that at any time have a talk with Mr. Harney with respect to this report of Baker's on the title?

A Yes, sir. I will come to that. That is Baker's report (indicating).

Q Was this report in the same form that it now is when you received it from Mr. Baker? A Yes, sir, exactly.

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Q And the corrections that appear in it now were there at that time? A Yes, sir, they were there when he gave it to me.

Q When after you received that from Baker did you see Mr. Harney again? A I saw Harney the next day and gave him the report.

Q Whereabouts? A At his office, 50 Church street.

Q Did he at that time have one of these Baker reports?

A He didn't show it to me if he did.

Q Did you show him yours? A I showed him that.

Q And discussed it with him? A Discussed it with him. Baker had found four or five points of objection to the title and I went over them with Mr. Harney and told him, had quite a lengthy conversation with him, I can't remember all the details, but in substance it was that the main objection there seemed to be in connection with a contract that I had made to a real estate agent named John B. Hyatt, of 30 Church street, for the exchange of my property, the mansion property with Mr. Manevets, a Hebrew gentleman, for an apartment house in New York City.

Q Yes, well, what was said between you and Mr. Harney with respect to that objection? A That I had had --

MR. HAIRE: May I ask for the date of this?

MR. EDWARDS: The report is dated September 19, 1912.

THE WITNESS: The contract for the exchange of the

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properties had not been carried out, and Mr. Manavets had filed the contract of record.

Q That is, notice of pendency of action in lis pendens?

A Yes, sir.

MR. HAIRE: Your Honor will excuse me a moment, I object to this on the ground that it was subsequent to the transaction complained of in the indictment.

THE COURT: Well, that does not make any difference.

MR. EDWARDS: It began before and continued on afterwards.

THE COURT: Yes, that was thoroughly threshed out in the case of the People against Jacob Levine, tried before me.

MR. HAIRE: Your Honor will give me the benefit of an exception.

THE COURT: Yes.

Q Go on. A He said that contract would have to be removed from the record before I would be able to give a first mortgage on my mansion property. Negotiations were then taken up --

Q Just a moment.

MR. EDWARDS: I offer in evidence this report of Mr. Baker's which the witness has produced, concerning which he talked with Mr. Harney.

MR. HAIRE: No objection.

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(Marked People's exhibit 27.)

Q Now, Mr. Granger, go right on. A We had a number of interviews, I don't recall the dates, but it ran along through the remainder of July and I think into August.

Q Well, this report is dated September 19, 1912. These talks were after the report, were they not? A Oh, yes, after the report. I was thinking in regard to the exchange of the properties just when I spoke then.

Q Now, I am directing your attention particular as to what was said to Mr. Harney and what you did as a result of your conversation with him. A Well, I told him I would take up negotiations with Mr. Manevetz, and it resulted in the contract being removed of record.

Q In what form was that removal effected? A I have got the removal here. I showed Mr. Harney, by the way, in the course of the interviews, Mr. Harney wanted to see the contract for exchange of the property, and I told him, I had told him before that my mansion property was sold for \$17,500 to this Mr. Manevetz, and I was to take from Mr. Manevetz his property in New York, and Manevetz was to assume the mortgage on the mansion. When Mr. Harney found that out he said he could not allow the loan to be made because the estate, this gambler who had left the money was very much opposed to Jews, and that he himself felt the same way, as also did the lawyer of the estate, who had been mentioned by that time as a lawyer at

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111 Broadway, whose name he did not give me, but that they could not, as the mortgage was to be assumed by a Hebrew, they could not allow the thing to go through.

Q Well, I told him that to get over that point, that I would, that Mrs. Granger and I would both join in a bond and mortgage on the property, and that I would undertake to pay the interest to an trust company that he would name during the entire period of the loan. He said no, that that would not be satisfactory, that so long as the estate knew that there was a Hebrew in the woodpile, why, they would not do it.

