

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.)

No. 7373.)

Clarence Darrow,)

Defendant.)

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REPORTERS' TRANSCRIPT.

VOL. 47

I N D E X.

Direct. Cross. Re-D. Re-C.

Newman Essick, 3704 3744

George G. Young, 3744 3753-67 3762-67

Mrs Dora F. Bain, 3769

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1 July 3rd, 1912. 2 o'clock P.M.

2 Defendant in court with counsel.

3

4 ✓ NEWMAN ESSICK on the stand for further
5 direct examination.

6 • THE COURT: Are you ready to proceed, gentlemen?

7 MR ROGERS: We wanted Mr Appel.

8 THE COURT:" We will wait a moment.

9 MR ROGERS: Go ahead.

10 THE COURT:Q All right. Mr Rogers says he is ready to
11 proceed.

12 MR FORD: Mr Essick, I will ask you to look on these sheets
13 in the column headed October 6, 1911 , and attract your
14 attention to a mark made in red ink on the document,
15 and ask you to state what that mark is and what signifi-
16 cance it has, if any?

17 MR ROGERS: Objected to as incompetent, irrelevant and
18 immaterial; calling for a conclusion or opinion, and no
19 foundation laid and hearsay.

20 THE COURT: Objection overruled.

21 MR ROGERS: Exception.

22 A The red ink entry is the initials of the bookkeeper
23 who balanced that account that night and checked it as
24 being correct.

25 MR FORD: What, if anything, does it indicate with re-
26 gard to the checks presented against the account up to

1 that time?

2 MR ROGERS: Objected to as calling for a conclusion or op-
3 inion, no foundation laid, incompetent, irrelevant and
4 immaterial.

5 THE COURT: Objection overruled.

6 MR ROGERS: Exception.

7 A It indicates that the account has been balanced and
8 all checks and entries of that account found correct.

9 MR FORD: At the time that balance is struck and that mark
10 is made -- or, at the time that balance was struck and that
11 mark was made, what, if anything did it indicate with
12 regard to the presence of the bank book of the depositor
13 in the bank, and the desire to have it balanced and the
14 checks returned?

15 MR ROGERS: Objected to as incompetent, irrelevant and im-
16 material and not the best evidence, no foundation laid.

17 THE COURT: Objection overruled.

18 MR ROGERS: Exception.

19 A Not conclusive evidence that the passbook was left,
20 but it probably was. We often balance accounts without
21 the passbook being left.

22 MR ROGERS: Wait a moment.

23 MR FORD: That may be stricken out, if you desire.

24 THE COURT: Strike it out.

25 MR FORD: Have you any record of the bank book being re-
26 turned?

1 MR ROGERS: The same objection as last made.

2 THE COURT: Overruled. Mr Ford, you may confer with the
3 witness, if you desire to, but you should first ask per-
4 mission.

5 MR FORD: What I asked him for privately --

6 THE COURT: You are at liberty to do so, but you must
7 ask permission before you do so, so we will all understand
8 precisely what is being done. What is the question now?

9 MR FORD: I ask that permission. There is no question
10 pending before the court.

11 THE COURT: All right, you may confer with the witness.

12 MR FORD: I am informed by the witness that to get the
13 receipts for bank books that have been balanced and indi-
14 cating that the books have been returned, will take some
15 little time to hunt for. Perhaps counsel is willing to
16 stipulate without making that search that the bank book
17 was returned, and all checks returned against that ac-
18 count.

19 MR ROGERS: We offered to do some stipulating. We offer-
20 ed to stipulate everything that counsel is desiring to
21 prove, or seemingly desiring to prove, and he refused the
22 stipulation, and, under the circumstances, we don't feel
23 like stipulating a part of his case and we refuse. Let
24 him prove it.

25 MR FORD: If the court please, I did not refuse any stipu-
26 lation. I simply indicated to the court that I did not

1 think his stipulation was broad enough to cover all that
2 we sought to prove by this record this morning.

3 MR DARROW: Your Honor, we offered to stipulate every-
4 thing they stated and further asked them if there was any-
5 thing else.

6 THE COURT: That is quite true.

7 MR DARROW: If they want to take this time, it isn't we
8 who are doing it.

9 MR FORD: If the court please, there are certain technical
10 requirements within the law with regard to corporations which
11 requires certain things to be proved by testimony and not
12 by stipulation.

13 MR DARROW: There isn't anything in the law requiring any-
14 thing of this sort to be proven in testimony. The stipu-
15 lation covers it.

16 THE COURT: The court is not going to direct the District
17 Attorney how to present his case. The statement made by
18 Mr Darrow at this time is entirely in accordance with the
19 record this morning.

20 MR FORD: Attracting your attention to the column headed
21 October 6th, 1911, and particularly to the figures
22 "1000" in the first sub-column of the main column on that
23 page, and between the 4th and 5th lines drawn laterally
24 across the page from the bottom, I will ask you what, if
25 anything, the figure "1000" indicates on that page?

26 MR ROGERS: Objected to as incompetent, irrelevant and

1 immaterial, calling for a conclusion or opinion, not the
2 best evidence, not made by the witness, anything purport-
3 ed to be made by him, nor any foundation laid.

4 THE COURT: Overruled.

5 MR ROGERS: Exception.

6 A Indicates that there was a check for \$1000 paid
7 against that account on that day.

8 MR FORD: Paid against the account of C. S. Darrow, Trus-
9 tee? A Yes sir.

10 Q And upon a check signed by C. S. Darrow, Trustee?
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2s 1 MR. APPEL. Wait a moment--we object upon the ground that
2 is not the way to prove the signature of a witness; it is
3 incompetent, irrelevant and immaterial and no foundation
4 laid for proving the account, it appearing now from the
5 testimony of the witness that he was not the keeper of the
6 account, and the only person that can prove the correctness
7 of it is the one who keeps the account or the one who
8 may know the facts upon which the entry was made.

9 THE COURT. Overruled.

10 MR. APPEL. We except.

11 A Please read the question.

12 (Last question read by the reporter.)

13 A Yes, sir.

14 MR. ROGERS. I call your Honor's attention to the fact
15 that he doesn't ask him if there was a check paid on that
16 date, simply says what does the mark indicate.

17 MR. FORD. That is true.

18 MR. ROGERS. What the mark indicates certainly cannot be
19 evidence.

20 MR. FORD. Q Do you know whether or not that check--the
21 check for \$1000 indicated by that entry is now in the poss-
22 ession of your bank?

23 MR. APPEL. We object upon the ground it is incompetent,
24 irrelevant and immaterial for any purpose whatsoever, that
25 it assumes a fact not testified to by the witness, that it
26 assumes that the check of Mr. Darrow was paid for \$1000 and

1 the witness has not been shown to have any knowledge
2 in referenceto the signature on the check, the check itself
3 has not been produced in evidence. He has been asked
4 about an instrument not before the witness, not tendered,
5 under the provisions of the code, to the defense; incom-
6 petent, irrelevant and immaterial.

7 THE COURT. Overruled.

8 MR. APPEL. We except.

9 A What is the question again?

10 (Last question read by the reporter.)

p 11 A It is not.

12 Q What, if anything, has been done with that check?

13 MR. APPEL. We object to that upon the same grounds stated,
14 and upon the further ground that no foundation has been
15 laid for the introduction of the evidence of the witness
16 upon that subject.

17 THE COURT. Objection overruled.

18 MR. APPEL. We except.

19 A Returned with all the other checks.

20 MR. FORD. Q To whom? A C. S.--

21 MR. ROGERS. The same objection.

22 A Excuse me.

23 THE COURT. Objection overruled.

24 A C. S. Darrow, Trustee.

25 MR. FORD. We now offer in evidence that portion--withdraw
26 the offer for just a moment.

1 MR. FORD. Q I attract your attention to the larger sheet
2 of these two sheets, and particularly to the words opposite
3 the numeral 25 on the left hand side of the page and to the
4 entries across the page opposite those figures, also to the
5 entries on the second of these two documents, which is
6 marked at the top with the words, "46" to the entries
7 opposite the figures "25" throughout that page and ask you
8 if all of those items refer to transactions had concerning
9 the account of C. S. Darrow, Trustee?

10 MR. APPEL. Wait a moment--we object to that question on the
11 ground no foundation has been laid for the purpose of proving
12 the account or the correctness of the account by the witness;
13 that it appears in evidence he did not make the account and
14 it does not appear that he knows the facts upon which the
15 account was made, therefore, he is incompetent to testify
16 to the correctness of it; upon the further ground it is
17 incompetent, irrelevant and immaterial for any purposes
18 and hearsay.

