

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. 46

I N D E X.

	Direct.	Cross.	Re-D.	Re-C.
✓ A. J. Krueger,	3643	3653		3681
✓ Frank R. Smith,	3685	3689		
Newman Essick,	3693			

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1 WEDNESDAY, JULY 3, 1912; 10 A.M.

2 Defendant in court with counsel. Jury called; all pre-  
3 sent. Case resumed.

4 -----  
5 MR. ROGERS. Your Honor please, on yesterday an incident  
6 occurred which after due deliberation and consideration  
7 and thought, after a perusal of the written record to which  
8 I call your Honor's attention--

9 THE COURT. What page?

10 MR. ROGERS. 3603; the defendant deems it to be necessary  
11 to be brought to your Honor's attention at this time.  
12 I call your Honor's attention to the statement made in  
13 lines 1 to 8 of page 3603. Now, if your Honor please,  
14 while at first sight, and doubtless under first impression,  
15 it would not appear that your Honor meant by that statement  
16 a criticism of the course of the defendant in taking objec-  
17 tions, in making objections and taking exceptions, yet it  
18 is susceptible of that construction, and to me last night  
19 before reading the words as they have been extended by your  
20 Honor's shorthand reporter, I first thought they could not  
21 mean what they do now appear to mean. I might say, if your  
22 Honor please, that in the long work of this trial there  
23 was divided up among us for the sake of convenience, and for  
24 the sake of the better work on all parts, various things  
25 to be done, and to Mr. Appel was delegated the work of  
26 making objections and taking exceptions to what we deemed

1 to be improper evidence, improper remarks of counsel and  
2 improper rulings of the court. It is an ungrateful task,  
3 it is one which no lawyer wants to do, and Mr. Appel took  
4 it because to me had been delegated the cross-examination  
5 of the witnesses to a large extent, and to Mr. Geisler and  
6 to Mr. Dehm had been delegated some of the work of the pre-  
7 paration of the case from a legal standpoint, and Mr. Dehm  
8 some of the work of the presentation of the defendant's  
9 case when it shall come, and to Mr. Appel there was delegated  
10 what I call a very ungrateful task, one which I would not  
11 want under any conditions or circumstances, and yet one  
12 which it is absolutely necessary that some man shall do.  
13 Whether Mr. Appel has done his duty or not is not the ques-  
14 tion here. To us he appears to have done his duty in  
15 taking objections and in many cases we unite and I speak  
16 for all counsel for the defendant, he has done his duty  
17 exceedingly well, because we believe there have been many  
18 instances here of most prejudicial error, prejudicial to  
19 the rights of the defendant, prejudicial to his standing  
20 before the jury and prejudicial, if your Honor please, to  
21 his substantial standing as a defendant in this court.  
22 Now, your Honor, says in that, it is not necessary for me to  
23 read it, but your Honor sees fit to say to Mr. Appel, <sup>not</sup> to  
24 him personally, but to the defendant and all of us, that  
25 what Mr. Appel did yesterday was the culmination of a long  
26 series of disorderly conduct--of similar disorderly conduct.

1 I have been deliberating over the matter and I think I  
2 have reached a very calm consideration of it, and it is not  
3 right that this defendant should stand before this jury  
4 with a statement made by your Honor that Mr. Appel's conduct  
5 in making objections and taking exceptions has been dis-  
6 orderly. If your Honor please, I have never seen so many  
7 attempts to introduce evidence, which I regarded as outside  
8 of the record and as inadmissible in a criminal case, as I  
9 have seen in this case, and Mr. Appel, at times, it may be,  
10 has been vehement in his objections and has been vehement  
11 in his arguments, but it is not right, sir, and I stand here  
12 as an attorney and counsellor at law before your Honor, and  
13 as an officer of your Honor's court, bearing in mind my  
14 oath, to maintain all respect due to courts of justice and  
15 judicial officers, and I have that in mind as I speak to  
16 you: It is not right that this defendant should be sub-  
17 jected to that statement. We have a right to object to  
18 the course of procedure which has gone on here--

19 THE COURT. Mr. Rogers, read the statement.

20 MR. ROGERS. "It being the culmination of a long series  
21 of similar disorderly conduct on your part."

22 THE COURT. Read the whole statement from line 1 to 8.

23 MR. ROGERS. "The Court deems your remarks to be entirely  
24 out of order and disorderly, as to the remarks themselves,  
25 as to the manner and tone of their presentment here in court  
26 and as being the culmination of a long series of similar

1 disorderly conduct on your part tending to seriously inter-  
2 fere with the due course of this trial and constituting  
3 a contempt of court, for which contempt the Court orders  
4 you to pay a fine of \$25.00".

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1 Now, the other day when your Honor saw fit to impose  
2 on me the first fine in 12 years of practice at the bar,  
3 I recognized your Honor's ruling was entirely right in do-  
4 ing what you did, and the fine has been paid, and I real-  
5 ized then your Honor exercised <sup>towards</sup> me on that occasion len-  
6 iency, because a man with my experience at the bar ought  
7 never to have stood here and stated here any matter or  
8 say what I did, and your Honor fined me \$25 and I paid it  
9 gladly -- not gladly, but I believed it to be right, and,  
10 if your Honor please, while we are talking about disorderly  
11 conduct, let me call your Honor's attention to something,  
12 sir. Here you designate the conduct of the attorneys  
13 for the defense as the culmination of a long series of  
14 disorderly conduct, which we deem to constitute our mere  
15 right to make objections and take exceptions, which we  
16 ought to take, and which we ought to make, and yet, I saw  
17 in this court room, if your Honor please, a man pick up a  
18 deadly weapon, weighing four or five pounds and attempt to  
19 throw it at Mr Appel, and women sitting behind him, and  
20 your Honor sat there on the bench without a reproof, and  
21 to this day has he ever been reproved in this court room,  
22 and I do that, standing here defending this man and desig-  
23 nated as men who are committing a long culmination of dis-  
24 orderly conduct. If your Honor please, I stand here to  
25 say that just so long as I have voice, and so long as they  
26 persist in introducing evidence which I believe they them-

1 selves know to be inadmissible, in the manner in which  
2 they present it, I shall object until my voice gives out, and  
3 I may be sent to jail for it, but that won't silence me,  
4 because there are other men here ready to take my place and  
5 stand where I stand. Now, if your Honor please, the defend  
6 ant at this time moves your Honor to instruct the jury  
7 that we have a right to object to these -- make these ob-  
8 jections; that we have a right to take these exceptions  
9 and that the making of objections and taking of exceptions  
10 is not disorderly conduct and, if your Honor please, that  
11 they are not to be prejudiced by your Honor's remark, nor  
12 are they to be deducted therefrom the statement that your  
13 Honor believed we had been disorderly in this court room,  
14 and we ask your Honor for that instruction to the jury at  
15 this time.

16 THE COURT: Gentlemen of the jury, you heard what took  
17 place yesterday. You have been sitting in this court room  
18 for the last seven weeks, and have seen a very busy, stren-  
19 uously busy workshop in operation. Wherever such condi-  
20 tions exists there will be some sparks. I do not intend that  
21 the sparks that may have flown about from time to time,  
22 shall be given more importance than is their due. Yesterday  
23 an incident occurred, a regrettable incident, which you  
24 heard and which has just been read. If any jurymen  
25 places the construction which counsel for the defendant  
26 has placed upon the court's remarks, I instruct you that

1 such is not the intention, and in my opinion, is not a  
2 proper construction to place upon those remarks. Counsel  
3 absolutely has the right, it is his sworn duty to stand  
4 here and object and state in the record his objections,  
5 his motions, so that the record fully presents the de-  
6 fendant's case. It certainly is not any misconduct on the  
7 part of counsel to perform that duty. The court's criti-  
8 cism, as such, is solely directed at the failure of counsel  
9 to immediately respond to the direction of the court to  
10 be seated until some more opportune time, and to desist  
11 from further remarks, further argument, which sometimes I im-  
12 sist has been over-vehement, but one of those things that  
13 incidently happens in a very busy workshp, and ought not  
14 be very seriously regarded. However, in compliance with  
15 Mr Rogers' suggestion, less there be any misunderstanding  
16 or the jury may think that the remarks made by the court  
17 yesterday were directed solely toward Mr Appel, and in no  
18 way were intended to reflect upon the defendant himself,  
19 directly or indirectly, or upon the manner in which he was  
20 presenting his defense; that it was not intended, and was  
21 not intended to be any intimation that it is disorderly  
22 or improper for counsel to stand here and to make proper  
23 objections in the proper manner, in the proper tone, and  
24 protect the record in this case. The sole criticism was  
25 as I have stated, and I will not again repeat it. It is  
26 one of those incidents which I do not think should be re-



1 garded very seriously, because of the very strenuous work  
2 that is being done in this court room and has been car-  
3 ried on for the last eight weeks. I deem that is all  
4 that is necessary to be said at this time. You may proceed,  
5 .gentlemen.

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1 MR. FREDERICKS. I notice, in going over the record, I had  
2 inadvertantly neglected to offer in evidence the \$500 in  
3 bills that I offered for identification with the testimony  
4 of Mr. Biddinger. That is, I say I noticed--I am not sure,  
5 I have it in mind that I intended to offer that in evidence  
6 when Mr. Burns took the stand; at any rate, it has been  
7 testified about and all that and it may be the record only  
8 shows it was offered for identification. What was the  
9 number, Mr. Smith?