Q What was the final result, did you get this contract in lis pendens removed of record? A Yes, sir, I got it removed of record, and I told Mr. Harney in the course of one of these conversations of several of them, that he need not have known anything about this transaction with the Hebrew, but that I had had a fall out with Mr. Hyatt, through whom the trading, the exchange of the properties was made, that I had found Mr. Hyatt to be untruthful, I caught him in two or three lies, and that he was not a reliable man, and that I would have nothing more to do with him, and I dropped him and told him that I would not carry on any contract further with him, that I would carry it out, if at all, with his partner, if we could put it through. The partner was a man named Eisenberg, who was a Hebrew, and I told Harney this, that that Hyatt had gone to Mr. Baker and given him information for the purpose of trying to

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cause Mr. Baker to make an adverse report, so that the loan would not be made, on account on account of the fall out that I had had with this Mr. Hyatt in not allowing him to carry out the contract, and so Hyatt thought he saw, he was going to lose his commissions, and we had quite a fight or row on the thing and broke up. I left his office and told him I would have nothing more to do with him, that Hyatt was not a man to be believe, and that I would not believe him on oath, and that his partner Eisenberg had told me the same thing, but the whole thing resulted in my paying -- I told Mr. Harney that the negotiations with Manevets's lawyer had gotten down to the point that they demanded \$235 in order to withdraw that contract, so as to enable me to make a first mortgage on my mansion property in Woodridge, and I said to him "Now, Mr. Harney, if I pay this \$235 and get rid of the Hebrew, will you make that loan of \$8500?" He said "I will", and then I paid \$235, and that is the release (indicating).

Q This is the release? A That is a copy of it. The original is on file.

Q Showing a discontinuance of the action? A Yes, sir.

Q And the original was filed, and the record cleared ?

A Yes, sir. Here is quit claim deed that was given in the same connection, showing that the matter was clear for making

a --

Q And that was properly recorded? A Yes, sir.

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MR. EDWARDS: I ask to have these marked for identification.

(Marked People's Exhibits 28 and 29 for identification.)

Q Now, these papers, were they shown by you to Mr. Harney?

A Yes, sir.

Q And what did he say with respect to them? A He said that cured that part all right, satisfactorily.

Q Now, what, if anything -- A (Interrupting) After I got all the matters cleared up I wrote Mr. Harney a letter on October 16 that I have here, referring to the five points in Mr. Baker's report.

MR. EDWARDS: Have you the original letter, Mr. Haire?

Q Now, I show you letter produced by Colonel Haire, counsel for the defendant, and ask you if that is the original letter? A Yes, sir, that is the original.

MR. EDWARDS: I offer this letter in evidence.

MR. HAIRE: Objected to only upon the ground that it was subsequent to the offence charged.

THE COURT: On that ground it is overruled and exception to the defence.

MR. HAIRE: I take an exception.

(Two sheets are marked People's Exhibits 30-A and 30-B. and read to the jury by Mr. Edwards.)

Q Now, these numbered paragraphs refer to the correspond-

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ingly numbered paragraphs of Baker's report, do they not?

A Yes, sir.

Q Did you see Mr. Harney after you wrote this letter?

A Yes, sir.

Q Did you have a talk with him then about the contents of the letter? A Yes, sir.

Q And what was said in respect to the way in which you had cleared it? A He said it was entirely satisfactory to him but he would have to refer the matter to his lawyer, Mr. Baker, and he would have to talk with him.

Q Who is the Mr. Hinchman referred to in the first and second numbered paragraphs of the letter? A He is the mortgagor in Philadelphia.

Q Yes, the man who held the then existing blanket mortgage which was to be closed? A Yes, sir.

Q You mean the mortgagee, do you not, not mortgagor? A Yes, mortgagee. I would just like to add that, in the course of the conversation with Mr. Harney, when I was talking with him in regard to this trade with Manevets and of Mr. Hyatt's connection with it, and to show him that he should attach no weight to anything that Mr. Hyatt should say, in addition to my telling him that his partner would not believe him on his oath and that I would not either, because I had found him in two or three lies, that his landlord, Mr. Wiseman, of Garden City, Long Island, had called on me in order to get

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an attachment on any moneys that might become due from me to this Mr. Hyatt, and told me that he was --

MR. HAIRE: I object to all this.

