

J. D. FREDERICKS.

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,

IN AND FOR THE COUNTY OF LOS ANGELES.

Dept. No. 11.

Hon. Geo. H. Hutton, Judge.

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The People of the State of California,)

Plaintiff,)

vs.)

Clarence Darrow,)

Defendant.)

No. 7373.

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REPORTERS' TRANSCRIPT.

VOL. 12

I N D E X.

Direct.

Cross.

Re-D.

Re-C.

Henry H. Flather

930

1 JUNE 5, 1912, 10 A.M.

2 (Defendant in court with counsel. Jury called; all
3 present; case resumed.)

4 Mr. ROGERS. In reference to the cross-examination fur-
5 ther of the witness Franklin, the matter I expected to
6 have ready this morning, of course, is part of the founda-
7 tion we must lay. I haven't yet prepared it sufficiently
8 to go on, and I ask your Honor to let it go over until
9 2 o'clock.

10 THE COURT. All right.

11 MR-FREDERICKS. Probably take that time with the present
12 witness and better finish up with him.

13
14 H E N R Y H F L A T H E R,
15 on the stand for further direct examination.

16 MR. FORD. Mr. Flather, I attract your attention to what
17 purports to be a check drawn on the Riggs National Bank
18 by Frank Morrison in favor of Clarence Darrow, on June 13,
19 1911.

20 MR. ROGERS. I would like to be shown the document.

21 MR. FORD. I will before I introduce it.

22 THE COURT. Isn't this document the one you showed to
23 counsel just before we adjourned?

24 MR. ROGERS. I was just looking at it and counsel said
25 "I have to go now, I have an engagement, I will show it
26 to you in the morning."

1 THE COURT. I thought you had seen it last night. You are
2 quite right.

3 MR. FORD. If counsel desires to look through all the
4 documents I offer, we might take a recess for a few
5 minutes.

6 THE COURT. We will take the time.

7 MR. FORD. Q I now attract your attention to one of the
8 documents exhibited to counsel for the defense, the first
9 one being what purports to be a check drawn on the Riggs
10 National Bank of Washington D. C. by Frank Morrison, Sec-
11 retary in favor of Clarence Darrow, in the sum of \$15,000.

12 MR. APPEL. I wish you wouldn't read the check. A person
13 ought always to refrain from that as much as possible.

14 THE COURT. Objection sustained.

15 MR. FORD. I attract your attention to a document which
16 purports to be check No. 2, without describing it. Have
17 you ever seen that before?

18 A Yes, sir.

19 Q State whether or not that was ever paid by your bank?

20 MR. APPEL. Wait a moment. We object upon the ground--
21 let us do this so as to save repeated objections. Your
22 Honor, we object to the--I suppose you are going to offer
23 all of these checks?

24 MR. FORD. Yes, we are going to offer them all.

25 MR. APPEL. So I can make one objection and avoid interrup-
26 tions and so on. I will object then--

1 MR. FORD. That is, all the checks in favor of the
2 defendant.

3 MR. APPEL. All the checks in favor of the defendant, yes;
4 so we will understand. I object to the introduction
5 of the alleged checks in evidence in this case upon the
6 ground that they are incompetent, irrelevant and immaterial
7 for any purpose whatsoever. We admit the signature on the
8 back of those checks to have been made by Mr. Darrow, the
9 defendant, your Honor. We will admit that the signature
10 of the drawer of those checks is that of Mr. Morrison, al-
11 ready mentioned by the witness on the stand. We will admit,
12 your Honor, that these checks were, in the course of business,
13 paid by the bank, of which the witness here is an official,
14 and at the date stamped there as having been paid by the
15 bank, but we do object to the materiality and the reason
16 why we do that is this: I will state my reasons so we
17 will understand the objection and so there will be no
18 covert meaning to it--we may be wrong, of course. We
19 object to the introduction of those checks because
20 they do not tend to prove any facts in this except that
21 Mr. Darrow, in the course of business, received some money;
22 that it does not tend in any way to identify the money
23 in question. That it does not connect the passing of that
24 money from Mr. Darrow to Mr. Franklin; that the writing on
25 these checks cannot possibly identify the particular money;
26 that it tends in a manner to contradict the evidence of the

1 prosecution already introduced in evidence here, but, of
2 course, that is not the point, simply by way of illustra-
3 tion. The writing there does not in any way identify the
4 money. Of course, if your Honor please, if a man is
5 charged with having given money to another one to bribe
6 a witness, the prosecution would not be allowed to show
7 that for six or seven months before this man had been
8 putting money in his bank. They would be allowed to
9 show that he drew money from the bank on the particular
10 day or a day or two before or somewhere so close to the
11 transaction, so as to show that he had ability to do that,
12 but, your Honor, that is all right because to show that he
13 had the ability to pay that money. I admit that, but
14 your Honor will see that the whole business transactions
15 of the defendant in respect to receipts of money and so on
16 would not be allowed. All we could be allowed to show
17 is that about the time that the transaction occurred that
18 he had the ability to carry on that transaction by showing
19 that he had money on hand, but to go here and disclose
20 private transactions of every kind, and under which to
21 show the law must be assumed in the absence of evidence
22 entirely conclusions, in the lawful carrying on of his
23 business. I say it is not material. Why should we be held
24 here, your Honor, because they charge the defendant here
25 with having passed money over to Franklin for the purposes
26 named in this indictment? Why should we be held to come

1 on the stand and make an accounting of every nickel and
2 every cent that Mr. Darrow has ever had for several months
3 before that? The district attorney, the prosecution
4 ought to do this. He ought to select some particular
5 transaction. Now, the checks themselves are not evidence
6 against him to identify the money, the source from which
7 they came is material, your Honor. What difference does
8 it make, let me suggest this and we will not argue it any
9 more, what difference does it make, your Honor, whether
10 I got money from the president of the United States or from
11 any one else. Put it in my pocket and deliver it to
12 Franklin to go and bribe a juror in a case I am trying.
13 The question is not whether I got it from Tom, Dick and
14 Harry; the question is not whether those men or those
15 people who paid it to me actually paid it to me, that is
16 not involved in the issue. The question is whether I fur-
17 nished it as an item of evidence showing my consent to the
18 perpetration of the crime; it is an incident only because
19 even if no money had been furnished, if he had been asked
20 to do it and he had done it with whatever moneys he had
21 obtained from any source, the guilt of the defendant would
22 have been established just as well. But, the introduc-
23 tion of this evidence here, and I do not wish to state it--
24 it seems to me it is for the purpose of showing your Honor
25 that some other persons connected with the def_ense were
26 furnishing the money, which is immaterial in this case.