10 THE CLERK. 28.

11 MR. FREDERICKS. We now offer that exhibit 28 in evidence  
12 with the testimony of Mr. Burns.

13 MR. ROGERS. I object to that on the ground it is incom-  
14 petent, irrelevant and immaterial; no foundation laid;  
15 not sufficiently identified; not within the issues, there  
16 is no witness on the stand.

17 THE COURT. Is Mr. Burns out of town?

18 MR. FREDERICKS. I think he is. It was not a matter of  
19 identification.

20 THE COURT. I think the witness ought to be on the stand,  
21 in case counsel desires to cross-examine him.

22 MR. FREDERICKS. That might be true if it were anything  
23 else except a matter of bills, if it were a matter of a docu-  
24 ment or in regard to a signature or that sort of thing, it  
25 would be correct, probably, but where in a case such as  
26 this the bills were identified by Mr. Biddinger and Mr. Burns  
said those were the same ones he had received from Mr.

1 Biddinger and turned back to him, making simply a con-  
2 necting link, and there being nothing about the bills making  
3 it necessary, I do not think it is necessary that there  
4 should be a witness on the stand.

5 THE COURT. I think counsel has a right, if he insists on  
6 that point, to have him here, however, in case he wants  
7 to cross-examine him. The objection is sustained.

8 MR. FREDERICKS. We will have to close our case without it  
9 because Mr. Burns wont be back here for ten days. Will we  
10 have permission to put him back on the stand?

11 THE COURT. Yes, you can put him back on the stand at any  
12 time, any time before the case is finally closed.

13 MR. FREDERICKS. It is more a formal matter, more than any-  
14 thing else, because there has been testimony in regard to  
15 the bills and what they were and what was done with them and  
16 all that.

17 THE COURT. Yes, I know.

18  
19 A. J. K R U E G E R,

20 a witness called on behalf of the People, being first duly  
21 sworn, testified as follows:

22 DIRECT EXAMINATION

23 MR. FORD. Q What is your name? A A. J. Krueger.

24 Q Where do you reside? A Palms.

25 Q That is in this county? A Yes, sir.

26 Q How old are you, Mr. Krueger? A 48.

1 Q And what is your occupation? A Farming.

2 Q Are you the same A. J. Krueger who was summoned as a  
3 juror in the case of People versus J. B. McNamara on Sunday,  
4 the 26th day of November? 1911?

5 MR. ROGERS. We object to that as irrelevant, incompetent  
6 and immaterial, not a proper method of proving the summoning  
7 of a juror, no foundation laid.

8 MR. FORD. I am not attempting to--

9 THE COURT. Wait a minute-- have you finished your objec-  
10 tion?

11 MR. ROGERS. Yes, sir.

12 THE COURT. Objection overruled.

13 MR. ROGERS. Exception.

14 MR. FORD. Answer the question- A Yes, sir.

15 MR. ROGERS. Does that objection include "incompetent,  
16 irrelevant and immaterial"?

17 THE REPORTER. Yes, sir.

18 MR. FORD. The answer? A Yes, sir.

19 Q Do you know Bert Franklin? A Yes, sir.

20 Q Did you see him on Sunday, the 26th day of November,  
21 1911, the day you were summoned as a juror? A Yes, sir.

22 Q At what place? A At my house.

23 Q Had you seen him at any time before that? A Yes, sir.

24 Q About how long prior to that? A I don't know just  
25 exactly, I guess two weeks or maybe more.

26 Q Well, about two weeks? A About two weeks or more.

1 Q At what place? A At my place.

2 MR. ROGERS. I object-

3 Q Who else was present the first time you saw him? A No-  
4 body.

5 Q What was said and done between you on that first occasion?

6 MR. APPEL. We object to that on the ground it is incompetent,  
7 irrelevant and immaterial for any purpose whatsoever; that  
8 it is collateral to any issue in this case; that it does  
9 not tend to prove any element of the offense charged in the  
10 indictment; that no foundation is laid for the introduc-  
11 tion of this evidence, and that it is hearsay.

12 THE COURT. Objection overruled.

13 MR. APPEL. We except.

14 MR. FORD. Answer the question.

15 A What was the question?

16 (Question read.)

17 A Why, he came up to the house and says, "Hello, Krueger."

18 I says, "Hello, you have got the best of me, I don't know  
19 you." He says, "You know Bert Franklin?" "Oh, yes."

20 I says, "I do remember you now." He told me that I was  
21 about to be drawn on the McNamara jury and I told him I  
22 didn't want to serve on no jury. Why, he told me it  
23 would be more in it for me on the jury than I could make  
24 off my little ranch. I told him I didn't feel like going  
25 on that jury at all, I said I would not set on it anyway.  
26 Well, he says, "I will see you later, some day I will come

1 out before you are subpoenaed." He says, "I will know  
2 before you are subpoenaed and I will come out to see you,"  
3 and he went away at that time.

4 Q Was that all that was said on that first occasion that  
5 you now remember? A That is all I remember.

6 Q Did he ask you on that occasion whether--for the purpose  
7 of refreshing your recollection, I ask you, did he ask  
8 you on that occasion whether you knew anything about the  
9 case?

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1 MR APPEL: Wait a moment. We object to that upon the  
2 ground it is incompetent, irrelevant and immaterial; it is  
3 collateral to any issue in this case; it is foreign to  
4 any proof concerning any element of the offense charged  
5 in the indictment; it is hearsay; it is leading and sug-  
6 gestive and no foundation is laid.

7 MR FORD: As to the last point, that it is leading and sug-  
8 gestive, the code defines a leading and suggestive question  
9 as one which suggests the answer to the witness, and per-  
10 mits its use --

11 THE COURT: This suggests the answer, but I think it is a  
12 harmless leading question. Objection overruled.

13 MR APPEL: We take an exception.

14 MR FORD: Read the question. (Question read.)

15 A I don't remember him asking me that question.

16 Q Did he, on that first occasion, say anything about  
17 what he wanted you to do if you got on the jury?

18 MR APPEL: Wait a moment. We object to that upon the ground  
19 it is incompetent, irrelevant and immaterial for any pur-  
20 pose whatsoever; that it is collateral to any issue in  
21 the case; that it does not tend to prove any element of  
22 the offense charged in the indictment; and upon the fur-  
23 ther ground, that no foundation is laid; it is hearsay,  
24 leading and suggestive.

25 THE COURT: Objection overruled.

26 MR APPEL: We except.

1 A I didn't understand that last question.

2 MR FORD: Read it. (Question read.) A Well, I don't know  
3 about the first time that he did say about that, going on  
4 that jury.

5 Q You don't remember? A I don't remember.

6 Q Coming down now, to the second time when you met him  
7 at your home on the 26th day of November, you and he being  
8 alone at the Palms, what was said on that occasion be-  
9 tween you?

10 MR ROGERS: I don't know whether he said that.

11 MR FORD: Oh, yes he did.

12 MR APPEL: We object to the question on the ground it  
13 assumes that the witness met Franklin on the 26th day of  
14 November, and it assumes that a conversation was had be-  
15 tween the witness and Franklin on that day.

16 MR FORD: He so testified.

17 MR APPEL: (Continuing.) -- that it assumes a condition  
18 and facts not testified to by the witness, and not shown  
19 by the witness to have any knowledge thereof; it is incom-  
20 petent, irrelevant and immaterial for any purpose whatso-  
21 ever; it is hearsay; collateral to any issue in this case  
22 and does not tend to prove any element of the offense  
23 charged in the indictment.

24 THE COURT: Objection overruled.

25 MR APPEL: We take an exception.

26 MR FORD: Read the question.



1 (Question read.)

2 A Why, he asked me if I had been summoned on the jury.  
3 I told him "Yes, this morning." Well, he wanted to know  
4 what I thought about it. I said I didn't feel nothing  
5 about it. "I feel not like sitting on that jury". Well,  
6 he told me I had -- he says I better stick. He says,  
7 there is more in it for me than there was I could make  
8 off that little ranch and I told him after a while -- I  
9 told him I would do the best I could.

10 A JUROR: I cannot hear very well.

11 THE COURT: You will have to turn around so the gentlemen  
12 in the jury box can hear you.

13 MR FREDERICKS: If anyone didn't hear the last answer --

14 THE COURT: Read the last answer.

15 (Last answer read.)

16 MR FORD: Go ahead. A Well, he wanted to know if I  
17 wanted any money, if I needed any money, and I told him,  
18 no, I didn't need any money. Why, he said if I needed money  
19 he had \$200 he could forward me until the trial was over.  
20 I told him I had plenty of money; I didn't need any money.

21 Q Was there anything else said on that occasion that  
22 you remember? A Why, he asked me if there had anybody  
23 been there before this -- between the time he had been  
24 there the first time and the second time.

25 Q What did you tell him?

26 MR APPEL: We object now, to the statement of the witness,

1 and we object to the evidence upon the ground it is hear-  
2 say, incompetent, irrelevant and immaterial for any purpose  
3 whatsoever; and upon the further ground, that it does not  
4 tend to prove any issue in this case and no foundation is  
5 laid for the introduction of this matter, and it is collater-  
6 al to any issue in the case.

7 THE COURT: Objection overruled.

8 MR APPEL: We except. A I told him yes, that, what is  
9 the name -- Mr Fowler had been there to see me.

10 MR FORD: Is that Frank Fowler?

11 MR ROGERS: Wait a minute. Suppose we don't lead this  
12 witness.

13 THE COURT: No, do not lead him.

14 A I think it is Frank Fowler.

15 MR DARROW: Read that last answer.

16 (Last question and answer read.)