A (Continuing) I told Mr. Harney this, Mr. Haire.

MR. HAIRE: I object to this, what he told Mr. Harney about somebody else's affairs.

THE COURT: Well, let us eliminate that. That probably is not necessary.

THE WITNESS: It was directly in connection with that, with this making the loan, and I was fearful that the loan would not be made because this man Hyatt had interfered and tried to prevent it, and I wanted to show him the lack of character of this Mr. Hyatt.

THE COURT: Yes, but I do not believe that is necessary in this case.

BY MR. EDWARDS:

Q Well, we will not go over that. A Well, the lack of character is very well known, anyhow.

MR. HAIRE: I move to strike that out.

THE COURT: Strike it out.

MR. EDWARDS: No objection.

Q What was the bond and mortgage that you refer to in that letter, People's Exhibit #30 as having been signed by your wife which you would sign at the closing? A That was for getting the loan for \$8500 from Harney.

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Q That is, the bond and mortgage had been prepared, had it? A Yes, sir, because my wife was in Cartersville, Georgia, and it had to be sent down to her for her to sign, so that the money would be produced and I would sign it.

Q Where is that bond and mortgage? A Mr. Harney has it.

Q Have you got it? A No, sir, he has got it.

MR. EDWARDS: Have you got it?

MR. HAIR: No, sir.

MR. EDWARDS: May it appear of record that it was not produced?

THE COURT: Yes.

Q You had seen that bond and mortgage, had you not?

A Yes, sir, I had given it to Mr. Harney.

Q And who was the mortgagee appearing in the bond and mortgage? A No name.

Q The name blank? A The name was in blank. I had asked Mr. Harney the name of the estate and he would not give it to me. He said he would fix that up at the time of closing.

Q So that you never got the name of the estate from him? A Never got it. I asked him for it a number of times, but never succeeded. He simply would tell me that it was this race track gambler and that the name would be put in the papers at the time of closing. At the time that I handed Mr. Harney Mr. Baker's report, I handed this letter with it showing certain papers that I had given to him that accompanied Mr. Baker's

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report.

Q That is the copy of letter in which you sent him certain papers with respect to the title? A Yes, sir.

Q I do not think we need that? A All right, if you don't need that. The bond and mortgage are mentioned in that, so I thought it might be useful.

Q Mr. Granger, after writing that letter on October 16, did you see Mr. Harney? A Yes, sir.

Q Where? A At his office, 50 Church street.

Q Did you go from there to anywhere with him? A Not right then. A day or two afterwards we went together to Mr. Baker's office.

Q Yes, that was where? A At 115 Broadway.

Q And were these objections to the title and your answers to them discussed at that time? A We went there together and Mr. Baker was not in.

Q Yes. A But Mrs. Baker was there and Harney had quite a lengthy conversation in a very low tone with Mrs. Baker in an inner office. The door was open and I was in the outer office, showing that he was not so very unfamiliar --

MR. HAIRE: Wait. I move to strike that out.

MR. EDWARDS: Consented to strike out the latter part.

THE COURT: Yes, strike it out by consent.

Q Now, did you at any time in company with Mr. Harney see Mr. Baker? A Next day I think it was we went again, and

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Harney -- Baker was not in. We waited for about an hour and then Mr. Baker came, and he showed him the letter to which you refer, that original letter that I had written him showing that the points had all been met, and Baker looked them over. Harney then had Baker's report in connection with that letter.

Q That is Baker's report which is People's Exhibit 27 and the letter of yours to Baker? A Yes, sir.

Q Of October 16, which is People's Exhibit 30? A Yes, sir, and he went over them with him. Baker told him that it was all satisfactory. Then I had told Harney previously in his office that I would have Mr. Hinchman in Philadelphia, the gentleman who held the mortgage, make a draft on me with the various papers, releases, and so forth, attached, and after the conclusion of the talk in Mr. Baker's office, when Baker told him that it was all satisfactory, then I said to Harney "Can I now have the draft made, is that all right?" He says, "Yes", told me to make the draft.