1 What difference does it make whether Frank Morrison sent any
2 money to Mr. Darrow or not? It doesn't prove that Darrow
3 gave that money to Franklin. The sole question, it seems
4 to me, would be, did Mr. Darrow have the money on the day
5 in question, did he have the ability to pay Mr. Franklin?
6 Not from what source he got it, not who gave it to him;
7 the fact that Morrison gave him money does not tend to show
8 that Mr. Darrow is guilty, the fact that he got it from
9 other sources does not tend to show that he is guilty. The
10 question is, did he use it for the purposes named in the
11 indictment. It is too remote, if your Honor please, and
12 your Honor will see by an inspection of these documents
13 they run for months and months back, your Honor, and here
14 we will have to go upon the stand and give an account of
15 every cent. Must we have an accounting, your Honor?

16 THE COURT. Let me look at them. (Witness hands documents
17 to court.)

18 MR. FREDERICKS. Now, may it please the Court--

19 THE COURT. (Interrupting) Just a moment. I am going to
20 hear you, but just one moment.

21 MR. FREDERICKS. Yes, your Honor.

22 THE COURT. (After examining documents.) Proceed, Captain
23 Fredericks.

24 MR. FREDERICKS. This is generally an argument and discus-
25 sion as to the admissibility of all of the checks contained
26 there sent to Mr. Darrow the defendant in this case. Now,

1 there is no effort or aim or object on the part of the
2 prosecution to connect any one in the east, as counsel
3 has intimated, with this matter at all.

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3-Pl We are simply trying Clarence Darrow, the defendant in this
2 case, and do not wish to bring anyone in except those that
3 are necessary. So much for that. Now, we are showing --
4 let us assume, for instance, a set of circumstances. Sup-
5 pose all of these checks together would show that the party
6 who is furnishing the funds for the defense of the McNamara
7 case was sending all his money -- the amount is over a hun-
8 dred thousand dollars -- to Clarence Darrow. Suppose these
9 checks would show that all of those checks were deposited
10 by Clarence Darrow in the regular order and due course of
11 business in his bank in Los Angeles except one. Suppose
12 the evidence would then show that the one check was taken
13 by him to a foreign city and that he there secured bills for
14 that check. Now, the materiality of the transaction would
15 then be apparent. We are tracing -- We may assure counsel
16 that we are tracing but the one, but it is competent and it
17 is material to show that that one was handled in the manner
18 and in the way entirely different from the handling of the
19 great bulk of the funds, and was handled in a way to con-
20 ceal the transaction and protect the defendant, and for that
21 reason, the entire account of the checks in this matter be-
22 comes pertinent and competent in this case, and I hardly
23 think counsel will seriously argue the right of the admissi-
24 bility of these checks in this manner. It is rather element-
25 al, but in fairness, I wish to call the attention of the
26 Court to what might make these things material and state

1 they are material and will be material on the proper theory
2 of the case.

3 MR FORD: I just wanted to add one thing. I think it is
4 necessary to get down to elements sometimes. The fact that
5 the defendant caused a specific check to be cashed in an-
6 other city and the proceeds to be brought here -- testimony
7 of those who had seen that transaction done, would be direct
8 evidence. We have a right to show by indirect evidence the
9 existence of the same facts by proving other things. Section
10 1832 -- or 1831 first, says: "Direct evidence is that which
11 proves the fact in dispute directly without the inference or
12 presumption, and which in itself, if true, conclusively es-
13 tablishes that fact." For example, if the fact in dispute
14 be an agreement, the evidence of a witness who was present
15 and witnessed the making of it is direct, and if that witness'
16 statement is true, then it conclusively establishes the fact
17 that that agreement was executed. Section 1832: "Indirect
18 evidence is that which tends to establish the fact in dispute
19 by proving another and which though true does not of itself
20 conclusively establish that fact, but which arouses an infer-
21 ence or presumption of its existence." For example, from
22 the code, a witness proves an admission of the parties to
23 the fact in dispute. This proves the fact from which the
24 fact in dispute is inferred. That is, if the defendant said
25 such a thing is true, that admission is not the point in
26 dispute, but the jury may infer from the fact that the

1 defendant said it was true, that it naturally was true.
2 As in this case, the fact that the defendant, in the ordinary
3 course of his business, put all of his checks in the banks in
4 Los Angeles, with the exception of one, and took that other
5 one away to a place where it was not likely to be discovered
6 by the authorities and caused it to be cashed and currency
7 got for that, does not in itself conclusively establish the
8 fact that that money was used for bribe money, but it arouses
9 an inference or presumption and it is proved by a fact from
10 which the jury may draw the inference or presumption that
11 that money was not going to be used in an honest manner and
12 for bribery, although, as the code says, indirect evidence
13 may not of itself conclusively establish that fact. Now, the
14 jury has the right to draw inferences and presumptions. In-
15 direct evidence is classified by Section 1957 of the Penal
16 Code as being of two kinds, inference and presumption. An
17 inference, defined by Section 1958 is a deduction which the
18 reason of the jury makes from the facts proved without the
19 express direction of law to that effect. But there are some
20 inferences which the law directs must be drawn, and those are
21 when presumptions -- and presumption is a deduction which the
22 law expressly directs to be made from particular facts. And
23 Section 1960 says: " An inference must be founded on a fact
24 legally proved and on such a deduction from that fact as is
25 warranted by a consideration of the usual propensities or
26 passions of men or particular propensities or passions of
the person whose act is in question, the course of business,
or the course of nature.

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Sm 5 Now, we don't contend this particular bit of evidence in it-
6 self is the whole proof on the subject. It cannot be. We
7 have a right to introduce partial evidence, subject to its
8 being stricken out later. If we do not connect it up later,
9 Section 1834 of the Code of Civil Procedure provides as fol-
10 lows: (Reading) "Partial evidence is that which goes to
11 establish a detached fact in a series, tending to the fact
12 in dispute". The ultimate fact in dispute here is the fact
13 whether or not the defendant gave this money to Mr Franklin
14 with the intention to bribe Lockwood. Now, we are attempting
15 to prove that he received a certain piece of money and used
16 it for that particular purpose, and we are going to show that
17 he did his business ordinarily in a certain manner, and that
18 he departed at this particular transaction. That draws an
19 inference, which although not connected, taken in connection
20 with the other evidence in the case, will, we believe, estab-
21 lish the fact. (Reading) "Partial evidence is that which
22 goes to establish a detached fact in a series, tending
23 to the fact in dispute. It may be received subject to being
24 rejected as incompetent, unless connected with the fact in
25 dispute by proof of other facts." Which we avow our in-
26 tention of doing in this case. (Reading, authority further)

1 Now, we intend to place this money in the hands of the
2 defendant, all of it. We intend to show the manner in
3 which he ordinarily disposed of it. We intend to show the
4 exception to that course of ordinary business on one parti-
5 cular check, and we shall endeavor, and intend to trace the
6 proceeds of that particular check back into the hands of
7 this defendant through him to Mr Franklin, ultimately to
8 Lockwood.