19 THE COURT. Objection overruled.

20 MR. APPEL. We except.

21 A yes.

22 MR. FORD. We now offer in evidence these two documents
23 as exhibit 36. We offer that portion of the documents
24 containing the items testified to by the witness.

25 MR. APPEL. We object to it on the ground it is incompetent,
26 irrelevant and immaterial; no foundation has been laid for

1 the introduction of the matter offered in evidence, that
2 it has not been proven correct or to be correct by the
3 keeper or the maker of the account or by any person
4 having actual knowledge of the facts; incompetent,
5 irrelevant and immaterial for any purposes, no foundation
6 laid.

7 THE COURT. Objection overruled.

8 MR. APPEL. We except.

9 (Document marked.)

10 MR. FORD. Q I hand to you four slips of paper which I
11 have shown to the defendant in this case. Did you
12 ever see them before? A Yes, sir.

13 Q What are they?

14 MR. ROGERS. We object to that question on the ground it
15 calls for a conclusion or opinion; incompetent, irrelevant
16 and immaterial; no foundation laid; not the best evi-
17 dence.

18 THE COURT. Objection overruled.

19 MR. ROGERS. Exception.

20 A They are lists of items received through the clearing
21 house on the 6th of Last October from the First National
22 Bank.

23 Q Of Los Angeles? A Of Los Angeles.

24 Q And by the term "items" you used in your answer, is
25 that a technical term used in banking?

26 MR. APPEL. We object to that as immaterial.

1 THE COURT. Objection overruled.

2 MR. APPEL. We except.

3 MR. ROGERS. May I inquire if the witness made those him-
4 self?

5 THE COURT. Yes, ask him.

6 MR. ROGERS. Q Did you make those yourself? A These items?

7 Q yes. A No, sir.

8 MR. ROGERS. Then, what are we getting here, not even the
9 man that made them?

10 MR. FORD. Just a moment--

11 THE COURT. What is the objection?

12 MR. ROGERS. We object to it as not the best evidence;
13 incompetent, irrelevant and immaterial; no foundation laid.

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1 MR FORD: The witness testified, if your Honor please,
2 that he was the cashier and that all of these documents
3 were made under his directions by his employes, and he
4 knows them to be official records of the bank, kept by
5 the bank in the ordinary course of business.

6 MR ROGERS: The case of People against Blackman, 137 Cal.,
7 if your Honor please, is all the citation necessary under
8 such circumstances.

9 MR FORD: We will produce the man who made them, also,
10 your Honor.

11 MR APPEL: That would not justify them in introducing a
12 witness who has no personal knowledge of those things.
13 As I understand the general rule, it is, an account can
14 be proven by a person who made it, who knows the correct-
15 ness of it, who knows what is meant by the figures --
16 by a system of bookkeeping a third person, because he
17 knows the system of bookkeeping is not qualified to tes-
18 tify concerning the correctness of the account.

19 THE COURT: The witness testified, it is true, this morn-
20 ing that certain papers he had, were made under his super-
21 vision, but he has not so testified in regard to the docu-
22 ments now shown him.

23 MR FORD: Perhaps that is correct. Perhaps I made a mis-
24 statement in that regard.

25 THE COURT: The objection is sustained.

26 MR FORD: I have asked him if he knew what they were; I

1 have not asked to introduce them, but simply wished to
2 have them identified for the purpose of preliminary --

3 MR ROGERS: I move to strike out the answer as a conclu-
4 sion, and it has developed it is not the best evidence,
5 incompetent, no foundation laid.

6 THE COURT: The foundation is not laid and the answer is
7 stricken out.

8 MR FORD: Read the last question.

9 (Last question read.)

10 MR ROGERS: I did not refer to that. I referred to the an-
11 swer to the question "What are they".

12 THE COURT: Yes, that is the answer I had in mind.
13 Stricken out on the ground no foundation is laid.

14 MR ROGERS: We have offered to stipulate to the cor-
15 rectness of the account. We stand ready to save this jury's
16 time.

17 MR FORD: There is no need of going into that again.

18 MR ROGERS: To show that the checks were paid, and to
19 stipulate to everything truthful about that account in
20 every way. Now, if counsel wants to waste a whole afternoon
21 in fussing around with these things, he is doing it at his
22 own risk and peril of error and over objection. If your
23 Honor pleases, we renew our offer to stipulate to any-
24 thing truthful to that account in the Commercial National
25 Bank to which Mr Essick can truthfully testify.

26 MR FREDERICKS: If counsel will permit the witness to

1 testify --

2 MR APPEL: He is not competent to testify.

3 MR ROGERS: We do not like to have a steam roller run over
4 us.

5 THE COURT: Now, gentlemen, proceed.

6 MR FORD: Referring now to the documents you now hold in
7 your hand, do you know by whom they were made?

8 MR ROGERS: of your own knowledge, of course? A No sir.

9 MR FORD: Do you know in what department they were made?

10 MR ROGERS: The same objection, it is incompetent, and if
11 he doesn't know by whom they were made, how does he know
12 in what department they were made?

13 MR DARROW: I think they might find that out outside of the
14 court room, and they should not take up everybody's time
15 investigating those things.

16 MR ROGERS: We object to it on the ground it is incompe-
17 tent, irrelevant and immaterial; no foundation laid; not
18 the best evidence. Mr Essick does not know who made
19 them, and how can he know in whose department they were
20 made?

21 THE COURT: Objection sustained.

22 MR FORD: If the court please, a banker who has testified
23 that he knows the employes who are working under his di-
24 rections, would certainly know in what department they were
25 made. Withdraw the question for a moment.

26 Q Are the papers which you hold in your hands a part of

1 ✓ the files of the bank, kept by the bank in the ordinary
2 course of business and made in that bank on the 6th day
3 ✓ of October, 1911?

4 MR APPEL: We object to the question on the ground it is
5 incompetent, irrelevant ; no foundation has been laid;
6 and upon the further ground that the witness has testified
7 that he does not know who made them, therefore, he cannot
8 state in what department they were made or by whom they
9 were made, or whether they are in fact, official records
10 of the bank, and if they were official records of the bank
11 they cannot prove themselves, inasmuch as they are not
12 documents which are made by law admissible in evidence as
13 official records.

14 MR FORD: Records kept by a bank in ordinary course of
15 business, are presumed under the law, to be correct.

16 MR APPEL: But not in a criminal case.

17 THE COURT: The question here is whether or not he knows
18 these papers are official records.

19 MR ROGERS: We are wasting time and wearing out this jury with
20 a lot of fussing that can well be avoided.

21 MR FREDERICKS: Then why do you make the objection?
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4p 1 MR. ROGERS. Because, if your Honor pleases, if they wont
2 take a stipulation, if they insist on proving it, if they
3 want to worry and wear out and take your Honor's time,
4 let them do it by legal methods. They do not know how, if
5 your Honor pleases, and they have not known how all the time
6 they have been examining this witness.

7 THE COURT. Now, Mr. Rogers. Read the question.

8 (Question read.)

s 9 THE COURT. Objection sustained.

10 MR. FORD. Q Do you know whether or not they are a part
11 of the records of the bank made in the ordinary course of
12 business on the 6th day of October, 1911, and kept in the
13 bank since that time as a part of the records of the bank?

14 MR. ROGERS. Of the witness's own knowledge, I take it.

15 THE COURT. That is the question, does he know.

16 MR. ROGERS. Of his own knowledge.

17 THE COURT. That question should be yes or no; you know or
18 you do not know, one or the other.

19 A May it please the court, part of that question
20 the answer would be yes and part of the answer no, if I may
21 explain.

22 THE COURT. Read the question again and see if it is neces-
23 sary to make an explanation.

24 (Last question read by the reporter.)

25 A I can only repeat, your Honor, part is yes and part
26 no.

1 THE COURT. All right. What part is yes?

2 A These are a part of the records of the bank. They are
3 not made in the bank; they are made in the First National
4 Bank and they are listed to us enclosed with the items
5 through the clearing house. These were not made in our
6 bank, they were made in the First National Bank.

7 MR. ROGERS. If your Honor please, I submit, if I may
8 ask a question? You were not in the First National Bank
9 when those were made? A No, sir.

10 Q You didn't see them made? You don't know whether they
11 were made there or somewhere else, except what appears on
12 them, isn't that true? A Is that the question?

13 THE COURT. Yes, that is the question.

14 MR. ROGERS. Q Isn't that true? A What is the question.

15 Q You were not in the First National Bank on that day?

16 A No, sir.

17 Q And you didn't see them made? A No, sir.

18 Q All you are testifying to is just the statement, isn't
19 that so? A I am testifying that these came in a sealed
20 envelope from the First National Bank.