Q Referring to Hinchman? A Yes, sir.

Q And did you communicate that fact to Hinchman? A I communicated that fact to Hinchman, and next day the draft came over with the papers attached, to the National City Bank.

MR. AIRE: Wait, I object to that, about his telling about a draft coming from Philadelphia.

MR. EDWARDS: He has stated here that Mr. Harney told him at this point that he could now communicate with

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Hinchman in Philadelphia and have him draw on him with the release of the existing mortgage attached, and he is now testifying that that draft came through the day following, after communicating with Mr. Hinchman, a draft which was drawn on the witness by reason of the arrangement with Harney, with Harney's approval, with Hinchman, the existing mortgagee, and which was to be met by money that Harney was to loan him on this new mortgage.

THE COURT: Well, does he testify this was an agreement Harney made with him?

MR. HAIRE: But now he goes on to state that Hinchman did draw on him and the draft came through on such and such a bank, and I move to strike out that part.

THE COURT: No, there is no legal objection to that. Objection overruled.

MR. HAIRE: I take an exception.

THE WITNESS: (Continuing) Well, we will get over that point this way: Mr. Harney at my suggestion came down --

MR. HAIRE: I object and move to strike that from the record. There is no question.

THE COURT: Ask him a question.

BY MR. EDWARDS:

Q Did you after this draft came through and you received notice of it, did you see Mr. Harney again? A Yes.

Q Did you mention the draft to him? A I told him the

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draft was at the National City Bank and suggested that he come down there with me and see that everything was there.

Q Did he do so? A And he did so, we walked down to the National City Bank together and saw the draft and the various papers and documents at the bank.

Q That were annexed to the draft? A Yes, sir.

Q And did Mr. Harney express any opinion with respect to these papers? A Well, he said he would have to talk with his concealed lawyer at 111 Broadway further. I said --

MR. HAIRE: Wait a moment. I want to know if he said

"Concealed lawyer".

A Well, with the lawyer at 111 Broadway whose name he would not give me, although I had asked for it repeatedly.

BY MR. EDWARDS:

Q Did he tell you who the lawyer was? A No, sir.

Q Did he tell you how long he had known him? A Not at that time, but at different times he told me that he was a very prominent lawyer, he was a man that he had known for 25 years, that he was a very wealthy man, and that he was a corporation lawyer and that he was the chief lawyer of the estate.

Q Did he ever mention Mr. Beekman's name to you? A He never mentioned anybody's name.

Q What was the next thing that you heard from Mr. Harney with respect to this loan? A Harney said that he would see this lawyer the next day, and I called, and he informed me, I

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think, that the lawyer was out of town that day. Then I called again and the lawyer was in the Supreme Court, and another time I called again and he was in the Chancery Court over in New Jersey another time.

Q This was what Herney told you? A Yes, sir, different times there he would leave me waiting in his office while he would go down to 111 Broadway, and then after an hour's wait he would come back and tell me these cock and bull stories.

MR. HAIRE: I move to strike out "Cock and bull stories."

MR. EDWARDS: Consented to.

THE COURT: Yes, that is consented to be stricken out.

Q But he would tell you where the lawyer was? A Yes, that he was in the country or somewhere else, he was always somewhere except where he was wanted.

Q Well, go right on and tell us what happened next?

A Finally he came and said he had seen the lawyer and the lawyer said that we ought to have references as to my personal standing and character. Well, I was indignant at that and told him after all these weeks and months of delay, for him now to come in talking about my character, I said it was ridiculous, and I said "You have had the property appraised by your own appraiser, showing ample value there, and everything is ready, the draft is down at the bank there, you agreed to make the loan time ^{and again}, and it is perfectly absurd. Well, he said that

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he thought so, too, that it was rather hard, and he was sorry for the delay, but that is what this lawyer at 111 Broadway said they ought to have, and so I gave him references, some half dozen of them.