9 MR APPEL: That is ^{the} a very argument of counsel to support my
10 objection. The provision of the code the gentleman has
11 read, your Honor, applied to civil cases. Now, it is true
12 that the rule of evidence in criminal and civil cases are
13 the same excepting in those ^{inferences} instances, your Honor, where
14 the question of presumptions come in. No inference or pre-
15 sumptions are allowed against the defendant. No one ought
16 to argue that a series of presumptions ought to convict
17 anyone. That is not good law, your Honor.

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1 Now, here is the proposition. A man goes down here and
2 in the habit of cashing checks, say, at the International
3 Bank. He gets drafts and checks in the course of his
4 business and goes down here to the International Bank and
5 he cashes them there. It is close to his office. I have
6 very often done that when the very few checks came to me.
7 It was close to my office, but if I happen to have a check
8 in my pocket and I should go down the street to the First
9 National Bank, and I remembered I had got to go a little
10 further over to the Title Insurance and Trust Company, which
11 is below that, and I said, "Well, they know me here in this
12 bank, I had better cash this check in here," and go over
13 there with the money and cash that check in there, and then
14 counsel would want to show that all of my checks prior to
15 that time, that I had cashed them in the International
16 Bank, a perfectly innocent transaction in itself, and then
17 because I did a perfectly innocent transaction in cashing
18 another check in the First National Bank, then he comes
19 up with this as a detached fact from a series of facts and
20 the code says, "from a series of facts connected with the
21 case." It doesn't say "series of facts detached and
22 unconnected from the case." The gentleman better read that
23 section and ponder over it a little more. I happen to
24 catch it as he read it, because, your Honor, I happened to
25 go in the First National Bank, as I said, and cash a check,
26 that they then must show all my conduct from the time I

1 was born up to the time I cashed that check at the First
2 National Bank and tell this jury, AH! why didn't he go
3 and follow the customary course of his business? Ah! You
4 must infer that this was for criminal purposes, so I say it
5 is so far fetched--what difference does it make that this
6 gentleman, with all their avowals and propositions here *to*
7 ~~approved~~, that they have in hand, they say we propose to
8 trace this, we propose to do that, then, your Honor if they
9 have that evidence, what is the object of getting inferences
10 and presumptions? Come up with the facts and proof.

11 Prove the facts clear and directly. What difference does
12 it make? take the check you are speaking of. Now, say,
13 here, this check was cashed at a different place; cashed
14 for Mr. Darrow, \$100,000 say. He put it in his pocket, he
15 came down to Los Angeles and gave a part of it to Franklin.
16 Show that that money he gave to Franklin, as you allege,
17 is the same money he received in Philadelphia or in Chicago
18 or received it in Los Angeles, or received it anywhere, if
19 you can identify it. What difference does it make, I say,
20 where he got it from or how he got it? Now, if your
21 Honor please, I say that is too remote. They want to show
22 this disconnected detached thing. They want to show here
23 that Mr. Darrow had three or four hundred thousand dollars
24 in his hand and then they say now, come over on the stand
25 and show us what you did with every cent of that account.
26 I say it isn't right. That the burden must not shift

1 to the defendant to show his innocence. That any guilt
2 or fact which tends to show guilt is admissible against
3 him, it is true, but how the cashing of a check at one
4 place, the mere act of going into a bank and getting a check
5 cashed, show any criminality. Does that show that parti-
6 cular money was used by him? Show it was removed every
7 time and place. I submit, if your Honor please, that these
8 other circumstances, not being material, should not be
9 material because one circumstance is material. I submit,
10 your Honor, it is ^{not} proper evidence.

11 MR. FORD. If the Court please, there are some new things
12 brought out by the argument of counsel--

13 THE COURT. Mr. Ford, counsel objected and he has the closing.
14 We must have an end to argument here somewhere. I think
15 the point has been fully presented.

16 MR. FREDERICKS. I think the counsel's argument was to the
17 weight of the testimony and not to its admissibility.

18 THE COURT. We must proceed orderly. When counsel makes
19 an objection he has a right to the opening and closing.

20 We cannot go on indefinitely. Read the question.

21 (Last question read by the reporter.)
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1 MR APPEL: We have admitted a lot of these things to aid
2 the prosecution in laying the foundation. I suppose really
3 the question is now --

4 THE COURT: There is no objection that there is no foundation
5 laid.

6 MR APPEL: No.

7 THE COURT: The question is clearly a question of materiality,

8 MR APPEL: And we thought we would have that decided and
9 then we will not interrupt.

10 THE COURT: Seems to me, you get the ruling that this
11 argument calls for the prosecution should offer the book.

12 MR FORD: Not until we lay the foundation.

13 THE COURT: Counsel has admitted the foundation.

14 MR FORD: I seriously doubt that counsel can admit for his
15 client --

16 THE COURT: Go on, and I will reserve the ruling until it is
17 offered in evidence.

18 MR APPEL: Mr Darrow here is an attorney in the case, and
19 the defendant, and he has stated in open court that he makes
20 the same admissions that I have made.

21 MR FORD: He does now, your Honor.

22 MR APPEL: I have admitted for him under due consideration.
23 I would not do it --

24 THE COURT: If there is any doubt about it, Mr Darrow has
25 made the same statement that Mr Appel made.

26 MR FORD: There are a large number of other checks there

1 that have no bearing on the case. I will have to direct
2 the attention of the witness to it, and I may state also,
3 your Honor, we are not going to offer this book in evidence,
4 but merely offer it for the purpose of being identified, and
5 will then submit photographs of it. The documents do not
6 belong to us, unless the defendant objects, of course.

7 I will attract your attention to check number 2;
8 check number 3; check number 5; check number 9; check number
9 15; check number 17; check number 24; check number 30;
10 check number 50; check number 52; check number 56; check
11 number 70; check number 77; check number 80; check number 83;
12 check number 89 and check number 92. I will ask you to
13 state whether or not each and all of the checks to which
14 your attention has been called were received by your bank
15 in the ordinary course of business, the stamps on the backs
16 thereof, placed there by your bank at the time they were re-
17 ceived and paid in the ordinary course of business. I am
18 making it generally in that form covering your objection.