21 Q Did you see them come from that bank? A No, sir.

22 Q Did you see them placed in a sealed envelope in the
23 First National Bank? A No, sir.

24 Q Did you open them yourself? A No, sir.

25 MR. FORD. Q Were these documents received in a package
26 containing the checks corresponding with these items and

1 purporting to come from the First National Bank on the 6th
2 day of October, 1911?

3 MR. APPEL. Your Honor, the witness says he didn't receive
4 them, didn't get them. Now, we object to that because the
5 foundation for him testifying in reference to that is clean
6 out of the record. It is eliminated; he don't know; he
7 has no personal knowledge of those things. He might as
8 well give an opinion or conclusion, it is true, from a
9 custom and system of the bank, but in this kind of cases, it
10 must be absolute knowledge of the witness. A man in the
11 course of business might as well testify that in his opinion
12 this is all right, but that would be very hearsay, from
13 what he has been told, from the mere fact of seeing them
14 there, something of that kind, but he certainly is not
15 competent to testify to that.

16 MR. FORD. If the Court please, I desire to show by this
17 witness--

18 MR. ROGERS. We object to any offer of proof. The
19 Supreme Court of this state said that the District Attorney
20 has no right to make an offer to prove what his witness
21 has been held incompetent to prove.

22 MR. FORD. I am not going to offer. I am stating the
23 object to the court in order that the court may rule on it
24 in the light of that object.

25 MR. ROGERS. Exception.

26 MR. FORD. We purpose to prove, the Court please, that

1 he was the manager of that bank and all those departments,
2 expert with and familiar with the operations of that depart-
3 ment, and that he has made examination of all the records
4 of that bank and from that examination the bank records
5 show, whether they be true or false, that will be a matter
6 to be connected up by other testimony, the bank records
7 show that the thousand dollar check drawn against the account
8 of C. S. Darrow Trustee, came to the bank enclosed with
9 this list of items from the First National Bank on that
10 day, and we have already secured in evidence the testimony
11 of Mr. Franklin that he did deposit a check in the First
12 National Bank signed by Mr. Darrow, or Mr. Darrow had written
13 it out and given it to him

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1 That he deposited it in the First National Bank, and that
2 it was drawn on some other bank and the testimony of Mr
3 Essick already shows that the check of \$1000 was drawn
4 against the account of Mr Darrow, or C. S. Darrow, Trus-
5 tee, on the 6th day of October, 1911, and we now wish to
6 show by the witness that he has examined the books and
7 records of his bank. It makes no difference whether they
8 were made by him, if these records were made outside of
9 the bank and came enclosed with a list of items, he can
10 state that fact.

11 THE COURT: He has
12 Stated it.

13 MR FORD: Then we will put on other witnesses to show that
14 the item referred to -- we will put on witnesses from the
15 First National Bank to show that was the one that was sent
16 on to this bank.

17 MR ROGERS: Mr Darrow offered to stipulate, if your Honor
18 please, that the check for \$1000 to Mr Franklin was drawn
19 against the Commercial National Bank and was charged against
20 his account and paid by that bank. Now, for some ulter-
21 ior motive and some unknown reason, if your Honor please,
22 they are taking up this time, either killing, deliberately,
23 or for some other reason, and they are fussing around
24 here with a lot of adding machine slips coming from clear-
25 ing house No.3. That is the number of the Commercial
26 National Bank with the clearing house.

THE COURT: I am going to sustain the objection. Ob-

1 j ection sustained to the present form of the question.

2 MR FORD: Referring now to the items which you hold in
3 your hand -- I will ask you -- calling your attention
4 to four \$1000 -- four places where the figure "1000"
5 occurs, I will ask you if on that day your bank received
6 four checks from the First National Bank, each for the
7 sum of \$1000?

8 MR ROGERS: That is objected to upon the ground that the
9 witness has no right to refer to the document, they having
10 been rejected in evidence, no foundation for them, they
11 are not made by him or under his direction or with his
12 knowledge, no foundation has been laid, incompetent, ir-
13 relevant and immaterial, and we again offer to stipulate as
14 we have heretofore indicated in order to save time and
15 trouble for this jury.

16 MR FORD: If the court please, we haven't yet offered the
17 document. We are trying to get all that the witness
18 knows about the document, and when the proper time comes,
19 we will introduce them, if they are admissible.

20 MR ROGERS: One cannot refresh his recollection --

21 MR FORD: With regard to the other proposition, their stip-
22 ulation, we regard, whether we are right or wrong, it
23 matters not, we are thoroughly satisfied the law requires
24 us to put in this fact by testimony. Now, we may be wrong
25 in entertaining that view, but entertaining that view, it
26 will be useless for counsel to offer further stipulations

1 in regard to that matter, and if the matter is of no im-
2 portance to them, and they desire to save time, they can do
3 so by withholding their objections and I will state here
4 that our only object is such as the figures themselves
5 indicate, and that there is no other ulterior object.
6 Our only motive is our belief that under the law we must
7 introduce this matter by testimony.

8 MR ROGERS: Then, if counsel will produce proper testi-
9 mony in legal fashion, if your Honor please, and he will
10 do it directly, we will not object, but we do object to
11 the manner of its introduction and to introducing it by
12 incompetent proof and proof for which there is no founda-
13 tion. We stand ready at any time when the proper evidence
14 is brought forward to admit it, if they want the evidence
15 admitted, if they won't take our stipulation. I never
16 heard of a law that a stipulation, solemnly made in open
17 court, would not bind, but there may be some such law.

18 MR FREDERICKS: There is a law that an accomplice is to be
19 corroborated by testimony. There is a law no man can be
20 convicted except by sworn testimony of witnesses; that is
21 a constitutional law.

22 MR APPEL: And those documents which are offered in
23 evidence is directly against the proposition stated by Mr
24 Fredericks himself.

25 THE COURT: Read the question. (Discussion.)

26 (Last question read by the reporter.)

1 THE COURT: Objection overruled. A No.

2 MR FORD: How many entries -- 1000 entries are there there.

3 MR APPEL: Wait a moment. We object upon the ground
4 there is no foundation laid. He is asking him concerning
5 the contents of an instrument which are not in evidence,
6 is not the best evidence; it is incompetent, irrelevant
7 and immaterial for any purpose whatsoever.

8 MR FORD: I will look at them myself, your Honor. I may
9 have been -- my recollection may be at fault. If the
10 court will permit me to ask the witness a question.

11 THE COURT: yes.

12 MR FORD: How many checks did you, on the 6th day of
13 October, 1911, receive from the First National Bank?
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1 MR. APPEL. Wait a moment. We object upon the ground
2 that the witness has already stated, your Honor, that he did
3 not receive them himself, that he didn't open the envelope,
4 that he didn't see them put in the envelope, that he per-
5 sonally has no knowledge. He can only testify, I suppose,
6 from what he saw on the books and that would be hearsay,
7 your Honor. A man cannot go and look at his books and
8 then testify to facts from that. It is just the same as if
9 he had been told by someone or someone had written to him
10 and informed him of those facts. He cannot claim to have
11 knowledge--

12 THE COURT. Objection overruled.

13 MR. APPEL. Let me add to the objection that it is incom-
14 petent, irrelevant and immaterial and no foundation laid and
15 hearsay.

16 THE COURT. Objection overruled.

17 MR. DARROW. Just one moment please.

18 MR. APPEL. May we ask him a question, your Honor?

19 THE COURT. Yes, you may.

20 MR. APPEL. Q Are you testifying from personal knowledge
21 or from an inspection of the document in your bank or in
22 your hand? A State the question again.

23 Q Have you any knowledge--any remembrance at all about
24 the matter--are you aided in giving an answer to that ques-
25 tion from your own personal knowledge of the facts or simply
26 from refreshing your memory and gaining information from

1 a document in your hand and from inspection of the records
2 in your bank? A My information comes solely from an
3 inspection of the records of our bank.

4 Q Then you have no personal knowledge at all of the fact?

5 A Of this question which has been asked me?

6 Q Yes. A No personal knowledge other than the records
7 of the bank show.

8 MR. APPEL. Then we object, your Honor, to the question and
9 to the evidence upon the ground stated in my objection to
10 the question. I cannot go in my books down here and
11 come in court and testify to facts that are in the books.
12 I didn't make the entry, I have no knowledge of the cor-
13 rectness of the entry, if there is any question on the law
14 as to that, your Honor, I can cite it in a few moments.

15 THE COURT. Objection overruled.

16 MR. APPEL. We except.

17 MR. FORD. Answer the question.

18 (Last question read by the reporter.)