Q Do you recollect who you gave as references? A I referred him to Mr. Harding, the head of Charles T. Barney & Company, Bankers, of 25 Broad street. I referred him to the Broadway Trust Company, of 8th street and Broadway, to the Real Estate Trust Company of Broad and Chestnut streets, Philadelphia, and to Mr. W. R. Wooster -- or W. R. Warner, president of the Warner & Swazey Company, Engineers and telescope builders, Cleveland, Ohio, also the Singer Building, New York, and to Mr. Francis H. Richards, an engineer at 9 to 15 Murray street, and well, he made notes of those and said he would write them. The next day I brought him in a volume of "Who's Who." He looked it over and he said, "Well, that looks all right", but he said it was rather old, it was a volume of 1908, and referred to me as being in the army and one thing and another. He said that was rather far back.

Well, in a day or two, or some days after these answers came in, and he showed me the answers and he said they were all satisfactory to him. Well, I said "Let us go ahead now and complete the loan." Well, he would want to take these references down to that unknown lawyer at 111 Broadway and show them to him to see what he would say, and well, "When will

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I see you again?" "Well, come in tomorrow", and by that time we will know." Then it dragged out until about another week before he got that lawyer and then Harney finally said that he had seen him. "Well, what was the result?" "Well, the references were colorless, colorless, they were not definite enough. Well, I said that's ridiculous", I said, "if you show me that lawyer of yours and he should tell me that I would knock him down."

Q Did he offer to show you the lawyer? A No, sir, he did not.

Q What was the next thing? A Well, the next thing he said he had had a further talk with his lawyer at 111 Broadway, whose name he never would give me and that the lawyer wanted to know if I had paid my taxes promptly over in Woodridge, and whether the interest had been paid on the loan. Well, I told him I would produce proof on those points, and that was done.

Q You did produce proofs? A Yes, sir. That was satisfactory to him and he took that to the 111 Broadway man to see if that was satisfactory to him.

Q Yes, he told you he took them to him? A He told me he did, yes, yes, and he said that, well, that was all right in the past but I might not pay the taxes and the interest in the future, for the three years of the loan, and the lawyer suggested that he would be safer to have a guarantor, somebody

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to guarantee that I would make these payments, amounting to about \$700. Well, I told him that was the height of absurdity, ~~that~~ with all that had been gone through, but if it could not go through without that -- I had had my suspicions aroused, but I had resolved to knock over every pin he would set up, and I went and got a friend of mine who was President of the National Board of Trade and other corporations, other businesses, and got him to agree in writing to guarantee that I would make the payment, and that if I did not he would.

Q Did you show that guarantee to Harney? A I brought that to Mr. Harney and gave it to him. He said "That's fine, that's satisfactory to me, and I will show this to the lawyer at 111 Broadway and see if it is all right, and then we will make the loan." Well, it took another day or two before he found this man, and he didn't see him on the train, as he often said that he would catch him on the train going over to near Bound Brook, in that way, and several more days elapsed and then he came back and said that the party who was guaranteeing me was not in Bradstreet's and therefore would not be satisfactory, he was not either in Bradstreet's or Dun's or any of these commercial books.

Well, I was indignant at it and had some hot words with Harney about it and told him who the man was. I gave him a list of the corporations he was president of, but it resulted in his not being satisfactory.

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Well, then I said to Harney "Suppose that I get you a bank draft covering the amount of the taxes and interest during the period of the loan, will that be satisfactory?" "Why", he says, "certainly." Well, next day I brought him a cashier's check of the Chase National Bank.

MR. EDWARDS: Is the Chase National Bank representative in court?

A PERSON IN THE COURT ROOM: Yes, sir.

MR. EDWARDS: Let me have that check, please.

Do you make any question of the regularity of this production, Colonel Haire? If you do I will withdraw the witness and put on the representative of the Chase National Bank.

MR. HAIRE: I object to it as incompetent.

MR. EDWARDS: I have not offered it yet. I have asked counsel whether he objected to my failure to offer proof of the source of production of the check, saying that I will do it if he does object.