19 MR APPEL: We have admitted all that.

20 THE COURT: Those facts have all been admitted by Mr Darrow
21 personally and counsel. Let the witness answer.

22 MR FREDERICKS: The witness may answer, yes. A They have.

23 MR FORD: And at the time that they were received were the
24 indorsements on the back of each check, with the exception
25 of your own bank indorsement, on the checks at that time?

26 A They were.

1 Q And the indorsements, or rubber stamp --

2 MR APPEL: We admit that all the indorsements were there
3 which are usually the indorsements, your Honor, and that
4 their last indorsement was made by them in the course of
5 business when they paid it, by marking it "Paid", and with
6 the date of it.

7 MR FREDERICKS: Let the witness swear to it, then.

8 MR DARROW: I object to that statement of counsel.

9 MR APPEL: He said to my client, "you would not admit it if
10 ~~you~~ we could not prove it", and loud enough for the jury to
11 hear it. Now, I know the Captain don't mean to do Mr Dar-
12 row any injury, but I just call the attention to that --

13 MR FREDERICKS: Nobody would have heard it. It was a little
14 colloquy between ourselves, and I assumed that the defendant
15 was man enough, and had stamina enough in him, and manhood
16 enough to have a private conversation with a man he was
17 talking to and not try to bawl it out and make capital out
18 of it, when it meant absolutely nothing, that is what I as-
19 sume.

20 MR DARROW: I object to that statement and am going to al-
21 lege it as error, anything he said to me was said for the
22 purpose of influencing someone, and he is nearer the jury
23 than he is to me, and he has no right to make any such re-
24 marks.

25 MR FREDERICKS: I will submit not one man on that jury heard
26 it.

1 MR DARROW: I don't know whether they did or did not,
2 but anyway, you have no right to make that remark.
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7s 1 MR. APPEL. His manner of saying his last remark we assign
2 as error, and we ask in case of any necessity that we
3 should remember the manner of the district attorney here.
4 He should not address the defendant in that manner, your
5 Honor.

6 MR. FREDERICKS. The defendant is an attorney in the case.

7 MR. APPEL. He should not tell this jury, he ought to be man
8 enough to do this and do that. That is not right. That
9 is taking advantage of a man that is here on trial. I dare
10 say, the gentleman probably would not say that to other
11 people, although I have great confidence in Mr. Fredericks
12 and in his manhood, but I don't think it is right. I think
13 it is taking advantage. I think it is cowardly to do that.
14 I think so.

15 MR. FREDERICKS. I will take care of my part of it.

16 THE COURT. Gentlemen, just a moment.

p 17 MR. FREDERICKS. I am not playing the baby act.

18 MR. APPEL. Well, you are inferring that we are, and I will
19 tell you that I am just as much of a man as you are, I know
20 you and I am not afraid of you.

21 THE COURT. Mr. Appel!

22 MR. APPEL. I have seen--

23 THE COURT. MR. Appel! Be seated or I will instruct the
24 bailiff to seat you.

25 MR. APPEL. He is referring to me.

26 THE COURT. I am going to dispose of this. Sit down.

1 MR. FREDERICKS. I am not referring to anybody.

2 THE COURT. Let me take care of this now. Gentlemen, the
3 court has frequently admonished counsel on both sides
4 in this case to address their remarks to the court. Per-
5 sonally I did not hear of the remarks of Captain Fredericks
6 until they were stated by counsel. Had I heard them or
7 been aware of the fact I should certainly have reprimanded
8 counsel for making any remarks. The remarks are entirely
9 out of place, irrespective of their purport, their purport
10 makes them still further out of place, and I am going to
11 be content at this time with admonishing counsel, and
12 this is the last admonition I am going to give to counsel
13 on either side in this case, that any remarks made while
14 court is in session must be made to the court. If necessary
15 the court will translate them from the defendant to the
16 prosecution and from the prosecution to the defendant.
17 This is not a place and not a condition for any side
18 remarks to be made by any counsel in this case. Address
19 your remarks to the court. This incident has proved the
20 necessity for absolutely enforcing that rule. It is seldom
21 enforced in court, but it will be strictly and absolutely
22 enforced against counsel on either side, no matter how
23 trivial the side remark may be, it will not be permitted
24 in this case. This incident has demonstrated the necessity
25 for a very strict enforcement of that rule and it will be
26 strictly enforced as against both sides, and I trust,

1 Gentlemen, you will govern yourselves accordingly.

2 The jury is admonished and directed to disregard the
3 statements made by counsel at this time for any purpose
4 whatever.

5 MR. FREDERICKS' I want the record to show, may it please
6 the court, that my talk with counsel on the other side
7 was in a subdued tone of voice and intended for counsel.

8 THE COURT. The record already shows that fact by my state-
9 ment that I did not hear it.

10 MR. FREDERICKS. And intended as a pleasantry, and without
11 any illfeeling at all.

12 THE COURT' Let us have no more pleasantries.

13 MR. APPEL. I would not want the record to show the fact
14 that the remark is not denied. I suppose I can show by
15 every man on this side they heard it, and they are further
16 away from him than the jury, and I do not want the record
17 to show that to my mind the remark was not heard.

18 THE COURT. The record shows that I did not hear that remark
19 and counsel can avail themselves of that and further than
20 that I cannot go.

21 MR. FORD. If the court please, at this time I desire to
22 offer in evidence the documents concerning which the witness
23 has just now testified, being documents or what purport
24 to be checks number 2, 3, 5, 9, 15, 17, 24, 13, 50, 52,
25 56, 70, 77, 80, 83, 89, 92.

26 MR. APPEL. We make this objection. We object to the offer

1 as made and to all of the instruments offered in evidence
2 as a whole and to each and every one of them individually,
3 on the ground that they are incompetent, irrelevant and
4 immaterial, hearsay, and not proof against this defendant
5 of any fact in dispute; upon the further ground that the
6 documents in evidence have not been--we waived that before,
7 your Honor, what I was going to say--upon the further
8 fact that the introduction of the checks in evidence
9 would be against the provisions of the constitution; it
10 would be denying the defendant the right to be confronted
11 with the witnesses that he may cross-examine them; that
12 the writings themselves are not evidence of the facts
13 alleged to exist and which counsel on the other side
14 undertakes to prove, and your Honor, we call your attention
15 to just one decision upon that.

16 THE COURT. I am considering all of the argument you made
17 a few minutes as having a direct bearing upon this ques-
18 tion, but the Court will hear you further.