17 MR FORD: Go ahead. Mr Fowler had been there to see  
18 you; then what? A And I asked him, I says, "Is Mr  
19 Fowler and you working on the same case?" He said he  
20 thought it was all right, whatever he said. He wanted  
21 to know what Mr Fowler told me and I said "Mr Fowler didn't  
22 say much to me, only said I was going to be drawn on a  
23 jury, and if I could stick I better stick. There was  
24 four matches <sup>supposed to be there</sup> laying on the floor, and he kind of placed  
25 them around and he says there was that much in it for me,  
26 but I didn't know how much that meant or anything about it."

1 Q How many matches? A Four. Mr Franklin said that  
2 that would be all right.

3 Q Now, you stated a moment ago that Mr Franklin had asked  
4 you to stick? A Yes.

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1 Q Did he state upon which side?

2 MR. ROGERS. We object to that as leading and suggestive.  
3 Let the witness tell his story.

4 THE COURT. Objection sustained.

5 MR. FORD. Q was anything said at that time about your  
6 sticking or the manner in which you were to vote, if you  
7 did stick?

8 MR. APPEL. Wait a moment--we object to that upon the  
9 ground it is incompetent, irrelevant and immaterial for any  
10 purpose; it is collateral to any issue in this case; it is  
11 hearsay and does not tend to prove any issue in the case of  
12 any kind or any element of the offense; it is leading and  
13 suggestive and no foundation has been laid for the introduc-  
14 tion of these statements.

15 MR. ROGERS. In that behalf, if your Honor please, it seems  
16 to me a witness that is testifying in this fashion, that he  
17 ought not to be interrogated, "Was anything said about this  
18 matter?"

19 THE COURT. Yes, I think there is an element of a leading  
20 question there that ought not to be there and upon that  
21 ground alone the objection is sustained.

22 MR. FORD. Q Well, what else was said upon that subject?

23 MR. APPEL. The same objection as last.

24 THE COURT. Objection overruled.

25 A Why, there was nothing more said about that subject,  
26 excepting he said to vote for the defense.

1 MR. FORD. Cross-examine.

2  
3 CROSS-EXAMINATION.

4 MR. ROGERS. Q You said your name was Krueger and you live  
5 down at the Palms? A Yes, sir.

6 Q Do you know the district attorney's office pretty well?

7 A Not very well. I know of them, yes.

8 Q Do you know any members of it pretty well? A I know  
9 Mr. Fredericks better than anybody.

10 Q You know Mr. Fredericks better than anybody. Had busi-  
11 ness with him? A No, sir.

12 Q Never had any business with him? A Only once when he  
13 was running for the first time for the district attorney's  
14 office.

15 Q When was that? A About eight years ago or more.

16 Q Did you have any business, well, of later date than that?

17 A I think on one occasion, yes.

18 Q What is that? A On one occasion, I think, yes.

19 Q Well, now, what was that occasion? A It was through  
20 his office, it was.

21 Q Well, what was it? A I was arrested for selling liquor  
22 without a license.

23 Q And then you compromised it, didn't you? A No, sir, I  
24 paid for it.

25 Q Paid for it? A Yes, sir.

26 Q How much? A \$300.

1 Q \$300? A Yes, sir.

2 Q That was a matter of record over here at Pasadena,  
3 wasn't it? A I think so.

4 Q They took you over from the Palms to Pasadena? A Yes,  
5 sir.

6 Q Did you imagine that anybody, after Mr. Fredericks had  
7 arrested you for running a blind pig--that is what it was,  
8 wasn't it, really, to put it in so much plain english, it  
9 was running a blind pig? A Yes, in plain english.

10 Q Did you think after Mr. Fredericks had arrested you for  
11 running a blind pig and taking you over to Pasadena and  
12 had you fined that he would let you on a jury?

13 MR. KEETCH. We object to that on the ground it is argu-  
14 mentative?

15 THE COURT. Objection overruled.

16 MR. ROGERS. What?

17 A I didn't understand.

18 THE COURT. Read the question.

19 (Question read.)

20 A Let me on a jury?

21 MR. ROGERS. Q yes. A Of course, I didn't think he  
22 would let me on a jury.

23 Q Didn't you tell Franklin so? A Yes.

24 Q Didn't you tell Fowler so? A I don't remember whether  
25 I told Fowler so or not.

26 Q You told Franklin? A I told Franklin so, I didn't

1 think Fredericks would accept me .

2 Q Was that before or after Franklin told you there would  
3 be some money in it for you, after he offered you the money  
4 or before? A I don't know whether it was on the first  
5 time or the second time that he seen me.

6 Q On the very first time that the matter was brought up,  
7 didn't you tell Franklin that Fredericks would never let  
8 you on a jury in the world, that he had arrested you for  
9 running a blind pig and you had been found guilty or  
10 pleaded guilty and had been fined and there was no use,  
11 didn't you tell him that the first time you ever saw him  
12 about it?

13 MR. FREDERICKS. That is objected to on the ground it is  
14 already answered, the witness said he didn't know whether it  
15 was the first time or the second time.

16 MR. ROGERS. If your Honor please--

17 MR. FREDERICKS. He said it.

18 MR. ROGERS. He has not answered that question and I have  
19 a right to say if on the first time he saw him it didn't  
20 occur, and counsel ought not by his statement try to say  
21 the same thing--

22 MR. FORD. In justice to ourselves, we ask that the record  
23 be read back just a few questions.

24 THE COURT. Read the record. I see no harm in the ques-  
25 tion, the objection is overruled.

26 A I told Franklin that I didn't think Fredericks would

1 keep me on that jury because I thought he had it in for me  
2 anyway.

3 MR. ROGERS. Q And after that Franklin told you he would  
4 give you a couple of hundred dollars if you needed any  
5 money? A Yes.

6 Q After that Franklin told you he would give you a  
7 couple of hundred dollars if you needed any money?

8 MR. FREDERICKS. Objected to upon the ground it is the same  
9 identical question that has been asked.

10 MR. ROGERS. Q When you had already told him that Freder-  
11 icks would not keep you on the jury? What were you doing?  
12 was he making you a present of it?

13 MR. FREDERICKS. That is objected to as argumentative.

14 THE COURT. Objection sustained.  
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1 MR ROGERS: Why, Mr Krueger, do you mean to say that Frank-  
2 lin offered you \$200 in cash before you were ever brought  
3 in the court room? A Why, that is what he offered me.  
4 I didn't see no money, but I told him I didn't need any money.

5 Q You didn't need any money, had plenty? A I didn't  
6 know whether it was cash or what it was.

7 Q Supposing it was cash, you would have taken it?

8 MR FREDERICKS: Objected to upon the ground that it is  
9 a supposition, argumentative, speculative and not relevant.

10 THE COURT: Objection sustained.

11 MR ROGERS: When he said \$200 you thought it was cash,  
12 didn't you, you thought it was real money, money you could  
13 spend? A Surely I did.

14 Q How did you come to let \$200 get away from you, Krue-  
15 ger? A I don't understand what you said?

16 MR FORD: Objected to as irrelevant --

17 MR ROGERS: Why didn't you take it?

18 THE COURT: There is another question, why didn't you  
19 take it.

20 MR FORD: I want to object to counsel addressing the wit-  
21 ness in that manner.

22 THE COURT: Counsel has withdrawn the question and sub-  
23 stituted another, why didn't you take it? A little dif-  
24 ferent language. Am I correct in the assumption, Mr  
25 Rogers?

26 MR ROGERS: You are. A For the simple reason that I

1 didn't want to set on that jury; that is the reason I  
2 didn't take it.

3 Q Didn't you know, as a matter of fact, that you never  
4 would be allowed to sit on the jury anyhow?

5 MR FREDERICKS: Just a moment. That is objected to as  
6 calling for a conclusion of the witness, as to what the  
7 District Attorney may have thought. This witness don't know  
8 whether he would be allowed to sit there or not; he can  
9 only form his own opinion, which is an opinion of the wit-  
10 ness of what somebody else might think.

11 THE COURT: His state of mind on that subject, I think  
12 is proper subject of inquiry.

13 MR FREDERICKS: As to what we thought -- very well.

14 THE COURT: Objection overruled.

15 A What was the question? (Last question read by the  
16 reporter.) A Well, I did not know it -- whether I  
17 would or not.

18 Q Have you ever sat on a jury in this county, in the  
19 Superior Court?

20 MR FORD: Objected to as incompetent, irrelevant and imma-  
21 terial; argumentative, especially is it argumentative and  
22 not cross-examination. He may never have been drawn.

23 THE COURT: Objection sustained.

24 MR ROGERS: Have you ever been a jurymen in this county  
25 in the Superior Court? A Yes sir.

26 Q When? A I was twice; I don't know just exactly when.

1 It was about four years ago the last time.

2 Q In what court? A Was there a judge by the name of  
3 Morris?

4 MR FREDERICKS: Moss? A Moss.

5 MR ROGERS: In Judge Moss' court? A Was the last time,  
6 I think.

7 Q Were you ever in a case in which there was any criminal  
8 case tried? A No sir.

9 Q Civil cases entirely? A Yes sir.

10 Q During that time was Mr Fredericks or Mr Ford or  
11 Mr Keetch, or any members of the District Attorney's of-  
12 fice an attorney in the case? A Not that I know of.