MR. HAIRE: I do not object to that, if Mr. Granger identifies the check.

MR. EDWARDS: Well, that is what he is going to do now.

Q I show you check that has just been handed me by the Chase National Bank messenger and ask you if that is the check to which you have just referred? A Yes, sir, that's the check

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drawn to my order and endorsed by me.

Q And did you show that check to Mr. Harney? A I did.

Q Did you have a conversation with him with respect to it?

A Yes, sir.

MR. EDWARDS: I offer this check in evidence.

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

Objection overruled. Exception.

(Marked People's Exhibit 31.)

A (Continuing) We talked over the matter and my suggestion was to put the money in a real estate -- in a trust company to be drawn upon by this unknown estate that Mr. Harney was the sole trustee of, in the event of my not paying the interest on the loan.

Q What did Mr. Harney say to that? A That was entirely satisfactory, nothing could be better. He wanted then to take that to Mister -- whoever he was, at 111 Broadway. Well, I said, "You are going the limit" and he said that this lawyer was such a prominent man and had real charge of the estate, that while he himself was the one who had sole charge of making the loans, as he had repeatedly told me, yet as in this matter had had advice from him, he did not feel like going ahead without having his absolute approval at the last moment, so he said he would inform him of it. I put the check in my pocket and he was to see his lawyer and I was to call next day.

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I did call and Harney told me that he had had an interview with him and told him he thought the loan ought now to be made, and he says that Mr. Granger had shown him this check.

Q That Mr. Granger had? A Yes, had shown him the check, the check had been cashed and that I had given him the money, and he said that I had told him, put my hand in my pocket this way (illustrating) and says, "I have got the money right here" and pulled out some greenbacks. He said he did not know how many I had, but "I have got the money right here and I told him that".

Q That is, he told you that he told this lawyer that?

A He told me he told the lawyer that. I am just suiting the action to the words, just in that way, and the lawyer told him that he had a friend who knew about my property.

Q Referring to the mansion property? A Referring to the mansion property -- no, that was a little latter -- he came back and said that he was doubtful about the value of the property; this lawyer, notwithstanding seeing Harney with this roll of \$1800 in his pocket, as he told him, that he was still not satisfied in regard to the value of the property, and next day I was to see him. I called there and found him going to the elevator with some man I didn't know, and I tapped him on the shoulder just as he was getting in the elevator. "Mr. Harney", I said, "how about the loan now?" Well, the lawyer at 111 Broadway told him that he had a friend that knew of my property

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and that he doubted about its being worth the value of the loan, and he would be afraid if the loan was made that it would come back on the estate's hands, and he advised against making it. Well, I said, "Mr. Harney, have you ever made a loan for this estate?" He said, I have." I said "Will you give me the name of two parties to whom you have made loans?" He said, "No, I won't." Well, I said "Will you give me the name of one?" Harney said, no, he wouldn't. Well, I said "I don't believe that you have got any estate, that you have got any money to loan, I believe that you are a fraud from the last word." Well, he said, "If you believe that you had better have me arrested".

Q What did you do? A I went down to the District Attorney's office and made my complaint and found that two other parties had been there before me.

MR. LAIRE: Wait, I move to strike that out.

MR. EDWARDS: Consented to.

THE COURT: Yes, very well.

Q Now, Mr. Granger, with respect to this check that you have handed here, you never gave it to Mr. Harney, did you?

A No, sir.

Q And you never gave him the \$1800 in cash, did you?

A No, sir.

Q The arrangement was that it was to be deposited with a trust company to be drawn against if you failed to pay your interest and taxes? A Yes, sir.

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Q And after this last conversation which you have testified to, you then re-deposited the check to your own credit?

A Yes, sir.

MR. EDWARDS: Your witness.

THE WITNESS: I would like to add another --

MR. HAIRE: I object to the witness adding anything.

THE COURT: Yes, wait until a question is asked.

BY MR. EDWARDS:

Q Is this another conversation you had with Harney?

A Yes, sir.

Q At what time, about, I mean, where did it come in in connection with this matter? A It came in in his office about the time of making, of requesting me to get these references.