19 MR. APPEL. Just one decision to submit, to especially
20 the last point. In the 64 North Carolina report, page
21 74; this is cited by approval of Mr. Wharton and followed
22 by other United States decisions, and I only wish to
23 read this as being a case directly in point. (Reading)

24 "In the course of the trial the state offered in evidence
25 the books of the North Carolina Railroad Company at Thomas-
26 ville Station in order to show that certain cotton, in regard

1 to which it was alleged that perjury had been committed,
2 had been received by the def endant. It was shown that
3 the entries were inthe hand of one Lea, a former agent of
4 the company at that station, and were in reference to the
5 ordinary business transactions of the corporation to which
6 they belong. The death of Lea was not shown, but that
7 he was living a short time previously in the state of Mis-
8 souri. The defendant objected to their introduction. The
9 objection was overruled, and the defendant excepted." Now,
10 the court says: "For the purpose of showing that the cot-
11 ton, in regard to which the perjury is charged to have
12 been committed, was received by the def endant, the books
13 of the North Carolina Railroad Company at Thomasville Sta-
14 tion were offered inevidence. It was shown that the entries
15 were inthe handwriting of one Lea, a former agent of the
16 company at said station, and were in reference to the ordin-
17 ary business transactions of the corporation. The death
18 of Lea was not shown; but that he was living a short
19 time previous in the State of Missouri. The evidence was
20 objected to by the defendant; objection overruled; and
21 the defendant excepted. We must assume that the entries
22 furnished material evidence, and that Lea was living and
23 was absent from the state. We take occasion to say that it
24 was the duty of his Honor to pass upon this fact, and to
25 set it out as a fact, and the recital of the evidence from
26 which he made the inference a fact, is superfluous and

1 irregular. It is a cherished rule of the common law,
2 that in trials by jury the witnesses shall be openly
3 examined and cross-examined, in the presence of the parties
4 and of the jury.

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9-P 1 "An exception is made in regard to dying declarations, but
2 this exception is restricted to indictments for homicide
3 against the party who caused the death, and is based on the
4 maxim, 'No man shall take advantage of his own wrong'. A
5 relaxation of the rule is also made, so as to admit in evi-
6 dence what a witness who is dead swore on a former trial be-
7 fore a jury, or a committing magistrate; upon the ground that
8 the accused had the benefit of consulting the witness, and
9 of the cross-examination, and is only deprived of one test
10 of truth, the presence of the witness before the jury, which
11 loss was caused by the act of God. In the case before us,
12 it was material on the part of the State to prove the del-
13 ivery of the cotton to the defendant at Thomasville. To
14 make this proof, the presence of the witness was necessary
15 (1), that he might be put under the obligation of an oath,
16 (2), that the jury might note his looks and demeanor,
17 (3), that the defendant might confront him with other witness-
18 es, and (4), that the defendant might cross-examine him.
19 Constitution Art. 1, Sec. 11 : 'In all criminal prosecutions
20 every man has a right to be informed of the accusation against
21 him, and to confront the accusers and witnesses with other
22 witnesses.' We take it that the word 'confront' does not
23 simply secure to the accused the privilege of examining
24 witnesses in his behalf, but is in affirmance of the rule of
25 the common law, that in trials by jury, the witness must be
26 present before the jury and accused, so that he may be con-

1 fronted, that is, put face to face. Upon the trial, it
 2 being proved that Lea was absent and not within the reach
 3 of the process of the court, all of these safeguards which
 4 the law has provided for the purpose of excluding falsehood,
 5 in favor with one charged with an infamous crime, are by
 6 the ruling of his Honor, put out of the way; and entries
 7 made by Lea in the books of the railroad company are ad-
 8 mitted to prove the delivery of the cotton in the stead of --
 9 the solemn oath of Lea subjected to the tests of truth or-
 10 dained by the law of the land. Whether the entries would
 11 be inadmissible as evidence, and proof of the death of Lea,
 12 is a question not now presented. We are satisfied that the
 13 entries were not admissible, and proof of Lea's absence from
 14 the State. If such was the law, it would be infinitely
 15 better for persons accused of crime to consent to have the
 16 depositions of witnesses who are absent from the State read
 17 in evidence; for they would thus secure the safeguards of
 18 an oath, and of a cross-examination, and be deprived only of
 19 the safeguard of confronting the witness in the presence of
 20 the jury. And yet, neither the Chancellor, according to
 21 the practice in England of issuing commissions to take depo-
 22 sitions of witnesses residing abroad, nor the Legislature,
 23 in passing statutes for the same purpose, have ever supposed
 24 that they had the power to deprive the accused of his rights
 25 to confront his accusers and their witnesses before the jury.
 26 As the trial was conducted, the defendant has, in this point,

1 been deprived of the safeguards provided by law in the
2 favor of life and liberty, and therefore has not been con-
3 victed according to law. There is error. This will be
4 certified to the end, &c."

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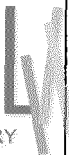
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10-P 1 Now, these checks are signed by Frank Morrison; we have
2 admitted that. But, Frank Morrison is not here to testify
3 that the proceeds of those checks in any way, shape or manner
4 were intended for any particular purposes, or reached, in
5 fact or reality, the hands of Mr Darrow, and these checks
6 are the written word of Mr Morrison, but he is not on the
7 stand and what he said then, wherever he wrote that check,
8 is just the same as if he had written a letter stating to
9 Mr Fredericks: "This is a fact", and they undertook to
10 introduce the letter in evidence. It is hearsay. I submit
11 it, if your Honor please.

12 MR FORD: If the Court please --

13 THE COURT: Let me see that case. I want to read one part
14 of it you read. (Counsel hands book to Court) Objection
15 overruled.

16 MR APPEL: We except.

17 MR FORD: The documents are admitted in evidence, your
18 Honor?

19 THE COURT: Yes.

20 MR FORD: I desire to read them into the record at this time.
21 (Reading): "No.2. Washington, D C, June 15, 1911. The
22 Riggs National Bank, formerly Riggs & Co. Pay to the order
23 of Clarence Darrow, Fifteen Thousand no/100 , \$15,000.00,"
24 signed "Frank Morrison, Secy., Special No.5." Which document
25 is indorsed as follows, in pen and ink; "Clarence Darrow".
26 Rubber stamp indorsement "Pay National Metropolitan Bank,

1 Washington, D C, or order, prior endorsements guaranteed
 2 Merch & Mech Savings Bank. William C Worthington, Cashier."
 3 Rubber stamp endorsement "National Metropolitan Bank, June
 4 19, 1911, prior endorsements guaranteed, Washington, D C."
 5 Rubber stamp endorsement: "Pay to the order of any bank or
 6 banker, Jun 16 1911, Western Trust & Savings Bank, Chicago.
 7 Harry R Moore, Cashier." Rubber stamp endorsement "Pay
 8 any Bank or Trust Company or Order prior endorsements
 9 guaranteed, The Continental Trust Company, Baltimore, Md.,
 10 F C Dreyer, Treas."