19 MR. APPEL. I suppose he means of his own personal knowledge,
20 your Honor?

21 THE COURT. I think the record shows the kind of knowledge
22 upon which he is answering. Answer the question.

23 A I don't know how many checks were received by the bank
24 upon that day from the First National Bank.

25 MR. FORD. How many one thousand dollar checks?

26 MR. Appel. Your Honor will see--let's be fair about it, if
you permit me. That is on October 6th, as I understand,

1 your Honor, or sometime in October. Your Honor will see
2 that the charge in this case is alleged to have occurred
3 on the 28th day of November, and the matter of the thousand
4 dollar check your Honor will remember as to the date, I
5 think it was October 6th or somewhere along there. Now,
6 the inquiry, as I understand the District Attorney, relates
7 to the thousand dollar check, your Honor. Now, suppose
8 this witness testified that they received so many or a
9 number of one thousand dollar checks. Now, certainly, in
10 so far as your Honor knows, and in so far as we know, and
11 in so far as the jury knows, we have not been connected,
12 and it has not been charged to us--with that issue or we had
13 anything to do with it any more than a one thousand dollar
14 check. Now, this inquiry relates to a number of thousand
15 dollar checks. Your Honor can see in admitting that
16 evidence you admit evidence which is foreign to the issue
17 entirely, that it goes to other transactions with the
18 bank, the checks payable at the Commercial National Bank,
19 deposited in the First National Bank, and there may be any
20 number of those checks drawn against the bank or the
21 account of the witness and deposited in the First National
22 Bank by any number of persons. Now, here they are asking him
23 concerning matters to which--and we have not been connected
24 or with which we have not been charged, and it is introduc-
25 ing other matters, other transactions in this question,
26 which is not pertinent to the issue, so the inquiry as to

1 what is our connection with that thousand dollar check,
2 what did Franklin do with it, how did it come to be paid
3 from Mr. Darrow's account? That is all the question here
4 they are asking him concerning a number of one thousand
5 dollar checks. I submit, your Honor, they are undertaking
6 to introduce evidence which is foreign to the issue here.

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1 THE COURT: What is your theory, Mr Ford?

2 MR FORD: The testimony so far shows, by the testimony of
3 this witness, that a \$1000 check drawn against the account
4 of C. S. Dar row, Trustee, on October 6th, 1911, was re-
5 turned to the defendant.

6 MR APPEL: No, no; the witness has not said that, your
7 Honor. I submit he said they were returned. I was very
8 cautious to hear that, and he didn't say they were re-
9 turned to the defendant.

10 MR FORD: I will stand on the record on that. And we wish
11 to show there were only two checks received that day for
12 \$1000 from the First National Bank, and only four re-
13 ceived by the bank during that entire day. We shall pro-
14 duce the other three checks which will be a process of
15 elimination showing that the fourth check is the check
16 referred to in this account, and must necessarily be the
17 check now in the possession of defendant.

18 THE COURT: That is what I want to know, whether you are
19 reaching this by process of elimination.

20 MR FORD: That is it exactly.

21 THE COURT: Upon no other theory can it be proper to
22 introduce the evidence.

23 MR APPEL: That is the same question we had before, if
24 you will permit me to suggest, that that kind of evidence
25 is never allowed, you cannot say that because I have an
26 account with you in a bank that a check drawn in favor of

1 a person, I am charged with drawing it, payable by that
2 bank, if they can produce each check of that denomination
3 containing that amount and leave the other one out and
4 because they can account for all those checks and that be-
5 cause A, B, C, D, E and F did not give any of those checks
6 to the person whom I am charged with giving my check,
7 therefore, I must, of necessity, have done that which I am
8 charged with. That character of evidence is the most dan-
9 gerous evidence that has been ever introduced. You can
10 prove, in a small town, murder has been committed, you
11 can bring all the inhabitants of the town to show that
12 they did not commit the murder, and therefore, the man
13 on trial must, of necessity, have committed it, because
14 those were the only people in the town. I submit that
15 that kind of evidence is never admissible, your Honor.

16 THE COURT: Objection overruled.

17 MR FORD: Read the question.

18 THE REPORTER: Mr Smith has the question.

19 MR FORD: I will repeat it.

20 Q How many \$1000 checks were received from the First
21 National Bank on that day?

22 MR DARROW: The same objection stands to this.

23 MR FORD: Yes sir.

24 THE COURT: Objection overruled.

25 A Two.

26 Q How many with the clearing slips which you hold in

1 your hands?

2 MR DARROW: The same objection.

3 MR APPEL: And objection on the further ground the wit-
4 ness has not testified that he had any knowledge upon the
5 fact, on the contrary, he has testified he has no personal
6 knowledge of the fact.

7 MR FORD: According to the records of the bank.

8 THE COURT: He has not even testified that these slips were
9 received in the ordinary course of business.

10 MR FORD: Were those slips received in the ordinary
11 course of business?

12 MR APPEL: He says he didn't receive them.

13 MR DARROW: He didn't receive them. This witness says
14 he did not even know whether they were received in the bank.

15 THE COURT: There is no objection to this question.

16 MR APPEL: We object to it on the ground no foundation has
17 been laid, incompetent, irrelevant and immaterial, assumes
18 a fact not in evidence; it is not the best evidence, it is
19 calling for hearsay, calling for guess-work; it is calling
20 for knowledge gained by the witness through an inspection
21 of the records which were not made by him and of which he
22 has ^{no} knowledge and does not know the correctness of them;
23 could not know the correctness of them, not knowing the
24 facts.

25 THE COURT: Objection overruled.

26 MR APPEL: We except.

1 A The question again, please.

2 (Question read.)

3 A The records show that they were.

4 MR APPEL: Move to strike that out.

5 MR FORD: It may be stricken out. I believe I can reach
6 this in a very simple manner.

7 THE COURT: Strike it out.

8 MR FORD: How many checks for \$1000 were drawn on your
9 bank on the 6th day of October, 1911?

10 MR APPEL: We object to that on the ground it is incompe-
11 tent, irrelevant and immaterial; not the best evidence;
12 upon the further ground, no foundation has been laid;
13 calling for an opinion and conclusion of the witness,
14 not for positive testimony; the witness has no knowledge
15 and it is otherwise immaterial for any purpose.

16 THE COURT: Objection overruled.

17 MR APPEL: We except.

18 A The records show four checks were paid by the Commer-
19 cial National Bank for \$1000 each on that day.

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8p 1 MR. APPEL. We move to strike it out. It is a substitution
2 of oral evidence for written evidence, it is not the best
3 evidence. We ask that it be stricken out as not res-
4 ponsive to the question.

5 THE COURT. The motion to strike is denied.

6 MR. APPEL. We take an exception.

7 MR. FORD. Is the question answered?

8 (Answer read.)

9 MR. FORD. Q I now hand you three documents and ask you
10 to examine them. I have already exhibited them to the
11 defendant.

12 (Witness examines document.)

13 Q State if those are three of the four checks that were
14 received by your bank from the First National Bank--
15 ~~withdraw the question--~~ State whether or not those are
16 three of the checks presented to your bank on the 6th day
17 of October, 1911, for \$1,000 each?

18 MR. APPEL. We object to that upon the ground no founda-
19 tion has been laid; the witness has not been shown to
20 possess any knowledge concerning the fact of presentation
21 to the bank; that he has testified that he did not
22 personally receive the checks, did not open the envelope
23 in which they are supposed to have come; and upon the
24 further ground that it is calling for hearsay; incompetent,
25 irrelevant and immaterial for any purpose.

26 MR. FORD. The documents themselves may contain all the
data to prove it.

1 MR. APPEL. Calling for an opinion and conclusion of the
2 witness.

3 THE COURT. Objection overruled.

4 MR. APPEL. We except.

5 A The question again, please, Mr. Petermichel..

6 (Question read.)

7 A Yes, sir.

8 MR. FORD. Q And the fourth check to which you refer is
9 the one indicated in exhibit Number--what is that last
10 exhibit, Mr. Smith--let me have that last exhibit--the
11 fourth item of \$1,000 check presented to your bank on
12 that date was the \$1,000 item on the account of Clarence Dar-
13 row, presented in Exhibit No. 36, concerning which you have
14 already testified.

15 MR. APPEL. We object to that because he is putting the
16 words in the mouth of the witness; it is leading and sug-
17 gestive; incompetent, irrelevant and immaterial.

18 MR. FORD. I withdraw the question.

19 THE COURT. Question withdrawn.

20 MR. FORD. Q Of those checks which you hold in your hand,
21 how many of them came from the First National Bank?

22 MR. APPEL. We object to that as no foundation laid; in-
23 competent, irrelevant and immaterial for any purpose;
24 calling for hearsay, opinion and conclusion of the witness,
25 the witness having already testified he has no personal
26 knowledge of the facts to which his attention has been

1 attracted by the question, otherwise immaterial for any
2 purpose.