13 Q How long before this visit that Franklin paid you was  
14 it that you were arrested for running a blind pig? A Oh,  
15 I don't know. About three years, I guess.

16 Q Well, as a matter of fact, you were still running a  
17 blind pig, weren't you?

18 MR FORD: Just a moment/

19 MR ROGERS: At the time of Franklin's visit there?

20 MR FORD: To that we object upon the ground that it is an  
21 attempt -- oh, I withdraw the objection.

22 THE COURT: All right.

23 A What was that?

24 MR ROGERS: Read it. (Last question read by the reporter.)

25 Q At the time of Franklin's visit to you? A No sir.

26 Q When did you quit?

1 MR FORD: Objected to as irrelevant and immaterial, and an  
2 attempt to impeach the witness by stating instances of  
3 misconduct, which is not permitted by the code.

4 MR ROGERS: It has a different aspect entirely; not at-  
5 tempting to impeach by that.

6 MR APPEL: His occupation is part of the cross-examina-  
7 tion.

8 THE COURT: Overruled.

9 A I quit right after I got arrested.

10 MR ROGERS: As a matter of fact, haven't you been sell-  
11 ing liquor without a license continually ever since you  
12 were arrested, you didn't begin then, but ever since that  
13 time, right down to the present time? A No sir.

14 MR FREDERICKS: That is objected to upon the ground it has  
15 already been asked and answered.

16 THE COURT: He has answered it again now. He said no.

17 MR ROGERS: Isn't that your occupation? A No sir.

18 MR FREDERICKS: Objected to on the same ground. I think  
19 counsel should not make his argument to the jury by re-  
20 peating questions.

21 THE COURT: Objection sustained.

22 MR ROGERS: When Mr Fowler came down there was anyone with  
23 him? A No sir.

24 Q Is this Mr Fowler here? A Yes sir.

25 Q Now, what did you say Mr Fowler said to you? A Why,  
26 he didn't say very much. He only asked me if I knew that

1 I was going to be drawn on the jury. I told him --

2 MR FORD: Just a moment. The witnesses are under the rule,  
3 and if MR Fowler is going to be called as a witness, and  
4 I presume that he should be called as a witness or would  
5 be called as a witness -- I withdraw the word "should",  
6 I think he ought to be excluded from the court room.  
7 The object of excluding witnesses is to prevent them from  
8 hearing what the witness says.

9 THE COURT: Mr Ford, I am not going to take that up at  
10 this time. MR Fowler is a lawyer, he undoubtedly knows  
11 the rule. There is a rule here, MR Fowler, excluding  
12 witnesses except in certain cases; yours does not come  
13 within that exception.

14 MR ROGERS: I guess you will have to leave. Now, that  
15 Mr Fowler has gone out, tell us --

16 MR FORD: Just wait until he does get out.

17 THE COURT: Yes, he has gone.

18 A I can't say any more than I said before.

19 MR ROGERS: Tell me what you said to him and what he said  
20 to you. A Why, MR Fowler asked me if I knew that I was  
21 going to be drawn on the jury. I told him no. Well, he  
22 said I was, and that if I could stick on the jury that  
23 there was so much in it for me.

24 Q What did he say, how much did he say there was in it?

25 A Just laid down four matches, said there is that much  
26 in it for you.

1 Q There is that much in it for you. Did you know how  
2 much he meant? A NO sir.

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1 Q You didn't inquire? A No, sir; I didn't inquire.

2 Q You didn't have any curiosity about it? A Well, because  
3 I didn't want to set on that jury.

4 Q Did you know what those matches meant? A How is that?

5 Q Did you know what they meant? A No, I didn't; I ex-  
6 pected it meant money, I do not know how much it was,  
7 four bits, four hundred dollars or four thousand.

8 Q You didn't know whether it meant four bits, four  
9 hundred, four thousand or forty thousand or four dollars?

10 A No

11 Q Or four matches, did you? A I know there were four  
12 matches there, I know that.

13 Q At that time Fowler just bought a bottle of beer from  
14 you, hadn't he? A No, sir, he did not.

15 Q Is that as true as the rest of it? A Yes, sir, you  
16 can't say so either. I set it up to the bottle of beer.

17 Q You set up the bottle of beer? A Yes, sir.

18 Q When you set up the bottle of beer--

19 THE COURT. Wait a moment, Mr. Rogers. Mr. Sheriff, you  
20 will have to maintain better order. I cannot have this  
21 court room interrupted by laughter.

22 THE BALLIFF. If you want to clear out the court room, they  
23 are all laughing?

24 THE COURT. I don't want to clear out the court room. I  
25 want to admonish the people who come here that this is  
26 too solemn and too serious a piece of business to call for

1 laughter, even if sometimes something may occur that may  
2 temporarily seem to be amusing. This trial is altogether  
3 too solemn a matter, and if you are interested in the pro-  
4 ceedings as such you will be allowed to stay, but any person  
5 that comes in here that looks upon this in any other light  
6 other than as a serious, solemn matter, attracting his  
7 serious and close attention, will not be allowed to remain  
8 in the court room and the sheriff will carry out the in-  
9 structions strictly. Proceed, Mr. Rogers.

10 MR. ROGERS. Q There was but one bottle on that occasion  
11 when Fowler was there or two? A I think it was only one.

12 Q Well, will you swear there were not two, absolutely?

13 A I think there was only one bottle of beer there.

14 Q Did he lay out the matches after the beer or before the  
15 beer came on the scene? A I couldn't tell you that either;  
16 I don't know whether it was before or after.

17 Q What else did Fowler say to you, give me as nearly as  
18 you can his words. A Well, that is as nearly as I can  
19 give it to you, what I have said.

20 Q What did you say to him? A I told him that I would do  
21 the best I could, that is what I told him.

22 Q Do the best you could? A Yes.

23 Q What did you mean by that? A Well, if they wanted to  
24 accept me to set on the jury they could accept me, that is  
25 all.

26 Q I thought you said a moment ago you didn't want to get



1 on the jury? A Well, I didn't.

2 Q But you told him you would do the best you could to get  
3 on the jury? A Yes.

4 Q Didn't you tell Franklin afterwards that you didn't  
5 want to get on the jury and would not? A I told them both  
6 so.

7 Q You told them both so? A Yes.

8 Q Did you tell Franklin how much those matches were worth  
9 apiece or were supposed to be worth apiece or intended to  
10 represent? A No, sir.

11 Q Did Fowler say to you in counting out those matches,  
12 "a thousand dollars apiece"? A No, sir.

13 Q A thousand each, you know that is what I mean, you under-  
14 stand me, do you? A I understand.

15 Q Have you been reading over a statement that you made up  
16 in the District Attorney's office lately? A How is that?

17 Q Have you read over a statement that you made up in the  
18 District Attorney's office lately? A No, I never seen it.

19 Q Have never read it? A No.

20 Q Are you sure you have never read over any paper or docu-  
21 ment up there before you went on the stand? A No, sir.

22 Q You are not sure or do you mean to say you did not do  
23 so? A I say no, sir, I did not see them.

24 Q Anybody read it to you? A No, sir.

25 Q Are you very sure of that? A Yes, sir.

26 Q Have you been up in the District Attorney's office lately?

1 A No, sir.

2 Q Haven't been up there at all? A I was up there this  
3 morning; I was up there about two or three weeks ago,  
4 I guess, when I had the subpoena served on me to be here  
5 in court.

6 Q Whom did you talk with in the District Attorney's of-  
7 fice?

8 MR. FREDERICKS. Objected to as indefinite, which time.

9 MR. ROGERS. The first time.

10 A That gentleman over there, he said to me that they  
11 didn't need me that day, that they would come after me when  
12 they wanted me.

13 Q This gentleman in the light suit of clothes, Mr. McLaren?

14 A I don't know what his name is.

15 THE COURT. Mr. McLaren, will you stand up.

16 MR. ROGERS. The Burns man.

17 THE COURT. Is that the man you mean?

18 A Yes, sir.

19 MR. ROGERS. Q He told you they couldn't need you? A Yes.

20 Q The next time you went did you also see a Burns man?

21 A Well, that was this morning.

22 Q Whom did you see this morning? A Why, he came to me,  
23 he said, "You come down to the court after awhile."

24 Q The same man? A Yes, sir.

25 THE COURT. Mr. Krueger, I don't believe the jurors hear  
26 you. If you speak so the jurors can hear you--

1 A I am a little weak, Judge; I can't speak very well.

2 THE COURT. I am sorry you are weak, but do the best you  
3 can.

4 MR. ROGERS. Q Did Fowler tell you which side he repre-  
5 sented? A Why, he told me for the defense.

6 Q Use the words that he did as nearly as you can, give us  
7 what he said as best you can. A Why, I told you what he  
8 said.

9 Q Try and see if you can do it again; tell me just as  
10 nearly as you can what Frankl Fowler said and what you said  
11 to Frank Fowler. A I can't repeat the same thing twice  
12 just the same.

13 Q Well, if it is true why can't you repeat it so it looks  
14 like the same thing.

15 MR. FORD. Object to that as not being a proper method of  
16 addressing the witness, argumentative.

17 THE COURT. Objection sustained.

18 MR. ROGERS. Q Try it and see how near you can come to it.

19 A He just told me he came down to see me and we had a bottle  
20 of beer. He told me that I was to be drawn on that jury  
21 and he wanted to know if I couldn't stick on the jury. I  
22 told him that I didn't want to set on that jury, and he  
23 spread out four matches there and he told me there would be  
24 that much in it for me if I would stick. I told him that  
25 I would do the best that I could.