Q Well, if you omitted anything in connection with this conversation I asked you for before, I would be glad if you gave it to me now. A He said he was sorry for the delay in completing the loan but if I was in a hurry that Mr. Baker, this lawyer at 115 Broadway was in touch with some quick money, and he thought I might get a loan from him, and advised me to go see him.

Q You never made any application to Mr. Baker, did you?

A I went to Mr. Baker in pursuance of that to find out if he had money. He said there was some estate over in Brooklyn that he thought he could get money from pretty promptly, and the terms were six per. cent and five per cent. commission in ad-

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dition. I told him that was not satisfactory to me, that Mr. Harney had promised to make the loan and that I would see the matter through with Mr. Harney before going any further. He urged me two or three times to make the application and said he thought he could get the money for me, but I told him I would not do it, and then I went back to Mr. Harney and told him that, and Mr. Harney made the suggestion to me, an impudent suggestion, that he could get me a position for selling stock of some rubber concern with a drawing account of \$100 a week. I told him I did not want anything of that kind, I simply wanted a loan from him and I could take care of my own affairs. You can see the reason for those suggestions.

MR. HAIRE: I move to strike that out.

THE COURT: Strike that out.

Q Can you tell us about when you last saw Mr. Harney as you testified, and about when you came to the District Attorney's office and made your complaint? A Well, that was two or three days after the date of that check, I remember.

Q The date of the check, People's Exhibit 31, is November 15th? A Yes, it would be about November 15th, I should say.

MR. EDWARDS: Your witness.

CROSS EXAMINATION BY MR. HAIRE:

Q I think you said you knew Mr. J. B. Hyatt, 50 Church street? A Yes, sir.

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Q And Mr. Eisenberg? A Yes, sir.

Q What is Mr. Eisenberg's first name, do you know?

A Martin.

Q Was there any action pending last October in the courts, or one of the courts of New Jersey, to declare the deed that you held to the property called the mansion property, only a mortgage? A Not that I know of.

Q Has there a decree lately been rendered -- A (Interrupting) Oh, I beg your pardon. What is the date you say?

Q Last October? A Last October, a suit brought at that time?

Q Was there such a suit pending at that time? A There was a suit that had been brought many years previous by a family named Cleveland, from whom I had gotten these properties in New Jersey through loaning them money, and they had brought a suit asking the Chancery Court to be allowed to pay me back the money that they owed me and get their property back, notwithstanding that I held these deeds.

Q In other words, declaring that the deeds should take the place of a mortgage, is that it, to be construed as a mortgage? A I am giving you the facts. You can draw your own conclusion.

Q Has that case been decided? A That case was decided, and the plaintiffs, the Clevelands were given ten days by the decree of the Chancery Court to make payment to me within those

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ten days, and then they could get their properties back, which was exactly what I would have been glad to have done.

BY THE COURT:

Q Did they do it? A No, sir, they did not.

BY MR. WAIRE:

Q When was that decree entered? A I don't remember.

Q It was entered since this defendant's arrest, wasn't it? A No, sir.

Q How? A Not that I know of.

Q When did the ten days expire? A They expired several years ago. At the time the action was brought. This Mr. Cleveland, the man with whom I had had the dealings was in England at the time, and it was manifest that the suit was brought to gain time to let him get back into this country and raise money to pay me back and get his properties back, and that's exactly what I wanted.

Q Did you know Mr. Cochran? A Cochran?

Q Yes, an office on Broadway? A Yes.

Q Do you know the number of his office? A 160.

Q You had business relations with him in regard to this property, didn't you? A No, sir.

Q How? A No, sir.

Q Did you have transactions with him through somebody else? A What property do you refer to?

Q I refer to this property that you are speaking of?

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A You refer to this mansion property on which we were getting this loan?

Q Yes. A I had no dealings whatever with Mr. Cochran on that property.

Q Did you in regard to the lots which you have mentioned here? A Yes, sir, but that was not -- we are talking now only about this mansion property.