3 THE COURT' Objection overruled.

4 MR. APPEL' We except.

5 A The records show but one came from there.

6 MR. FORD. Q All the other two checks came from other
7 sources?

8 MR. APPEL. We move to strike out the answer of the witness
9 on the ground it is not responsive to the question.

10 THE COURT' Motion to strike is denied.

11 MR. APPEL' We take an exception.

12 MR. FORD' The answer, I believe, is in?

13 THE COURT. Yes .

14 MR. FORD. Q And how many checks came from the First
15 National That day, altogether, for \$1,000?

16 MR. APPEL. We object to that as already answered.

17 MR. FORD. Let me reframe the question. Q How many
18 checks for \$1,000 came from the First National Bank that
19 day?

20 MR. APPEL' We object to that upon the same grounds stated
21 in our last objection.

22 THE COURT. Objection overruled.

23 MR. APPEL. We except.

24 A Two.

25 MR. FORD. Q Mr. Essick, how many years have you been
26 engaged in the banking business? A It will be 14 on the
4th of next August.

1 Q Are you thoroughly familiar with the system of book-
2 keeping employed in your bank?

3 MR. APPEL We object to that as immaterial, incompetent,
4 irrelevant for any purpose whatsoever; the witness has
5 not been put upon the stand to testify and give any expert
6 opinion or knowledge or skill with reference to that mat-
7 ter and we admit his knowledge and skill in every particular
8 and qualification, but it is immaterial in this case.

9 MR. FORD. Counsel having admitted his qualifications and
10 skill--

11 MR. APPEL Yes, yes, your Honor.

12 MR. FORD. --I cannot see any objection to letting me prove
13 his qualification as an expert, that is exactly what I want
14 to do.

15 MR. APPEL. I thought you would take that stipulation.

16 THE COURT. Objection overruled.

17 MR. APPEL. We except.

18 MR. FORD. Q Answer the question. A Yes, sir.

19 Q From an examination of the books and documents con-
20 cerning which you have testified this afternoon, and basing
21 your opinion upon that as an expert, from what source did
22 the check referred to in Exhibit No. 36, to wit, the
23 check for \$1,000 drawn on the account of C. S. Darrow,
24 Trustee, come?

25 MR. APPEL. We object to that upon the ground it is in-
26 competent, irrelevant and immaterial; that it is not a

1 matter of expert knowledge to prove from what place a
2 check came; a fact like that was never allowed as expert
3 testimony, never in the world and never will be so long
4 as there are courts and judges and every one who knows
5 what expert testimony is; it is not a matter of expert
6 testimony and it is otherwise incompetent, irrelevant and
7 immaterial for any purpose. I am not an expert.

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1 THE COURT:" The objection is overruled.

2 MR APPEL: We take an exception.

3 A The question again, Mr Petermichel.

4 (Last question r ead.)

5 A From the First National Bank.

6 Q BY Mr Ford: And on what date?

7 MR APPEL: The same objection.

8 THE COURT: Overruled.

9 MR APPEL: Exception.

10 A October 6h, 1911.

11 Q I don't know that we shall offer this, your Honor,
12 but I want to have them marked for identification.

13 Was that the document I showed you a moment ago, and con-
14 cerning which you testified? A May I answer?

15 Q Yes. A No sir, those are not the ones I had in my
16 hands a moment ago.

17 MR APPEL: Are we entitled to know what is done here?

18 THE COURT: The question was asked, Mr Appel. Do you wish
19 to have it read?

20 MR APPEL: It is a sort of a mutual conversation.

21 THE COURT: The court heard the question, and if you did
22 not, you are entitled to hear it.

23 MR APPEL: We are entitled to hear it.

24 THE COURT: If you didn't hear it you are entitled to have
25 it read. Read it.

26 (Last two questions and answers read.)

1 MR APPEL: That is all right, if they are not the ones.

2 ✓ MR FORD: The documents which you hold in your hands now,
3 ✓ are they the ones I showed you a moment ago? A Yes sir.

4 ✓ MR FORD: We ask that they be marked exhibit 37, for iden-
5 ✓ tification, your Honor.

6 THE COURT: Fasten them all together, and mark them.

7 MR FORD: I now hand you a bunch of similar documents.

8 A May I make a request, your Honor?

9 THE COURT: Yes.

10 A Those small slips are important to the bank in con-
11 nection with the envelope in which they are. May I ask
12 that the envelope in which they are enclosed, be a part
13 of the exhibit?

14 MR FORD: yes, we will offer it.

15 MR APPEL: We are perfectly willing, your Honor --

16 A I do not want to lose my records, in other words, your
17 Honor.

18 MR APPEL: We are perfectly willing, your Honor, that they
19 may be substituted and the court here may have copies of
20 them, and whatever questions there are concerning them, may
21 be asked concerning the copies, as if they were the origi-
22 nals, if they want to. That, I hope, under the statute,
23 the court has a right to do that; we can substitute copies
24 and they can be asked concerning them just the same as if
25 they were the originals, because all that is material in
26 there is the figures.

1 ✓ MR FORD: I now hand you an envelope containing some
2 ✓ slips which I have exhibited to counsel for defendant
3 ✓ and ask you if those were received by your bank on the
4 ✓ 6th day of October, 1941; if the records show they were re-
5 ✓ ceived?

6 ✓ MR APPEL: We object to that on the ground it is incom-
7 ✓ petent, irrelevant and immaterial, not calling for the
8 ✓ best evidence, and it is hearsay, collateral to any issue
9 ✓ in this case; no foundation laid, and calling for an opin-
10 ✓ ion and conclusion of the witness as an expert upon mat-
11 ✓ ters upon which expert testimony is not admissible, not
12 ✓ being a matter of expert testimony or of skill.

13 ✓ THE COURT: Objection overruled.

14 ✓ MR APPEL: We except.

15 ✓ A The question again, please.

16 ✓ THE COURT: Read the question.

17 ✓ (Question read.)

18 ✓ A Yes sir.

19 ✓ MR FORD: I will ask that they be marked Exhibit 38, for
20 ✓ identification, your Honor.

21 ✓ THE COURT: Mark them 38 for identification.

22 ✓ MR FORD: We now offer the checks identified by the wit-
23 ✓ ness as exhibit 39.

24 ✓ MR APPEL: We object to that on the ground they are imma-
25 ✓ terial for any purposes in this case, hearsay.

26 ✓ MR FORD: Being three checks for the sum of \$1000, pre-

1 sented, according to the testimony, to the Commercial
2 National Bank on the 6th day of October, 1911.

3 MR APPEL: We object to them on the ground they are imma-
4 terial for any purpose whatsoever, no foundation laid,
5 collateral, hearsay.

6 THE COURT: Objection overruled.

7 MR APPEL: We except. We ask that the rule be followed
8 now; it has not been complied with, but I demand whenever
9 a document is offered in evidence, that they be read to the
10 jury. They have a right to know these are not our
11 checks, it is a fact we are entitled to, if it is offered
12 against us.

13 THE COURT: I assume that as soon as they have been marked
14 counsel intends to read them.

15 MR APPEL: They should be read, and if they are against us
16 the jury ought to know that fact.

17 MR FORD: They may be read to the jury and we will stipu-
18 late they are not the checks of the defendant.

19 THE COURT: Mark the documents as quickly as possible and
20 let counsel have them to read them. You might read them
21 first and mark them afterwards.

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10p 1 ✓ MR. FORD. Exhibit 39. "Los Angeles, Cal., October 5,
2 1911. Commercial National Bank. Pay to the Order of
3 All Night & Day Bank, Los Angeles, Cal., \$1,000 One
4 Thousand 00/100 Dollars", signed "J. A. Hagins." Rubber
5 stamp on face of check, "E.F.K." Endorsed, "Pay to the
6 order of Merchants National Bank, Los Angeles, Cal. All
7 Night & Day Bank, Los Angeles, Cal. J. S. Moore, Cashier.
8 October 6, 1911." Stamp, "Merchants National Bank,
9 October 6, 1911", and perforated, "Paid."

10 ✓ The second document of the exhibit, "Los Angeles,
11 Cal., October 5, 1911. Pay to the order of S.C.Dunlap,
12 \$1,000 One Thousand 00/100 Dollars. To Commercial National
13 Bank, Los Angeles, Cal. Atlas Milling Company, by
14 V. Kratz." Endorsed, "Pay to the order of First National
15 Bank, Los Angeles Cal. S. C. Dunlap." Endorsed, "Los
16 Angeles Clearing House, First National Bank, October 6,
17 1911."