26 Q Now, where did he spread the matches out, on what?

1 A Down in the basement.

2 Q on the floor, on the table, or what? A On the floor;  
3 they were laying on the floor.

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1 Q They were lying on the floor. Did he take them out  
2 of his pocket, or were they on the floor already? A They  
3 were already.

4 Q They were there already? A yes sir.

5 Q Were there more than four matches there? A I don't  
6 know; I guess there was.

7 Q You guess there were? A Yes.

8 Q Don't you know; a box or not? A No, they was matches  
9 that I set there and had been smoking and throwed down  
10 there.

11 Q What kind of a basement is this; what is it like?

12 A Just like any hole under a house, I guess.

13 Q Is it a cellar? A Call it a cellar, if you want to.

14 Q What do you keep down there? A Keep my beer down  
15 there and other things.

16 Q Other things? A Yes.

17 Q What other things? A Oh, my God, I can't mention  
18 everything -- I keep my fishing outfit down there, I keep  
19 my gun down there, and I keep lots of little things down  
20 there.

21 Q Some demijohns? A No sir, I ain't got a demijohn  
22 down there, I don't think.

23 Q Don't know no more? A No sir.

24 Q How long was Fowler there altogether? A Oh, just a  
25 little while.

26 Q Just a few moments? A Oh, might have been there 15

1 minutes.

2 Q How did he come, walk, or in a buggy? A Why, he was  
3 a foot when I seen him.

4 Q When he went away, did you observe how he went? A He  
5 .went a foot.

6 Q How did Franklin come? A Why, the first time he  
7 stopped in an automobile.

8 Q And the second time? A I don't know how he came there.  
9 I know he walked away a foot, but how he got there, I  
10 don't know, but there was nothing outside, nothing when  
11 he went away. I know he went away a foot.

12 Q What time of the day was it that Franklin was there.

13 A Why, I couldn't tell you. I think it was about noon  
14 or afternoon.

15 Q Along in the middle of the day? A Somewhere in that  
16 neighborhood.

17 Q What time was it that Franklin was there the first  
18 time? A In the afternoon.

19 Q And the second time, what was it Franklin was there?

20 A In the morning.

21 Q Early or towards noon? A About 9 o'clock, I guess.

22 Q Isn't it a fact that when you were examined as a juror  
23 and brought into court that you were excused by consent of  
24 both sides, don't you know that?

25 MR FORD: Just a moment. To that we object upon the  
26 ground it is incompetent, irrelevant and immaterial, and

1 there might have been other reasons. It is argumentative  
2 and not cross-examination.

3 MR ROGERS: I would like to be heard on that.

4 THE COURT: Objection overruled. A Yes sir.

5 MR ROGERS: And that is after you had promised to do the  
6 best you could you were excused by consent of both sides?

7 A Yes sir.

8 MR FORD: That was the day after Franklin's arrest that  
9 you were excused, wasn't it? A I don't remember whether  
10 it was the day after his arrest or the day before. I was  
11 up here two times; I don't remember just exactly what day  
12 it was.

13 Q You say you saw the District Attorney or went to the Dis  
14 trict Attorney's office several weeks ago. Did you ever  
15 tell the District Attorney anything about this transac  
16 tion or your visit to the District Attorney's office a  
17 couple of weeks ago? A No.

18 MR APPEL: Wait a moment.

19 THE COURT: Strike out the answer for the purpose of the  
20 objection.

21 MR APPEL: We object upon the ground it is incompetent,  
22 irrelevant and immaterial, calling for hearsay evidence,  
23 nothing to do with this case, collateral to any issue  
24 and calling for acts and declarations of a person not in  
25 the presence of the defendant after the alleged commission  
26 of the offense.

1 THE COURT: Objection overruled.

2 MR APPEL: We take an exception.

3 MR FORD: just read the question. (Last question read by  
4 the reporter.) A Did I ever say anything to the District  
5 Attorney several weeks ago?

6 Q That is the question? A About this Franklin business?

7 Q Yes. A Well, what do you mean by the first time or  
8 the second time I seen the District Attorney?

9 Q Do you remember me sending for you a couple of weeks  
10 ago? A Oh, it was more than that.

11 MR APPEL: Object to that whole conference here with the  
12 witness and asking him in sort of a friendly and familiar  
13 way, you remember this occurred between you and I, and we  
14 object to that method of examination. It must be by ques-  
15 tion.

16 MR FORD: Withdraw the question. You were subpoenaed by  
17 the District Attorney to come to the office, you stated on  
18 cross-examination; is that correct?

19 MR APPEL: Wait a moment. We object to that as assuming  
20 a fact not testified to by the witness.

21 MR FORD: testified to it on cross-examination.

22 MR APPEL: Subpoenaed to come to his office, understand  
23 that.

24 MR FORD: I withdraw the question.

25 Q Do you remember being subpoenaed by the District  
26 Attorney?



1 MR APPEL: Wait a moment.

2 MR FORD: After this case began, the case of the People  
3 against Darrow.

4 MR APPEL: We object upon the ground it calls for oral  
5 evidence, and not the best evidence. The subpoena of the  
6 witness must be proven by the record.

7 MR FORD: I am asking if he remembers it.

8 THE COURT: Objection overruled.

9 MR APPEL: Q We except.

10 A If I remember being subpoenaed by the District At-  
11 torney?

12 MR FORD: Yes. A Yes sir.

13 Q How long ago was that, about? A Why, I think I was  
14 brought here on the 3rd of June, I believe it was.

15 Q Now, did you, before that time ever tell the Dis-  
16 trict Attorney or anybody else about the visit of Frank-  
17 lin to your house?

18 MR APPEL: Wait a moment. Now, we object to that on the  
19 ground it is incompetent, irrelevant and immaterial,  
20 calls for hearsay statements, calls for acts and declara-  
21 tions on the part of the witness in reference to third  
22 parties not connected with the defendant, calls for state-  
23 ments and acts and declarations subsequent to the alleged  
24 commission of the offense; calls for a recitation of  
25 past transactions on the part of the witness concerning  
26 acts and declarations of third parties not in the presence

1 of the defendant. There is no foundation laid, and under  
2 the rule announced by the Appellate Court in a most recent  
3 decision --

4 MR FORD: Which one?

5 MR APPEL: The 17th Appellate -- this kind of evidence, and  
6 all evidence heretofore introduced in this case is inadmis-  
7 sible.

8 THE COURT: Objection overruled.

9 MR APPEL: We take an exception.

10 A Yes sir.

11 MR FORD: Just read the question and answer.

12 (Last question read by the reporter.)

13 Q Before that time? A Yes sir.

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1 Q When did you tell the District Attorney first about the  
2 visit--

3 MR. APPEL. Wait a moment--to avoid repetition, if we are  
4 allowed, and so as not to be disorderly, we ask the court's  
5 permission to repeat the objection that we have just made  
6 last as deemed to be made to this question and upon each  
7 and all of the grounds stated therein.

8 THE COURT. The court will not only allow it but request  
9 counsel will as far as possible adopt the practice he has  
10 just suggested. It will be understood that the same objec-  
11 tion and the same ruling and the same exception refers  
12 to this question and in all cases where counsel states the  
13 same objection.

14 MR. APPEL. To avoid being disorderly, that is all I ask.

15 MR. FORD. Q I understood you to say you had told the Dis-  
16 trict Attorney before you were subpoenaed? A Yes, sir.

17 Q How long before you were subpoenaed had you told the  
18 District Attorney? A Oh, just a few days.

19 Q Just a few days? A Yes, sir.

20 Q Who was it you told among the District Attorney's office?

21 A I think it was--

22 MR. DARROW. Just a moment--will you read the question before  
23 the last?

24 THE COURT. Strike out the answer.

25 MR. DARROW. The question before it.

26 MR. FORD. I withdraw the question.

(Last two questions and answers read.)

1 MR. FORD. Q Did you say you told the District Attorney a  
2 few days before or prior to that, but prior to that, your  
3 telling the District Attorney, had you ever told him or  
4 any deputy anything about this matter, or any detective con-  
5 nected with the office, or investigator?

6 MR. APPEL. We object to that upon the ground that it is  
7 immaterial, incompetent, irrelevant to any issues in this  
8 case--

9 MR. FORD. Counsel have brought it out--pardon me--

10 MR. APPEL. --that it calls for declarations, acts and  
11 conduct of the witness in reference to a past transaction  
12 long after the alleged commission of the offense; that it is  
13 collateral to any issue; that it is hearsay; that it is  
14 not binding upon the defendant; that the acts and declara-  
15 tions of this witness or his abstaining from doing anything  
16 or acting in any particular way is not binding upon this  
17 defendant in any way, shape or manner; that it calls for  
18 the relation of the witness and the District Attorney in the  
19 absence of the defendant and it does not tend to prove any  
20 allegation of the offense charged in the indictment.

21 THE COURT. It seems to me that the objection that it is  
22 immaterial is well taken, Mr. Ford.

23 MR. FORD. Very well.

24 MR. FORD. Q You were subpoenaed on Sunday, the 26th day  
25 of November, and you say you spent several days in court  
26 after that? A Two days, I think.