11 "No. 5. Washington D C, July 8th, 1911.

12 Pay to the order of Clarence Darrow -- Riggs National Bank,
 13 formerly Riggs & Co. Pay to the order of Clarence Darrow
 14 Fifteen Thousand ~~no.~~ 100 \$15,000.00. Signed "Frank Morri -
 15 son, Secy. Special No.5." Endorsed "Clarence Darrow" in
 16 ink. Again endorsed "Clarence Darrow, Trustee", in ink.
 17 Rubber stamp endorsement "240 Pay to the order of the First
 18 National Bank, Los Angeles, Cal. Prior endorsements guar-
 19 anteed. Equitable Savings Bank, Los Angeles, Cal. J G Carey,
 20 Assistant Cashier." Rubber stamp endorsement "Pay any
 21 Bank or Banker, prior endorsements guaranteed, July 13, 1911,
 22 First National Bank, Los Angeles, Cal. W T Hammond, Cashier."
 23 Rubber stamp endorsement "All prior endorsements guaranteed.
 24 Pay any Bank or Banker or Order July 18, 1911, The Fourth
 25 Street National Bank of Philadelphia, Pa, D 3 0. R J Clark,
 11-P26 Cashier". Rubber stamp endorsement, letters "B" in a circle.

1 Rubber stamp endorsement "3", with the date "July 13, 1911"
2 in a circle. "

3 "No. 5, Washington D C, July 15, 1911. The Riggs
4 National Bank, formerly Riggs & Co. Pay to the order of
5 Clarence Darrow, Ten Thousand no/100 \$10,000.00". Signed
6 "Frank Morrison, Secy. Special No.5." Endorsed in ink
7 "Clarence Darrow". Rubber stamp endorsement "Pay any Bank
8 or Trust Co or order, prior endorsements guaranteed. Jul 25,
9 1911, The Commercial National Bank of Los Angeles. Newman
10 Essick, Cashier." Rubber stamp endorsement "All previous
11 endorsements guaranteed. Pay to the order of any Bank or
12 Banker. Girard National Bank, Philadelphia, Joseph Wain, Jr.
13 Cashier. August 1, 1911." "Pay to the order of Girard
14 Commercial National Bank, Philadelphia, Pa, July 31, 1911,
15 all prior endorsements guaranteed, First National Bank of
16 Pittsburg, Pa, F H Richard, Cashier."

17 "No. 9. Washington, D C, July --" I beg pardon; on
18 check No.2 I omitted to read, if you will go back to that,
19 in red ink on the face of the check "Not over \$15,000."
20 On check No.5, on the face of the check, a rubber stamp
21 endorsement "No. 2, 1911, T."

22 "Check No.9. Washington, D C, July 31, 1911. The
23 Riggs National Bank, formerly Riggs & Co. Pay to the order
24 of Clarence Darrow Fifteen Thousand and no/100 \$15,000.00. "
25 Signed "Frank Morrison, Special No.5" On face of check
26 appears in red ink the words written "Not over \$15,000".

1 Endorsed "Clarence Darrow", in ink; endorsed "C S Darrow,
 2 Trustee", in ink. Endorsed in rubber stamp "Pay any Bank
 3 or Trust Co or order, prior endorsements guaranteed, Aug 8
 4 1911 Commercial National Bank of Los Angeles. Newman Essick
 5 Cashier." Endorsed rubber stamp "Pay to the order of
 6 Girard National Bank, Philadelphia Pa, Aug 14 1911, all prior
 7 endorsements guaranteed. First National Bank of Pittsburg,
 8 Pa, F H Richard, Cashier." Endorsed rubber stamp "All prev-
 9 ous endorsements guaranteed. Pay to the order of any Bank
 10 or Banker, Girard National Bank, Philadelphia. Joseph Wain,
 11 Cashier. Aug 15 1911."

2-P. 12 "No.15. Washington, D C, Aug 3rd 1911. Riggs National
 13 Bank, formerly Riggs & Co. Pay to the order of Clarence
 14 Darrow Twenty-five Thousand and no/100 \$25,000.00"; signed
 15 "Frank Morrison, Secy. Special No.5." On face of check in
 16 red ink is written "Not over \$25,000". Endorsed "Clarence
 17 Darrow" in ink; endorsed "C S Darrow, Trustee" in ink;
 18 endorsed rubber stamp "240 Pay to the order of the First
 19 National Bank of Los Angeles, Cal., Aug 8 1911, Equitable
 20 Savings Bank, Los Angeles, Cal. J G Carey, Cashier. "
 21 Endorsed "Pay any Bank or Banker, previous endorsements
 22 guaranteed. Aug 8, 1911. First National Bank, Los Angeles,
 23 Cal. W T Hammond, Cashier." Endorsed rubber stamp "All
 24 prior endorsements guaranteed. Pay any Bank or Banker or
 25 order Aug 14 1911. Fourth Street National Bank of Philadel-
 26 phia. 5-39 R F Clark, Cashier. 5-39."

1 "No.17. Washington, D C, Aug 17 1911. Riggs National
2 Bank, formerly Riggs & Co. Pay to the order of Clarence
3 Darrow \$10,000, Ten Thousand and no/100. Frank Morrison,
4 Secy. Special No.5." Written in red ink across the
5 face of the check: "Not over \$10,000." Endorsed in ink
6 "Clarence Darrow"; in ink, "C S Darrow, Trustee". Rubber
7 stamp endorsement: "Equitable Savings Bank of Los Angeles,
8 Cal." "Pay to the order of Continental and Commercial
9 National Bank 6240 of Chicago, Illinois, 6240, Aug 7 1911.
10 All prior endorsements guaranteed. Central National Bank. "
11 This is rather confused. Do you want to read this?
12 MR APPEL: I am not familiar with it. I don't know how.
13 MR FORD: Endorsements "Continental & Commercial National
14 Bank of Chicago, Nathaniel R Losch, Cashier." Endorsed
15 rubber stamp "Pay to the order of Philadelphia National
16 Bank, Philadelphia, Pa. Continental & Commercial National
17 Bank of Chicago. Nathaniel R Losch, Cashier."

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13s1 "No. 24, Washington, D. C., Aug. 18, 1911. The Riggs
 2 National Bank, formerly Riggs & Co., Pay to the order of
 3 Clarence Darrow Ten thousand 00/100 Dollars, \$10,000 00/100.
 4 Frank Morrison, Secy. Special No. 5." in red ink on the
 5 face of the check, "Not over Ten thousand Dollars." Endorsed
 6 in ink, "Clarence Darrow. Clarence Darrow, Trustee.
 7 Equitable Savings Bank, Ruby Wood, pay any bank or banker
 8 Aug. 22, all prior endorsements guaranteed, the Citizens
 9 National Bank of Los Angeles, Cal., W. Woods, Cashier."