18 Third document: "Pay to the order--" "Los Angeles,
19 Cal, 10-6, 1911. Pay to the order of F. E. Watts, \$1,000
20 One Thousand Dollars. To the Commercial National Bank,
21 Los Angeles, Cal." Signed, "Cunningham Curtiss & Welch
22 Co. By Henry S. Jones, Secy." Endorsed, "Pay to the
23 order of E. D. Burbank, F.E. Watts. E.D.Burbank. Pay
24 to the Order of Commercial National Bank, 16-17 of Los
25 Angeles, Cal., 16-17 October 1911, Traders Bank, 16-67 A
26 of Los Angeles, Cal., 16-67 A. Thos. F. Cook. Cashier."
Perforated, "Paid, 10-6-11." Cross-Examine.

1 CROSS-EXAMINATION.

2 BY MR. APPEL. Q Mr. Essick, whatever you testified to here
3 you testified simply from an inspection of the records, as
4 I understood you to say, and not from any personal know-
5 ledge of the facts? A Yes, sir.

6 MR. APPEL. That is all.

7 MR. FORD. That is all.

8 MR. APPEL. Just a minute--something has been suggested
9 to me. We move to strike out all of this testimony in
10 this case on the ground that it don't concern the case.

11 THE COURT. The motion to strike out is denied.

12 MR. APPEL. We take an exception.

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14 G E O R G E G. Y O U N G,

15 a witness called on behalf of the People, having been first
16 duly sworn, testified as follows:

17 THE COURT. State your full name, and be seated.

18 A George G. Young.

19 DIRECT EXAMINATION.

20 MR. FORD. Q How old are you, Mr. Young? A 31.

21 Q Where do you reside? A Los Angeles.

22 Q What street and number, please? A 639 Solano avenue.

23 Q And your occupation? A Teller, First National Bank.

24 Q That is a bank doing business at the corner of Second
25 and Spring streets, in the city of Los Angeles, California?

26 A Yes, sir.

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

2 Q Were you a teller in that bank on the 6th day of October,
3 1911? A Yes, sir.

4 THE COURT. Just a moment, I didn't catch that first
5 question.

6 THE REPORTER. Does your Honor wish the record read?

7 THE COURT. Yes, read the record.

8 (Record read.)

9 MR. FORD. Q Did you see Bert Franklin that day?

10 MR. ROGERS. If it is the desire of counsel to prove by
11 this witness that Bert H. Franklin deposited that \$1,000
12 check by Clarence S. Darrow, or C. S. Darrow, Trustee, on
13 the Commercial National Bank, and deposited it to his own
14 account and drew therefrom a certain sum of money on that
15 day, we are willing to stipulate it.

16 MR. FORD. Read the question.

17 (Question read.)

18 A What day do you mean?

19 Q On the 6th day of October.

20 THE COURT. Wait a minute--counsel has offered a stipula-
21 tion, and I think you should act upon it in some way.

22 MR. FREDERICKS- We maintain, your Honor, that pleasant
23 as it might be to expedite matters, that a stipulation is
24 not receivable in a criminal case as evidence against the
25 defendant.

26 MR. ROGERS. The defendant will make it himself.

1 MR. FREDERICKS- Then we might possibly put the stenographer
2 on the stand and swear that Mr. Darrow did so, but I do not
3 believe otherwise it would be a competent record.

4 MR. DARROW. Put him on the stand where?

5 MR. FORD. Here, put the stenographer on the stand.

6 THE COURT. Go ahead and offer your evidence if you want
7 to.

8 MR. FORD. Q I will ask you to look at People's Exhibit
9 No. 7, which has been filed in this case, and ask you if you
10 ever saw that document before.

11 MR. APPEL. We object to that on the ground it is incompet-
12 ent, irrelevant and immaterial for any purpose whatsoever;
13 that it is collateral to any issue herein, does not tend
14 to prove that Mr. Darrow gave Mr. Franklin any sum of money
15 amounting to \$4,000 on the 28th day of November, 1911 or
16 directed him to pay that sum of money to Lockwood for any
17 purpose whatsoever.

18 THE COURT. Objection overruled.

19 MR. APPEL. We take an exception.

20 MR. FORD. Answer the question.

21 A Yes, sir, I have seen it.

22 Q When did you first see it and where? State the cir-
23 cumstances.

24 MR. APPEL. Wait a moment--we object upon the ground it
25 is incompetent, irrelevant and immaterial and hearsay,
26 that it doesn't call for any acts or declarations or any

1 part binding upon the defendant, calling for matters which
2 are collateral and that the declaration or acts of the witness
3 or Franklin do not tend in any way, shape or manner, to
4 prove that the defendant on the 28th day of November, 1911,
5 delivered to Franklin \$4,000 with which--charged in the
6 indictment.

7 THE COURT. Objection overruled.

8 MR. APPEL. We take an exception.

9 MR. FORD. Answer the question. A I took this deposit
10 on October 6th from Mr. Franklin.

11 Q At the time you received that deposit slip which you
12 hold in your hand and which has been marked exhibit 7
13 in this case, did Mr. Franklin give you anything else
14 besides the deposit slip?

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1 MR APPEL: Wait a minute. We object to it on the same
2 ground stated, that it doesn't tend to prove the offense,
3 or any element of the offense charged in the indictment;
4 it doesn't tend to prove any bribery on the part of the de-
5 fendant or of any giving -- any money being given by the
6 defendant to Franklin on the 28th day of November, 1911,
7 to give to Lockwood, and it is collateral to any issue.

8 THE COURT: Overruled.

9 MR APPEL: We take an exception.

10 MR FORD: Answer the question. A He gave me a check
11 when he gave me this.

12 Q What kind of a check?

13 MR APPEL: Wait a moment. We object upon the ground the
14 check is the best evidence, that it calls for secondary
15 evidence, and we object to the examination of the witness
16 concerning a written instrument not before the court, or
17 before the witness or before counsel; that no compliance
18 with the requirements of the statute or the code in that
19 respect has been observed by the District Attorney, and
20 it is collateral to any issue in this case, and does not
21 tend to prove the offense charged in the indictment.

22 MR FORD: The record is already introduced in evidence --

23 THE COURT: Overruled.

24 MR APPEL: Exception.

25 MR FORD: Read the question. (Question read by the repor-
26 ter.) A You mean --

1 MR FORD: Describe the check.

2 MR APPEL: We make the same objection, your Honor; no
3 foundation laid. There is a way to lay the foundation,
4 your Honor, the oral testimony of the contents --

5 THE COURT: I don't think there has been any foundation
6 laid here.

7 MR FORD: If the court please, that is exactly the point
8 made to the preceding objection to which your Honor ruled.

9 THE COURT: Not foundation.

10 MR FORD: Our testimony will show that the check referred
11 to is the same check referred to by the testimony of the
12 preceding witness, where the record shows that the check
13 had been returned to the defendant.

14 MR APPEL: This record, your Honor --

15 THE COURT: Overruled.

16 MR APPEL: We take an exception.

17 A Why, the check was Mr Darrow's.

18 MR FORD: Of C. S. Darrow, Trustee? A C. S. Darrow.

19 Q Drawn on the Commercial National Bank?

20 MR APPEL: Wait a moment. I would like to get the
21 answer.

22 THE COURT: Read the answer.

23 (Last answer read by the reporter.)

24 MR APPEL: That is what we want to know; the question
25 called -- of course he undertook to tell him what it was,
26 the defendant, C. S. Darrow, Trustee. I didn't hear any

1 response. The witness's answer was C. S. Darrow; I
2 thought he meant to say C. S. Darrow, Trustee.

3 THE COURT: That is the record.

4 MR FORD: I am not trying to attract the witness' atten-
5 tion -- the check was drawn on the Commercial National Bank.

6 MR APPEL: They didn't accept that stipulation.

7 THE COURT: Counsel asked for a reading of the record and
8 got it.

9 MR APPEL: They wouldn't take the word of the defendant or
10 his counsel as being true.

11 THE COURT: You have got a reading of the record.

12 MR APPEL: Now, they have no right to rely on it.

13 MR FORD: Just state the kind of a check, what bank it was
14 drawn on, by whom it was signed; describe it generally.

15 MR APPEL: Wait a moment. That is objected to upon the
16 ground that no foundation is laid for the introduction of
17 oral testimony concerning a written document, and upon
18 the further ground it is not the best evidence, that the
19 question calls for secondary evidence, that it is not per-
20 missible under the code, that no foundation has been laid
21 for secondary evidence concerning the contents of a
22 written instrument and it is hearsay and collateral to
23 any issue in this case.

24 THE COURT: Objection overruled. Answer the question.

25 MR APPEL: We take an exception.

26 A I know the check was drawn by C. S. Darrow, and it was

1 drawn on some city bank, according to this marking.