1 Q Two days in court? A Yes.

2 Q Your subpoena called for you to appear in court on the  
3 Tuesday following, did it not?

4 MR. APPEL. We object to that as calling for secondary  
5 evidence, and not the best evidence.

6 THE COURT. Objection sustained.

7 MR. FORD. I will get the subpoena. If you will let me  
8 have the subpoena.

9 THE COURT. Gentlemen of the jury, bear in mind your former  
10 admonition. We will take a recess for five minutes.

11 (After recess.)

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

13 MR. FORD. Q Mr. Krueger, People's Exhibit No. 5 which has  
14 been filed in this case is the venire that was issued on  
15 the 25th day of November, 1911, requiring the jurors therein  
16 named to be and appear in Department 9 on the 28th day of  
17 November, 1911. At the time you were summoned as a juror  
18 were you told to be in court on the 28th day of November,  
19 1911, were you not?

20 MR. APPEL. Wait a moment--

21 MR. FORD. It is merely preliminary and perhaps leading,  
22 but I think it is permissible under the circumstances.

23 THE COURT. I think it is very leading, Mr. Ford.

24 MR. FORD. To save time I put it in that form. It is a  
25 record here and there cannot be any dispute about it.

26 THE COURT. Well, there is an objection.

1 MR. APPEL. Well, <sup>not</sup> after he told him what the sheriff  
2 told the witness and what the paper said.

3 MR. FORD. I will withdraw the question.

4 MR. FORD. Q Did you come into court in obedience to the  
5 subpoena at the time of the summons on the 28th day of  
6 November, the day named in the summons? A I went into  
7 court the day the summons was for me to appear.

8 Q The following Tuesday, the 28th? A I think it was, I  
9 am sure.

10 Q That was the date Franklin was arrested?

11 MR. APPEL. What does he tell him these things for?

12 MR. FORD. Q Do you remember whether that was the day  
13 Franklin was arrested? A I don't know; I don't remember.

14 Q But you were not excused until the next day after you  
15 were in court? A Yes, sir.

16 THE COURT. Mr. Ford, that is leading.

17 MR. FORD. He so testified.

18 THE COURT. If he so testified, what is the use of going  
19 over it again?

20 MR. FORD. Q How many days were you in court before you  
21 were excused? A Just two days.

22 Q Returning to Frankl Fowler: How long have you known  
23 Frank Fowler?

24 MR. APPEL. We object to that as not redirect.

25 MR. FORD. If the Court please, we didn't ask the witness  
26 on direct examination anything about meeting Frank Fowler.

1 He did testify on direct as to a conversation as to what  
2 he told Franklin about Frankl Fowler; on cross-examination  
3 they went into his relations with Frank Fowler.

4 THE COURT. Are you going into anything material?

5 .MR. FORD. I think so, your Honor; it is brought out on  
6 cross-examination.

7 THE COURT. This question, I suppose, is preliminary, how  
8 long he has known Frank Fowler. I think there should be  
9 very little time spent on that branch of the investigation.  
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1 MR FORD: Did you know Frank Fowler when you were serving  
2 as a juror in Judge Moss' court?

3 MR APPEL: We object to that as immaterial, incompetent,  
4 irrelevant, not redirect.

5 THE COURT: Objection overruled.

6 MR APPEL: We except.

7 A Yes sir.

8 MR FORD: You were trying damage suits in that department,  
9 were you?

10 MR FORD: The same objection as the last.

11 THE COURT: Objection overruled.

12 MR APPEL: Exception.

13 A Yes sir.

14 Q At that time Frank Fowler was a detective for the rail-  
15 way companies, was he not?

16 MR APPEL: The same objection; leading and suggestive.

17 THE COURT: Objection overruled.

18 MR APPEL: Exception.

19 A I think he was.

20 Q And had been for a great many years.

21 MR APPEL: The same objection last mentioned, incompetent,  
22 irrelevant and immaterial; hearsay; collateral to any is-  
23 sue in this case; no foundation laid.

24 MR FORD: If you know.

25 THE COURT: Objection overruled.

26 MR APPEL: Exception.



1 A That I don't know, how many years.

2 MR FORD: That is all.

3  
4 RE-CROSS-EXAMINATION

5 •MR APPEL: Now, Mr Krueger, I believe you stated that in  
6 a conversation with Mr Franklin, you had last with him,  
7 when he made some suggestion to you that he was perfectly  
8 willing to give you \$200, then at that conversation, I  
9 understood you to say you said to him, "All right, I will  
10 do the best I can". Am I right about that?

11 MR FORD: We object to that question; we object to it  
12 on the ground it is not recross-examination. He was ex-  
13 amined fully on that matter by the counsel for the defense  
14 on cross-examination, and on redirect, I have not touched  
15 anything about conversations.

16 MR APPEL: No, but it is only preliminary to something I  
17 am going to ask him concerning what he has testified in re-  
18 direct.

19 MR FORD: It is in the record.

20 MR APPEL: It is in the record, but I am leading up to  
21 that subject to draw the witness' attention to that inci-  
22 dent, and what I am going to ask him.

23 THE COURT: Of course, Mr Appel, the witness has a right  
24 to be interrogated by but one counsel. However, if the  
25 matter is brief and Mr Rogers being absent that will not be  
26 enforced here.

1 MR APPEL: Well, I ask the question and your Honor can rule

2 THE COURT: Read the question.

3 (Last question read.)

4 MR FORD: We object to it on the ground it is not re-  
5 cross-examination, not covering any matter brought out on  
6 redirect.

7 THE COURT: Strickly speaking I think that is right, but  
8 if counsel desire to go into that matter, they can. Ob-  
9 jection overruled.

10 A Why, I answered that question once.

11 MR APPEL: And that is correct, is it? A That is cor-  
12 rect, yes.

13 Q Huh? A Yes, he offered me the money.

14 Q I know, but you said, "All right, I will do the best  
15 I can". A yes, "I will do the best I can", yes.

16 Q You said that? A Yes.

17 Q Then the District Attorney has asked you whether or  
18 not you talked with Mr Ford about this matter, and you said  
19 you had talked with him, as I understood it; is that  
20 right? A Yes sir.

21 Q Now, did Mr Ford, in that conversation that you had with  
22 him, tell you that if you would testify to what you have  
23 testified here, you would not be prosecuted?

24 MR FORD: I object to that on the ground it is not re-  
25 cross-examination, that counsel has gone fully into his  
26 conversations on cross-examination, and I simply examined him  
on new matter brought out on redirect.

1 THE COURT: objection overruled.

2 A That I would not be prosecuted?

3 MR APPEL: Yes. A Well, I didn't understand it that way.

4 I don't know what they could prosecute me for, because

5 I hadn't done nothing I thought was wrong.

6 Q Well, did he say anything in that respect? A No,

7 I do not think he did.

8 Q You didn't expect to be prosecuted if you said these

9 things on the stand, did you?

10 MR FORD: We object to that as not proper; there is  
11 nothing the witness has specified to for which he could be  
12 prosecuted.

13 MR APPEL: Now, your Honor --

14 MR FORD: We object to the examination as not being recross  
15 examination; incompetent, irrelevant and immaterial.

16 MR KEETCH: He has already answered the question.

17 MR FORR: As having already been answered.

18 THE COURT: Objection sustained.

19 MR APPEL: We assign as error, the statement of counsel that  
20 the witness has not stated anything upon the stand here  
21 for which he might have been prosecuted or could be pro-  
22 secuted; upon the ground that he is undertaking, the jury  
23 to believe that as a matter of law, in spite of the facts  
24 testified to by the witness, that this witness has not made  
25 and agreed corruptly to go upon the jury, or attempt to  
26 qualify as a juror upon the understanding or proposition

1 made to him by Mr Franklin, the witness having testified  
2 that he, after conversation with Mr Franklin, that he  
3 finally said, "All right, I will do the best I can";  
4 and it is a matter for the jury to determine whether or  
5 not under those circumstances, the witness occupies the  
6 position of a person who might or might not or could not  
7 be prosecuted.

8 THE COURT: All right. Answer the question.

9 A What was that last question?

10 THE COURT: Read it.

11 (Last question read.)

12 A No sir.

13 MR APPEL: No sir; and you have not been prosecuted?

14 A No sir.

15 Q You have not, so far as you know, you have not been  
16 accused of any matter growing out of or arising from that  
17 understading with Mr Franklin? A No sir.

1lp<sup>1</sup> Q If such be the case, to be fair with you? A No, sir.

2 Q Nor with Mr. Fowler? A No, sir.

3 MR. APPEL. That is all.

4 MR. FORD. That is all.

5 .THE COURT. You are excused, Mr. Krueger.

6  
7 F R A N K R. S M I T H,

8 a witness called on behalf of the People, being first  
9 duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 MR. FREDERICKS. Q State your name to the jury.

12 A Sir?

13 Q State your name to the jury. A Frank R. Smith.

14 Q Where do you live, Mr. Smith? A Covina.

15 Q What is your business? A Orange grower.

16 Q Do you remember a time when you were summoned or drawn  
17 as a jurymen in the case of People versus McNamara?

18 A Yes, sir.

19 Q A few days or a short time prior to that time state  
20 whether or not you met Bert Franklin?

21 MR. APPEL. Just a moment--we might as well put in an  
22 objection at this time, your Honor, knowing and anticipating  
23 about what the questions of the District Attorney will be  
24 addressed to. We put in an objection, so that, with your  
25 Honor's permission, it may be considered as going to each  
26 and every question to be propounded to the witness.