10 "No. 30. Washington, D.C., Aug. 21, 1911. The Riggs
 11 ational Bank, formerly Riggs & Co., Pay to the order of
 12 Clarence Darrow, Ten Thousand/^{00/100 figures,}Dollars; /\$10,000' 00/100ths."
 13 Signed, "Frank Morrison, Secy. Special No. 5." Endorsed
 14 in ink, "Clarence Darrow." Another endorsement in ink,
 15 "O. A. Tveitmoe, Treasurer, defense fund State B. T. C."
 16 Rubber stamp endorsement, "Pay to the order of Riggs
 17 National Bank, Washington, D.C., the Anglo & London Paris
 18 National Bank, 11-17 San Francisco, Cal., 11-17." And
 19 in pencil mark, -pencil writing, the letters, "O.K."
 20 and the following figures in column, "46-"

21 MR. APPEL. We object to that as not being part of the check,
 22 hearsay, incompetent, irrelevant and immaterial.

23 MR. FORD. It is an endorsement that is upon it, whatever
 24 it may be.

25 THE COURT. Let me see it.

26 MR. APPEL. I add to my objection there is no foundation

1 laid for any reading of that pencil memorandum on the
2 back of the check in question; it is hearsay.

3 MR. FORD. I will state frankly to the court I don't know
4 the significance of it, but it is there on the check and
5 perhaps is absolutely immaterial, but as long as it is there
6 we want it read into the record. I don't see any sig-
7 nificance in it myself at all one way or the other.

8 THE COURT. Let me see it, in view of the special objec-
9 tion. Appears to be a mere pencil memorandum having no
10 reference whatever to the figures or to the matter under
11 consideration. Objection sustained.

12 MR. FORD. The document itself is in evidence, your Honor.
13 Whatever may be upon it I simply want the record to show
14 what the document was, was the only object in reading it.

15 THE COURT. The pencil memorandum apparently is no part
16 of the document.

17 MR. FORD. I would like to interrogate the witness at this
18 point--well, I will do that later.

19 "No. 50. Washington, D.C. Sept. 2, 1911. The Riggs
20 national Bank, formerly Riggs & Co. Pay to the Order of
21 Clarence Darrow, Ten thousand and 00/100 Dollars,"
22 figures, \$10,000 00/100", signed, "Frank Morrison, Secy.
23 Special No. 5." Endorsed in ink, "Clarence Darrow."
24 Endorsed, rubber stamp, "Pay any bank or Trust Co. or
25 order, prior endorsements guaranteed. Sept. 8, 1911, Com-
26 mercial natl. Bank of Los Angeles, Newman Essick, Cashier."

1 Endorsed, "Pay to the order of Girard National Bank,
2 Philadelphia, Pa. all prior endorsements guaranteed. Sept.
3 13, 1911, The First National Bank of Pittsburg, Pa.

4 F. H. Richard, Cashier." Endorsed, rubber stamp, "All
5 previous endorsements guaranteed, Pay to the Order of any
6 bank or banker, Girard National Bank, Philadelphia, Pa.,
7 Joseph Wayne, Jr., Cashier. Sept. 14, 1911."

8 "No. 52. Washington, D.C. Sept. 9, 1911. The Riggs
9 National Bank, formerly Riggs & Co. Pay to the Order of
10 Clarence Darrow Ten thousand and 00/100 Dollars," figures,
11 "\$10,000 00/100", signed, "Frank Morrison, Secy. Special
12 No. 5." In red ink on the face, "Not over Ten thousand
13 Dollars." Endorsed, "Clarence Darrow." In ink.

14 Endorsed, rubber stamp, "Pay any bank or Trust Co. or
15 order, prior endorsements guaranteed, Sep. 14, 1911, Com-
16 mmercial Natl. Bank of Los Angeles, Newman Essick Cashier.

17 16-17. " Rubber stamp endorsement, "Previous endorse-
18 ments guaranteed, Pay to the order of any bank or banker,
19 Girard National Bank, Phila. Joseph Wayne, Jr. Cashier.
20 Sep. 20, 1911." "Pay to the order of Girard National
21 Bank, Philadelphia, Pa. all prior endorsements guaranteed,
22 Sep. 19, 1911. The First National Bank of Pittsburg, Pa.
23 F. H. Richard, Cashier."

24 "No. 56--"

25 THE COURT. Just a moment, Mr. Ford. Mr. Rogers, were you leav-
26 ing the court room?

1 MR. ROGERS. Yes, sir.

2 THE COURT. There is a matter I want to discuss before
3 you leave. I had not quite disposed of the incident that
4 occurred here a few moments ago when counsel went on
5 with another question, but I deem it as well a little time
6 might intervene. Mr. Rogers was not in the court room and
7 for the further purpose of the record I want to now state
8 what occurred and take such action which I feel must be
9 taken under the circumstances. Mr. Ford was interrogating
10 a witness on the stand, and with the approval of the court
11 was very properly asking him some questions not in the
12 record at that moment. Mr. Ford's conduct was perfectly
13 proper. Counsel for the defendant had admitted some
14 matters, more or less material, and across the table and
15 in a tone of voice that was not heard by the judge of this
16 court but was heard by the defendant himself and by
17 his attorney, Mr. Appel; Mr. Fredericks stated, according
18 to the statement made by defendant and Mr. Appel, and
19 acquiesced in by Captain Fredericks himself, stated that
20 counsel would not have made the admissions if they had
21 not been able to prove them. Captain Fredericks un-
22 doubtedly meant this as a facetious remark, but this is
23 not the time or place for facetious remarks of that kind.
24 Remarks of that kind ought not to have passed across the
25 table. The defendant himself and his counsel took excep-
26 tion to the remark, and here is where the serious offense

1 took place: Captain Fredericks should have apologized
2 for the remark and might have ended it. I feel that was
3 his duty. He saw not to do so but on the contrary added
4 a remark to which the def_endant and his counsel took still
5 further offense and at which the court took offense. I
6 have reflected on this more in the last thirty minutes and
7 I cannot answer for myself as having done my duty towards
8 the maintenance of good order in this court room to let the
9 incident pass unnoticed. I feel that the facts as I have
10 recited them calls for more than a mere reprimand, which
11 was given, but I feel that it is an unlawful interference
12 with the proceedings of this court, tending to seriously
13 interfere with the due course of the trial and constitute
14 a contempt of court for which Captain Fredericks is fined
15 the sum of \$25. Following this incident and when the
16 court had directed the defendant, who appears as his own
17 counsel, and his attorney, Mr. Appel, to be seated, and
18 had informed those gentlemen that the court would give the
19 matter proper attention, Mr. Appel criticised the language
20 and conduct of Captain Fredericks as being cowardly. This
21 conduct on his part certainly tends to and does, whenever
22 it occurs, interfere with the lawful proceedings of this
23 court, and tends to seriously interfere with the due course
24 of the trial, and I find him guilty of contempt of court,
25 bearing in mind the aggravating circumstances, the fine
26 assessed will be \$5.