2 MR FORD: And for what sum? A Sir?

3 Q What amount?

4 MR APPEL: The same objection.

5 A \$1000.

6 THE COURT: Objection overruled.

7 MR FORD: Do you recall of your own personal recollection --

8 THE COURT: Just a moment, Mr Ford. I think we will take
9 a recess at this time. (Jury admonished. Recess for 10
10 minutes.)

11 (After recess.)

12 THE COURT: How much time do you expect to consume
13 on this branch of the case?

14 MR FORD: Just about three minutes. Now, at the time that
15 Mr Franklin presented this check of Darrow's and the
16 deposit slip that has been marked exhibit 7, I will at-
17 tract your attention to People's exhibit No.9, purporting
18 to be a check signed by B. H. Franklin for \$500 on October
19 5th, 1911, and ask you if you saw that document at that
20 time?

21 MR APPEL: Objected to upon the ground it is incompetent,
22 irrelevant and immaterial for any purpose whatsoever, upon
23 the further ground that it calls for hearsay evidence,
24 that it calls for matters collateral to the issue herein,
25 that the evidence does not tend in any way, shape or manner
26 to prove that the defendant upon the 28th day of November,

1 1911, delivered over to Franklin the sum of \$4000 or
2 directed him to bribe the juror Lockwood.

3 THE COURT: Objection overruled.

4 MR APPEL: We take an exception.

5 A : What was the question?

6 (Last question read by the reporter.)

7 A Yes sir, I saw it.

8 MR FORD: At that time did you pay Mr Franklin any money
9 upon that document, exhibit 9?

10 MR APPEL: Wait a moment. The same objection upon the same
11 grounds last stated in our last objection to the previous
12 question.

13 THE COURT: Overruled.

14 MR APPEL: We except.

15 A yes, I cashed the check, gave him 500.

16 MR FORD: \$500? A Yes sir.

17 Q In what kind of money?

18 MR APPEL: The same objection.

19 THE COURT: Overruled. A It was in paper.

20 MR FORD: Currency? A Yes sir.

21 Q And what denomination?

22 MR APPEL: The same objection.

23 THE COURT: Overruled.

24 MR APPEL: Exception.

25 A Why, it was in large bills. I never pay a \$500 check
26 in small bills unless they ask for it.

28

1 THE COURT. Read the question.

2 MR. DARROW. I ask to have that answer stricken out.

3 MR. FORD. Well, it may be stricken out.

4 THE COURT. Stricken out.

5 MR. FORD. You paid him in currency? A Yes, sir.

6 MR. FORD. Cross-examine.

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8

CROSS-EXAMINATION.

9 MR. APPEL. Q Now, let me see that document. Without
10 inspecting or your attention having been called to the
11 check in question purporting to be the check of Mr. Franklin,
12 do you have an independent recollection of the transac-
13 tion that you testified to? A Yes, sir.

14 Q You remember now that on the day in question you paid
15 him \$500? A Yes, sir.

16 Q And without seeing the check you could have testified
17 to it? A I knew I gave it to him, yes.

18 Q I say without seeing this check? A Yes.

19 Q This check has not refreshed your memory? A No.

20 Q Did you pay me \$500 on that day? A I don't know whether
21 I did or not.

22 Q Do you remember any other person that you paid any money
23 to on that day? A No.

24 Q On the day before do you remember that you paid any one
25 \$500? A No.

26 Q Or the day after? A No, sir.

1 Q Now, on the day in question do you remember having
2 received any other check from any other individual except
3 Franklin to deposit to the account of such an individual?

4 A Franklin's account?

5 Q No, any one? A No, I don't remember anything about it.

6 Q You remember having received any on the day before from
7 any particular individual to deposit to his account?

8 A No, sir.

9 Q Or the day after? A No, sir.

10 Q Now, do you remember whether or not the signature to the
11 check of \$1,000 was C. S. Darrow or C. S. Darrow, Trustee?

12 A I don't remember whether it was Trustee on it or not?

13 Q Sir? A I do not remember; I know it was Darrow's
14 check.

15 Q You don't remember whether it was C. S. Darrow, Trustee,
16 or not? A No, I wouldn't swear to it.

17 Q Do you remember where the endorsement was on the back
18 of it, whether across one end of it or lengthwise?

19 A No, I wouldn't swear to it; it was there.

20 Q Do you remember what color of ink it was? A No.

21 Q Do you remember whether it was a check written upon
22 your bank blanks or upon any other? A It was not on our
23 blanks.

24 Q Sir? A It was not on the First National Bank blanks;
25 no, sir.

26 Q It was not? A I don't think it was, no.

1 Q Well, do you know anything about it? A I wouldn't swear
2 to it one way or the other.

3 ✓ Q Was it a draft? A No, personal check.

4 Q Well, drawn upon any foreign bank? A Drawn upon a
5 bank here in the city, one of the city banks.

6 Q Do you remember what bank it was? A No, I know it
7 was miscellaneous--

8 Q Do you remember the number of the check? A No.

9 Q Do you know whether there was a number on it or not?
10 A No, sir.

11 Q Do you remember the color of it? A It was a green
12 check.

13 Q It was a green check? A I think so.

14 Q Did you ever get any other checks from Franklin?

15 A Yes, sir.

16 Q Were they green also? A I don't know.

17 Q Did you ever get any other checks from Franklin with
18 the name C. S. Darrow on them? A Yes, sir.

19 Q What color were they? A I don't know.

20 ✓ Q What were the amounts of the other checks that you
21 received from Mr. Franklin with the name of Darrow on them?

22 ✓ A I don't remember.

23 Q So, the only thing you know is about the matter in ques-
24 tion here? A I don't try to remember them.

25 Q You are testifying from the record, assisted by the
26 record? A Yes.

1 Q And you are basing your testimony upon your own per-
2 sonal recollection of the transaction but aided, of course,
3 materially by the record, that is right? A Yes.

4 MR. APPEL. Now, we move to strike out the testimony of the
5 witness on the ground that it is not the best evidence, it
6 is incompetent, irrelevant and immaterial for any purpose.

7 MR. FORD. Just a moment--

8 THE COURT. Motion to strike is denied.

9 MR. APPEL. We take an exception. Q Now, you say that the
10 check for \$1,000 which was deposited by Mr. Franklin to his
11 credit on what day was it, I forget? A October 6th.

12 Q Yes, on October 6th. You say that it was a green check,
13 was it? A I said I thought it was green.

14 Q What makes you think it was green? A Well, because I
15 thought I knew what it looked like.

16 Q What? A I thought I remembered what it looked like.

17 Q You thought, do you know? A No.

18 Q You have no way of thinking? A I have a slight recol-
19 lection.

20 Q On what do you base your conclusion or your memory of
21 its being green? A I remember the circumstance of bring-
22 ing the check in, just seemed to me it was a green check.

23 Q Now, wasn't it a check on the Commercial National Bank?

24 A Wasn't it?

25 Q Yes. A I don't know.

26 Q You don't know? A No.

1 Q Well, don't your record show it was a check on the
2 Commercial National Bank? A I think not.

3 Q Then it was not a check on the Commercial National Bank?
4 A I don't know whether it was or not.

5 Q Now, isn't it a fact that the check that he presented
6 to you was a yellow check? A I wouldn't say whether yellow
7 or green.

8 Q Then why did you say green a little while ago? A I said
9 I thought it was.

10 Q You merely guessed at it? A Yes.

11 Q When you guess at a thing do you swear to it as a fact?
12 A No, I didn't swear to it.

13 Q No, you are not under oath. A Yes, sir.

14 Q Now, isn't it a fact that the Commercial National Bank
15 checks are yellow--I attract your attention to one, for
16 instance, in order to try to refresh your memory. Attract-
17 ing the witness's attention to Exhibit No. 39, being two
18 yellow checks, dated October 5th, 1911--now, I will take
19 my seat then.

20 MR. FORD. I just wanted to look at the checks.

21 MR. APPEL. I didn't ask permission to come near the
22 witness.

23 THE COURT. I see no impropriety to your going up to the
24 witness stand in order to hand him a paper. All right,
25 now, you may go up to the witness stand and proceed with
26 the examination of the witness. If counsel on the other

1 side desires that permission--

2 MR. APPEL. I will explain the reason why I didn't want
3 to stay there. I am in a state of seemingly fear.

4 MR. FORD. I ask permission of counsel to let me look at
5 that check of the Commercial National Bank.

6 MR. APPEL. Your Honor, I am examining this witness.

7 MR. FORD. For my examination.

8 THE COURT. You have no right to see it at this time. He
9 is showing an exhibit and indicating what it is.

10 MR. FORD. Suppose counsel should be asking about some-
11 thing that is absolutely--

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1 THE COURT: I shall take it for granted he is not.