Q Well, you are absolutely sure you had no dealings with him in regard to the mansion property, as you term it? A I am absolutely sure.

Q You did have some dealings, however, with Messrs. Hyatt & Eisenberg? A I did, made a contract with Hyatt & Eisenberg in regard to the exchange of the property, as I have related.

Q Was that contract on file at the time, or was it recorded? A It was recorded.

Q Was it on record at the time you had the negotiations with Mr. Harney? A Yes, sir, before they were concluded.

Q How? A It was on record before they were concluded. As I stated in my testimony I found out Mr. Hyatt and had broken with him and then after that the contract was placed of record.

Q Now, were your business relations with regard to this mansion property broken off with Mr. Hyatt because you were unable to furnish title? A No, sir, because I had found him in falsehoods, would not believe him, and would not have any dealings with him, a man who would not tell the truth.

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Q You would not deal with such a wicked man? A No, sir, I was dealing with one and one was sufficient at a time.

Q Did Mr. Harney show you a paper or report from the New Jersey Title Insurance Company in regard to your property?

A Did who show me?

Q Mr. Harney? A I brought Mr. Harney a report from the North Jersey Title Company, it was the North Jersey Title Company.

Q That is the one (indicating)? A Oh, the New Jersey Title Company? The North Jersey, why, I brought that to Mr. Harney.

Q Sure of that? A I think so, I brought him so many papers, I have almost forgotten which. I have got that matter --

Q Well, wait a minute, witness. A That may be a different paper. I did not read it. I just saw the heading. If you will let me read that I can tell.

(Mr. Haire shows paper to Mr. Edwards.)

MR. EDWARDS: Is this supposed to refer to the mansion property or the lots?

MR. HAIRE: I asked him.

MR. EDWARDS: No, you did not.

BY MR. EDWARDS:

Q Will you tell me whether or not that refers to the mansion property? A This refers to the Woodridge property, the mansion.

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Q Yes. A I did not give that to Mr. Harney, although the facts are all there in another paper that I did give Mr. Harney.

MR. EDWARDS: Then I have no objection.

MR. HAIRS: I offer that in evidence.

(Marked Defendant's Exhibit C.)

BY MR. HAIRS:

Q You noticed this paper is dated October 10th, did you?

A I did not notice it, no, sir.

Q It is the fact, is it not? A Yes, sir. That's the time that you sent for it, I suppose, or Harney sent for it.

Q Please leave me out, I did not? A Well, but that date has got nothing to do with me.

Q Now, I notice the last clause of this, I won't read it all. (Reading) "In the abstract of title that was made by Messrs. Collins & Corbin a few years ago, and is now in the possession of Arthur O. Granger, there is a statement to the effect that Charles S. Hinchman, held an unrecorded deed conveying the premises in question to him. Mr. Granger tell us that there was in fact a deed made by Eugene S. Willard, who was then the owner of the premises in question, to Charles S. Hinchman, to be used in some transaction that was not consummated, but that the deed was never delivered. In view of the cloud that has been cast upon title by this statement in the abstract of Messrs. Collins & Corbin, we consider it advisable

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that there should be a quit claim deed by Charles S. Hinchman and wife, or at least a written disclaimer of any title to said Charles S. Hinchman." A That quit claim deed was attached to this draft.

Q Well, I was going to ask you if that was the deed that you referred to as being sent you with the draft attached?

A That was one of the papers attached.

Q Were there other papers attached? A Yes, there was a release from the mortgage.

THE COURT: Now, gentlemen, suppose we suspend now until two o'clock?

The Court then admonished the jury in accordance with section 415 of the Code of Criminal Procedure, and took a recess until 2:10 o'clock P. M.

AFTER RECESS. Trial resumed.

ARTHUR O. GRANGER, a witness for the People resumes the witness stand:

The defendant now pleads guilty to Grand Larceny in the Second degree.

THE COURT: Suppose I put this down for Thursday and have Mr. Kimball investigate?

MR. HAIRE: Very well, your Honor.

THE COURT: Thursday, February 13th, 1913.

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