1 MR. APPEL. Your Honor--

2 THE COURT. You may proceed, Mr. Ford.

3 MR. APPEL. Your Honor, on behalf of the defendant, we do
4 not--we except to the conduct of the court in finding his
5 counsel guilty of contempt of court during the trial of
6 this case, for having had the manhood to get up here and
7 defend his client. On behalf of myself I do not find
8 that the court has done anything more than he should do
9 in the finding, but in behalf of the defendant I take an
10 exception for whatever benefit he may get from it. As far
11 as I am concerned I think you ought to fine us more.

12 MR. FREDERICKS. He can pay part of mine if counsel feels
13 it will do.

14 THE COURT. Gentlemen, stop this right here. There will
15 be no more comments across the table between counsel. This
16 is not the time or place for facetious remarks.

17 MR. FREDERICKS. The prosecution will be very glad to help
18 the court enforce that rule, as far as we are concerned.

19 THE COURT. I wanted to say this, Mr. Rogers, in your presence
20 and now if you desire to be excused the court will not
21 detain you.

22 MR. ROGERS. In view of the fact that this witness is
23 going to take the remainder of the forenoon, and I might more
24 expeditiously attend to some matters on the outside, I ask
25 to be excused.

26 MR. FORD. (Reading) "56. Washington, D.C. Sept./19¹⁸11.

The Riggs National Bank, formerly Riggs & Co. Pay to the

1 order of Clarence Darrow, Ten thousand 00/100 Dollars."
2 Figures, \$10,000 00/100." Signed, "Frank Morrison, Secy.
3 Special No. 5." In red ink, "Not over Ten thousand Dollars."
4 Endorsed in ink, "Clarence Darrow." Endorsed, rubber
5 stamp, "240 pay to the order of the First National Bank
6 Los Angeles, Cal. Sep. 23, 1911, Equitable Savings Bank
7 Los Angeles, Cal. J. G. Carey, Cashier." "Pay Riggs
8 National Bank, Washington, D.C. all prior endorsements
9 guaranteed, Pay First National Bank, Detroit, Mich.,
10 F. G. Smith, Cashier. Pay to any bank or banker, all
11 previous endorsements guaranteed, Sep. 23, 1911. First
12 National Bank, Los Angeles, Cal. Cage No.3. W.T.S.
13 Hammond, Cashier."

14 "No. 70. Washington, D.C. Sept. 30, 1911. The
15 Riggs National Bank, formerly Riggs & Co. Pay to the
16 Order of Clarence Darrow, Ten thousand 00/100 Dollars",
17 figures, \$10,000 00/100." Signed, "Frank Morrison,
18 Secy, Special No. 5." In red ink, "Not over Ten
19 thousand dollars." Endorsed in ink, "Clarence Darrow."
20 Endorsed rubber stamp, "Pay any bank or Trust Co. or
21 order, prior endorsements guaranteed, Oct. 6, 1911, Com-
22 mmercial Natl. Bank of Los Angeles, Newman Essick, Cashier.
23 16-17. Pay to the order of Girard National Bank, Phila-
24 delphia, Pa. All prior endorsements guaranteed, Oct. 11,
25 1911, the First National Bank of Pittsburg, Pa. F. H.
26 Richard, Cashier. " Rubber stamp, "All previous endorse-

1 ments guaranteed, Pay to the order of any bank or banker,
2 Girard National Bank. Phila. Joseph Wayne, Jr. Cashier,
3 Oct. 13, 1911."

4 "No. 77. Washington, D.C. Oct. 16, 1911. The
5 Riggs National Bank, Formerly Riggs & Co. Pay to the
6 order of Clarence Darrow, Ten thousand 00/100 Dollars."
7 In figures, "\$10,000 00/100", Signed, "Frank Morrison,
8 Secy, Special No. 5." In red ink, "Not over Ten thousand
9 dollars." Endorsed in ink, "Clarence Darrow." Endorsed
10 in ink, "Clarence Darrow Trustee." Endorsed, rubber
11 stamp, pay any bank or trust Co. or order, prior endorse-
12 ment guaranteed, Oct. 21, 1911, Commercial Natl. Bank of
13 Los Angeles, Newman Essick Cashier." Rubber stamp
14 endorsement, "All previous endorsements guaranteed. Pay
15 to the order of any bank or banker, Girard National Bank,
16 Phila. Joseph Wayne, Jr. Cashier, Oct. 27, 1911." "Pay
17 to the order of Girard National Bank, Philadelphia, Pa.
18 All prior endorsements guaranteed. Oct. 26, 1911. First
19 National Bank of Pittsburg, Pa. F. H. Richard, Cashier."
20 Rubber stamp endorsement, "All previous endorsements
21 guaranteed. Pay to the order of any bank or banker,
22 Girard National Bank, Phila. Joseph Wayne, Jr. Cashier,
23 October 27, 1911."

24 "No. 80. Washington, D.C. Oct. 25, 1911. The
25 Riggs National Bank, formerly Riggs & Co. Pay to the order
26 of Clarence Darrow Ten thousand 00/100 Dollars." In

1 figures, "\$10,000." Signed, "Frank Morrison, Secy Special
2 No. 5." Endorsed in ink, "Clarence Darrow." Endorsed
3 in ink, "Clarence Darrow Trustee." Endorsed, rubber
4 stamp, "240 Pay to the order of First National Bank, Los
5 Angeles, Cal. Oct. 31, 1911. Equitable Savings Bank,
6 Los Angeles, Cal. J. G. Carey, Cashier." Rubber stamp
7 endorsed, "Pay to the order of any bank or banker, all
8 previous endorsements guaranteed, First National Bank Los
9 Angeles, Cal. Page No. 3 W. T. S. Hammond, Cashier."
10 Endorsed, rubber stamp, "Pay Riggs National Bank Washington
11 D.C. all prior endorsements guaranteed, First National
12 Bank Detroit, F. G. Smith, Cashier."

13 THE COURT. Gentlemen of the jury we will take a recess
14 until 2 o'clock.

15 (Jury admonished. Recess until 2 P.M.)

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