1 THE COURT. It will be so understood, Mr. Appel.

2 MR. APPEL. Yes, sir. We object to the question and we  
3 object to any evidence on the part of this witness con-  
4 cerning the matters about which he is going to be inter-  
5 roigated for the reason and upon the grounds following;  
6 That the evidence is incompetent, irrelevant and immaterial;  
7 that it is hearsay; that it is collateral to any issue  
8 in this case; that no foundation has been laid for the  
9 introduction of the evidence; that it has not been shown  
10 by the testimony of any witness, and on the contrary it  
11 has been shown by the testimony on the part of the prose-  
12 cution that Mr. Darrow had no knowledge and no understanding  
13 concerning matters or things about to be testified to by  
14 this witness; upon the ground that the witness Franklin  
15 named in the question here has testified in this court  
16 that his connection and his conversation with the witness  
17 was not even reported to Mr. Darrow and not discussed with  
18 Mr. Darrow and that, therefore, Mr. Darrow cannot be bound  
19 by the acts or declarations of this witness and of Mr.  
20 Franklin, the defendant having been shown to have absolutely  
21 no knowledge of the existence of this witness or of the  
22 matters or things about which he is going to testify, or  
23 that he ever had any knowledge or information concerning the  
24 matters after they occurred, or that he assented thereto or  
25 ratified them in any way, shape or manner, therefore, not  
26 binding upon him, and they are collateral to any issue in

1 this case.

2 THE COURT. Objection overruled.

3 MR. APPEL. Exception.

4 MR. FREDERICKS. Read the question.

5 THE COURT. And as suggested by Mr. Appel, it will be  
6 deemed that the same objection and the same ruling and the  
7 same exception has been interposed to each and every ques-  
8 tion propounded to this witness, unless some additional  
9 grounds of objection be stated. Read the question.

10 (Last question read.)

11 A I did.

12 Q How long had you known Bert Franklin? A Well, I think  
13 7 or 8 years.

14 Q And where was this place, where did you meet Franklin  
15 at the time you have referred to a few days before you were  
16 drawn as a juror in the McNamara case? A He came out to  
17 my home in Covina.

18 Q In Covina? A Yes, sir.

19 Q And did he see you more than once? A No, once is all.

20 Q State whether or not he had a conversation with you  
21 about the McNamara trial or any phase of it at that time.

22 A He did.

23 Q Who was present during that conversation? A Just Mr.  
24 Franklin and myself.

25 Q Relate the conversation to the jury. A Well, he came  
26 out and he said could he approach me or talk to me. I

1 says, "What is it?" and he started in and he said I was to  
2 be drawn on the jury and he asked me if any inducement  
3 would make me stick, and he went on and said how was  
4 three thousand? He was talking to me about that, he  
5 went on to four thousand. I said, "There ain't no use to  
6 talk to me because you haven't got enough money to buy me."

7 Q Well, what further was said in regard to what he wanted  
8 you to do? A Well, he wanted me to be drawn and try to  
9 stay on the jury.

10 Q And then what if you did stay on the jury? A Then he  
11 said there would be four thousand in it or maybe more. I  
12 told him there was no use to talk to me.

13 Q Under what condition, what were you to do? A Well, if  
14 I would acquit the McNamaras.

15 MR. FREDERICKS. Cross-examine.  
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## CROSS-EXAMINATION

1  
2 MR APPEL: Had you had any business transactions with Mr  
3 Franklin prior to that time? A Business? No sir.

4 Q You knew him as you know a great many men, knew him  
5 to meet him; shake hands with him; say "How do do"?

6 A That is all.

7 Q How long had you known him? A I think about 7 or 8  
8 years.

9 Q You knew him pretty well? A Oh, nothing personally,  
10 no.

11 Q There had been no special intimate friendship be-  
12 tween you and him? A No sir.

13 Q You had never manifested to him so far as you remember,  
14 any degree of friendship that might make him understand he  
15 could confide in you confidentially in all these matters?

16 A No sir, I had not.

17 Q You had never given him any intimation of knowledge or  
18 had ever conducted yourself, so far as you know, in his  
19 presence, or to his knowledge, so that he might have  
20 in any way got the idea that he could talk to you on a  
21 subject like that? A No, I never did.

22 Q Now, he came over to your place or residence? A Yes  
23 sir.

24 Q And came in the daytime? A He came in the daytime.

25 Q And your place or residence is in the city there?

26 A No, it is out in the country.

1 Q Was anybody with him? A Why, he came out in an auto-  
2 mobile; I don't know -- I didn't see anybody with him.

3 Q I mean so far as you know. A So far as I know there  
4 was nobody with him.

5 Q Did you see the automobile? A I seen it stand-  
6 ing out in the road, yes.

7 Q In the daytime, was it? A It was in the daytime.

8 Q And you were home with your family, I suppose? A Yes.

9 Q Some of your employes there? A I have none that  
10 stay there.

11 Q And your home is in one of the avenues of well-traveled  
12 roads there? A yes, it is one of the well-traveled roads.

13 Q Close to the street? That is, your home? A The  
14 house?

15 Q Yes. A Oh, 100 feet, I guess.

16 Q Now, the country surrounding your home there is well-  
17 settled, considering that portion of the country? A Oh,  
18 yes.

19 Q The homes and orchards there surrounding your home?

20 A Yes sir.

21 Q And you have resided there how long, Mr Smith?

22 A Well, going on 11 years.

23 Q And you are a pretty well known man there, aren't you?

24 A Yes sir.

25 Q And elsewhere in the county? You have lived in this  
26 county a great many years? A I was born here.

1 Q Now, will you be kind enough to state as nearly as you  
2 can in a concise manner, how he approached you; what was  
3 the first thing he said to you, for instance? I am not  
4 going to question you very long upon that? A Oh, I don't  
5 know. Just about what I stated before, the way he ap-  
6 proached me.

7 Q Well, he said, "How do you do", of course, greeted you?

8 A Asked me if he could talk to me and then he started  
9 in with just what I said.

10 Q Well, did he say to you -- did he ask you whether he  
11 could talk to you confidentially, and did he demand a prom-  
12 ise from you, if you did not come to any understanding  
13 or agreement that you would or should keep the matter se-  
14 cret? A He said after he found out my opinion, he asked  
15 me to keep it secret.

16 Q I mean before that? A No sir.

17 Q Then, he just came out in a sort of a bold manner?

18 A Why, he came out very bold indeed, yes sir.

19 Q Now, did he try to induce you in any way, shape or  
20 manner, to say anything to induce you to change your con-  
21 victions of right, as you expressed them to him? A No,  
22 I don't think he did after I got through with him.

23 Q He didn't try to persuade you to come to his under-  
24 standing? A No sir.

25 Q You took it for granted, I judge, from the circums-  
26 tances, from what he said and from what you said, immedi-  
ately upon you admonishing him that you were not that

1 kind of a person, that could be approached in that man-  
2 er, did he appear immediately to stop trying to persuade  
3 you to do that? A Yes sir.

4 Q As you saw him there when you said to him, he didn't  
5 have money enough to do business with you or words to that  
6 effect, or money enough to buy you, for instance, did  
7 he seem to be surprised in any way, or simply took it  
8 coolly? A I don't think he was very surprised.

9 MR APPEL: That is all.

10 MR FREDERICKS: That is all.  
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1           N E W M A N           E S S I C K,

2 called as a witness on behalf of the Prosecution, being  
3 first duly sworn, testified as follows:

4           DIRECT EXAMINATION.

5 MR. FORD. Q What is your name? A Newman Essick.

6 Q How old are you? A 44.

7 Q where do you reside? A Fifth and Normandie, Los  
8 Angeles.

9 Q And your occupation?

10 MR. APPEL. What do you want?

11 MR. FORD. We are seeking to prove by this witness and in  
12 connection with the testimony of Mr. Young from the First  
13 National Bank that on the 6th day of October--

14 MR. APPEL. No, by this witness.

15 MR. FORD. By this witness we will prove that the check  
16 deposited by Bert H. Franklin in the First National Bank  
17 on October 6th, 1911, for the sum of \$1,000, was signed by  
18 Clarence Darrow, drawn on the Commercial National Bank,  
19 with which Clarence Darrow had an account.

20 MR. DARROW. You don't mean Clarence Darrow?

21 MR. FORD. Yes.

22 MR. DARROW. You mean Clarence Darrow, Trustee.

23 MR. FORD. Clarence Darrow, Trustee; that the check came  
24 from the clearing house that same day, October 6th, and  
25 was paid out of the account of Clarence Darrow, Trustee on  
26 that day.

1 MR. DARROW. We will admit that every check given to Mr.  
2 Franklin signed by Clarence Darrow, Trustee, every one of  
3 them, was paid from the account of Clarence Darrow, Trustee.  
4 Every check given. This, of course, includes the check  
5 of October 6th.

6 MR. FORD. I will be very brief on this matter.

7 MR. DARROW. I object to the testimony. No use of wasting  
8 the jury's time or our time or the Court's time.

9 MR. FREDERICKS. It can be proven very quickly.

10 MR. DARROW. I object.

11 THE COURT. The defendant here admits it here as a defend-  
12 ant and his own counsel.

13 MR. FORD. Your Honor please, we are in some doubt as to  
14 the sufficiency of the admission alone, and we would like  
15 some independent evidence in addition to the admission.

16 MR. DARROW. There is no doubt about the admission of it.  
17 There can be no question but what it is just the same as  
18 if they took a day's time to prove something which in our  
19 opinion is of no consequence, which we are ready to admit.

20 MR. FORD. It will take only five minutes.

21 MR. DARROW. I object to it, and that--

22 MR. FREDERICKS. There has been plenty of time wasted. We  
23 insist on proving it this way. It is our side of the  
24 case.

25 THE COURT. You make your offer.

26 MR. FORD. Now, the last question, read it, please.

1 (Last question read by the reporter.)

2 MR. DARROW. The Court said make your offer.

3 THE COURT. I mean to ask a preliminary question so as  
4 to get a square ruling of the court on the matter.

5 MR. FORD. As soon as we get to the proper question they  
6 can make their objection.

7 MR. FORD. Q What is your occupation? A Bank cashier.

8 Q And with what institution? A Commercial National  
9 Bank.

10 Q That is a banking corporation organized under the  
11 banking laws of the United States with its principal place  
12 of business at the corner of Fourth and Spring Streets  
13 in this city?

14 MR. APPEL. We object to that because that is not the way  
15 to prove a corporation. We will admit, your Honor, that  
16 they can prove an institution of that kind to be doing  
17 business as a corporation, but this is not the way to prove  
18 the legal existence of a corporation. We want to avoid  
19 all these things.

20 MR. DARROW. I object upon the ground it is immaterial. It  
21 doesn't make any difference what-

22 MR. FORD. Withdraw the question.

23 THE COURT. Counsel has withdrawn the question.

24 MR. FORD. Q where is the Commercial National Bank doing  
25 business? A Fourth and Spring streets, Los Angeles.

26 Q And doing a banking business? A Yes, sir.

1 Q Do you know Clarence Darrow, the defendant in this case?

2 A Yes, sir.

3 Q Did he on or about the 6th day of October, 1911, have  
4 any account with the Commercial National Bank either in  
5 his own name or otherwise? A He had an account in the  
6 Commercial National Bank as Trustee.

7 Q Clarence Darrow as Trustee? A Yes, sir.

8 Q As cashier of that bank do you have charge of the book-  
9 keeping and the employes?

10 MR. DARROW' I again object. It is utterly idle. It is  
11 worse than silly, and it is not competent after the admis-  
12 sion is made. Is it of any consequence to this jury to  
13 parade and show--is it of any consequence to the court that  
14 it should be done?

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1 There is no question but what every check there given  
2 to Franklin was paid out of the trustee account signed  
3 by my name as trustee. Now, can anybody tell me where any-  
4 thing --

5 MR FREDERICKS: Your Honor, that is not the point. We  
6 have a right to prove the facts in this case in our own  
7 way. If the defendant in this case makes an admission  
8 we can prove his admission and that would be evidence, and  
9 then in addition to that we can prove it two or three  
10 times more in corroboration. Now, there is no such  
11 thing in the criminal practice as an admission that would  
12 bar out the introduction of testimony on that subject.  
13 We wish to prove the facts in this case by witnesses on  
14 the stand, and if counsel is in the attitude in reality  
15 which he indicates, it is a very simple matter for him to  
16 cease making objections and the thing will be proven --  
17 be proven, nothing more than and nothing else than it  
18 would be otherwise, and it would be proven quickly, and  
19 it would be over with, but we insist on proving our case  
20 that way with witnesses on the stand and getting our record  
21 in the way that we wish it. It is our side of the case.

22 MR DARROW: Your Honor, if he is done, I would like to say  
23 a word in reply to that. There was never any such law;  
24 there couldn't be any such law; after an admission in  
25 court, it is admitted. Just the same whether it is  
26 civil or criminal, and counsel is not entitled to prove

1 it over again. He is not running it. It is for this  
2 court to say whether a fact is proven or admitted, and  
3 if it is admitted, it stands as proven. It is not cor-  
4 roborations of anything; it could not be. It is a plain  
5 admission in court, and I object to any further evidence  
6 on the question.

7 MR FORD: If the court please, the stipulation made by  
8 counsel does not prove all of the things we are driving  
9 at.

10 MR DARROW: What else do you want?

11 MR FREDERICKS: That is our affair, may it please the  
12 court. We do not have to disclose to the other side what  
13 we are driving at. Now, we are offering evidence and as  
14 long as that evidence is competent, we are entitled to  
15 offer it.

16 THE COURT: Counsel stated he desires to show something  
17 in evidence in addition to what has been admitted.

18 MR FREDERICKS: And also what has been admitted, your  
19 Honor.

20 MR DARROW: Your Honor, we admit every check given to Mr  
21 Franklin signed Clarence Darrow, Trustee, was paid.

22 MR FORD: Do you admit that on --

23 MR FREDERICKS: We don't want any admission, Mr Ford.

24 MR DARROW: On the 6th day of October, what? Now, that  
25 is all there is to this, and I object to any evidence  
26 upon that point, that it is not a controverted question

1 at all.

2 THE COURT: I don't know what counsel expects to prove,  
3 but he stated he desires to prove something outside of  
4 the admission, and declines to state what it is. He is  
5 therefore, entitled to his question.

6 MR DARROW: He stated to me that is what he is going to  
7 prove.

8 THE COURT: He stated here this minute there are some other  
9 matters outside of the admission he wants to prove.

10 MR DARROW: I object to anything covered by the admission,  
11 and if I can get any line on anything else they want to  
12 prove, I reserve the right to admit it, if we think it is  
13 true.

14 THE COURT: All right. What is the question?

15 (Last question read by the reporter.)

16 THE COURT: Objection overruled.

17 A Yes sir.

18 MR DARROW: Take an exception.  
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1 MR. FORD. Q Did you on the 6th day of October, 1911?

2 A Did I what?

3 Q Have the same charge and control? A Yes, sir.

4 Q And did you have charge, custody and control of the books  
5 and records and papers of the bank? A Yes, sir.

6 Q I will show you two papers which I have already exhi-  
7 bited to the defendant in this case and ask you if you  
8 have seen them before? A Yes, sir.

9 MR. DARROW. To that I object upon the ground it has  
10 already been admitted.

11 THE COURT. Overruled.

12 MR. DARROW. Exception.

13 MR. FORD. The question is answered. Q What are they?

14 MR. APPEL. Wait a moment--

15 MR. DARROW. I want to make the same objection to that  
16 question.

17 MR. APPEL. The further objection, your Honor, that it is  
18 incompetent, irrelevant and immaterial, calls for second-  
19 ary evidence, not the best evidence.

20 THE COURT. Objection overruled.

21 MR. APPEL. We except.

22 A This is part of the individual books of the Commercial  
23 National Bank.

24 MR. FORD. The Court will permit me to ask a question about  
25 the checks before I interrogate him openly?

26 THE COURT. yes.

1 MR. FORD. Q Does that--was C. S. Darrow Trustee--did you  
2 have an account with C. S. Darrow, Trustee, on that date?

3 MR. DARROW. Objected to upon the ground it is admitted and  
4 also on the ground the witness has stated, and also on the  
5 ground it is incompetent, irrelevant and immaterial.

6 MR. FORD. That is probably true. Q Does this paper con-  
7 tain any items referring to the account of C. S. Darrow,  
8 Trustee?

9 MR. APPEL. Wait a moment--we object upon the ground that  
10 it doesn't call for the best evidence, it is secondary,  
11 immaterial and irrelevant for any purpose whatsoever.

12 MR. FORD. The purpose, your Honor, will be to show that  
13 the original check given by Mr. Darrow to Bert Franklin--  
14 THE COURT. I was thinking about one point in his objec-  
15 tion. Objection overruled.

16 MR. APPEL. We except.

17 A What is the question again, please?

18 (Last question read by the reporter. )

19 A Contains the items--

20 MR. FORD. Just yes or no to that question. A Yes.

21 Q Were those items placed there in the ordinary course of  
22 business?

23 MR. APPEL. Wait a moment--we object upon the ground it is  
24 incompetent, irrelevant and immaterial, that the books  
25 of account or papers being memoranda of transactions in  
26 relation to matters pertaining to some one else's business

1 and not being the act of the defendant cannot be given in  
2 evidence against him on the ground they are hearsay, irrele-  
3 vant and immaterial for any purpose; doesn't tend to  
4 prove any fact against him; no foundation laid.

5 THE COURT. Overruled.

6 MR. APPEL. We except.

7 A Please read the question.

8 (Last question read by the reporter.)

9 A Yes, sir.

10 MR. FORD. Q Would you kindly read and explain each item,  
11 referring to the account of C. S. Darrow, Trustee, to the  
12 court and jury?

13 MR. APPEL. We object upon the ground it is incompetent,  
14 irrelevant and immaterial; the question doesn't call for  
15 the best evidence; it calls for secondary evidence and the  
16 document itself has not been introduced in evidence, has not  
17 been admitted in evidence.

18 MR. FORD. I withdraw the question for just a moment.

19 THE COURT. You cannot finish with this witness in a few  
20 moments.

21 MR. FORD. I will try to.

22 MR. APPEL. We have a right to cross-examine.

23 MR. FORD. I think your cross-examination will perhaps  
24 be brief.

25 MR. APPEL. It will not be brief.

26 THE COURT. Wait a moment--counsel has stated it will take

1 some little time for his cross-examination. Might as  
2 well adjourn at this time.  
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4 (Jury admonished. Recess until 2 P.M.)  
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