2 MR APPEL: Your Honor can see it.

3 MR FORD: I have the same right to look at all exhibits
4 whenever a witness is being examined about it.

5 MR APPEL: I júst want to show your Honor --

6 THE COURT: Counsel has a right to show it to the witness
7 on cross-examination.

8 MR APPEL: Júst by way of refreshing his memory.

9 THE COURT: Without being interrupted.

10 MR FORD: Have I not a right to have my attention attract-
11 ed to a matter concerning which he is examining the witness,
12 so I may understand it?

13 THE COURT: He stated in the record what it is. It is
14 one of the exhibits in evidence, and you shall have it as
15 soon as counsel has finished examining the witness.
16 He has expressed a desire to examine the witness without
17 being interrupted.

18 MR APPEL: Let me make my question. If it isn't a fair
19 question, I will withdraw it.

20 MR FORD: just a moment. Is there a question before the
21 court.

22 THE COURT: I don't think there is. I am trying to get a
23 clear field for Mr Appel to proceed, and I am going to
24 get it. Proceed, Mr Appel.

25 MR APPEL: Now, I will attract your attention to two checks
26 which form part of the exhibit here, which is People's

1 exhibit No.39, one being a white check on the Commercial
2 National Bank, Los Angeles, Cal.; see? And the other two
3 being yellow checks on the Commercial National Bank of
4 Los Angeles. Now, after looking at them and seeing what
5 purports to be the blank checks of that bank, would that
6 aid you in now making a guess as to what sort of a colored
7 check the one was that Franklin handed to you?

8 MR FORD: If the court please, we object to the question
9 upon the ground that it is absolutely immaterial whether
10 it would aid him or not. The fact that there are some yellow
11 checks of the Commercial National Bank doesn't in any-
12 wise prove or tend to prove that there are not also green
13 blanks on that bank.

14 THE COURT: Objection overruled. Let the witness answer.

15 A No, that wouldn't aid me any.

16 MR APPEL: It would not? A No.

17 Q Did you ever see a green check on that bank? A I think
18 I have, yes.

19 Q When? A I see so many, although I wouldn't swear
20 I saw any green ones or not.

21 Q Don't you know the color of the checks of that bank?

22 A No, they have all different colors, I think.

23 Q What makes you think they are different colors?

24 A We have all different colors.

25 Q No, no, no; what makes you think there are different
26 colors of checks of that bank, the Commercial National

1 Bank? A there is two different colors right there.

2 Q And your green one makes three? A Yes.

3 Q All right. Now, these are two colored checks of the
4 Commercial National Bank, ain't it? A Yes sir,
5 there is two of them there.

6 Q One being Cunningham, Curtis & Welch Company,
7 blank check used for the purpose of drawing moneys from
8 the Commercial National Bank, and the other being the regu-
9 lar Commercial National Bank checks, which are yellow.

10 MR FORD: Is counsel testifying?

11 MR APPEL: What time of the day was it when Franklin came
12 there? A Well, about noon, I think.

13 Q About noon; how do you remember that? A Well, my
14 assistant was out at lunch at that time.

15 Q He is out at lunch on other days, ain't he? A Yes,
16 he goes the same time.

17 Q How do you remember the date? A This date?

18 Q Yes. A From that exhibit.

19 Q Exactly. What kind of a day was that; do you
20 remember in particular -- any other circumstance of that
21 day, so as not to bother you with questions? A No.

22 Q Absolutely none. You don't know what you did or who
23 talked to you or what business you transacted except that
24 you remember Franklin came there with a green check that
25 day and you don't remember anything more about that day,
26 do you? A No.

1 Q And you do remember that your assistant went out to
2 eat? A I know he always does.

3 Q And he always does eat? A Sure.

4 MR APPEL: No more. A No more?

6 REDI RECT EXAMINATION

7 MR FORD: Just a moment --

8 THE COURT: I think a juror wants to ask a question.

9 JUROR GOLDING: There is a misunderstanding somewhere;
10 he testified that \$500 check was on some other bank, except
11 the First National Bank, or is that a misunderstanding?

12 A No, that was our bank, the First National Bank.

13 JUROR GOLDING: \$500 with your bank? A Yes.

14 JUROR GOLDING: I misunderstood the testimony.

15 MR FORD: And the \$1000 was on another bank? A Yes,
16 the \$1000 was on another bank.

17 MR APPEL: I would like to ask a question.

18 THE COURT: All right.

CROSS-EXAMINATION resumed

19 MR APPEL: Who was the man just before Franklin appeared
20 at your window that you dealt with? A I don't know.

21 Q What kind of money did you give him? A I don't know.

22 Q Who was the next man? A I don't know.

23 Q You don't remember what he looked like? A No.

24 Q Do you remember what kind of money you gave people on
25 that day? A No, I do this time, though.

26 Q Why do you know that? A Because I gave it to Frank-

1 lin.

2 Q Because you gave it to Franklin? A Yes.

3 Q Isn't this the fact: that you have been over these
4 facts with someone and that they have aided you in remember
5 ing this thing, and you have thought over it so much that
6 it become impressed upon your memory, and now, from what
7 they have told you and from what little you have gathered
8 from the records, you have fixed what your testimony should
9 be here?

10 MR FORD: We object to that on the ground the question is
11 a long, compound question, some of it might be answered
12 in the affirmative and some in the negative, on the ground
13 it is a compound and complex question. If counsel desires
14 let him ask him why he remembers it, and we have no objec-
15 tion.

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14p 1 THE COURT. I think the witness understands the question
2 and can answer it. Is the question clear? A He wants
3 to know why I remember about Franklin.

4 THE COURT. Do you want it read? Read the question.
5 (Last question read.)

6 MR. APPEL. In your mind, I mean, I do not mean dis-
7 respectfully. A I don't know; I remember distinctly of
8 the transaction, Franklin coming in and depositing the
9 check and drawing his own check for \$500 and my handing it
10 to him.

11 Q He was in a great hurry? A I do not think so; I don't
12 know.

13 Q What did he tell you, he had to go down and pay his men
14 at the office? A No, I don't know what he said.

15 Q He didn't tell you that? A No.

16 Q What did he tell you? A I don't know as he told me
17 anything.

18 Q Not a word? A I don't know.

19 Q Did he tell you what kind of money he wanted? A I
20 don't remember whether he did or not.

21 Q How do you know what kind of money you gave him?

22 A Because I wouldn't give him small bills?

23 Q You would not? A No.

24 Q You always give large bills when they ask you for \$500?

25 A I do, so that he won't have to stand around the window
26 for an hour counting it.

1 Q Did you give him a \$500 bill? A No, I did not.

2 Q How do you know you did not? A Because I didn't have
3 them.

4 Q You didn't have a \$500 bill? A I don't keep them in the
5 case .

6 Q And don't you keep any at any time? A Very seldom, I
7 don't keep them at all.

8 Q What do you mean by "large bills"? A Hundreds and
9 fifties.

10 Q Did you give him one hundreds? A I wouldn't say one
11 hundred or fifty.

12 Q Did you give him fifty? A I wouldn't say, one hundred
13 or fifty.

14 Q Did you give him twenties? A No.

15 Q Didn't give him twenties? A No, I am sure I didn't
16 give him twenties.

17 Q Did you open a big package and open up \$500? A No, sir.

18 Q Was it a \$500 package? A No, sir.

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1 Q How did you give it to him? A I have my big bills
2 in that drawer and I handed them to him.

3 Q They were loose there? A Yes.

4 Q Well, was it after 12 o'clock? A I don't know.

5 Q Who was present? A I don't know who was there.

6 Q Were the other employes there? A Everybody in the
7 bank.

8 Q What day of the week was it? A I don't know.

9 Q Your assistant went away at 12 o'clock to dinner,
10 didn't he? A No, he goes about 11, somewheres around
11 11.

12 Q Did he come back on that day? A He come back after
13 a while.

14 Q Sir? A He came back.

15 Q What time did he come back? A I don't know.

16 Q Did you go to dinner? A Yes.

17 Q And came back? A Yes.

18 Q What time did you leave? A I leave when I get
19 through.

20 Q No, that day. A Somewhere before, about half past
21 12, between 12 and half past.

22 Q And you came back that day? A I came back at half
23 past one.

24 Q Remained at the bank until late that afternoon?

25 A About half past 4 or 5.

26 Q That was Saturday? A I don't know.

1 Q Your bank closed at 12? A I don't know. It was not
2 Saturday that he got the money.

3 Q It was not Saturday, October 6th, 1911?

4 MR FORD: We object to that, that is a matter of almanac
5 calculation, counsel can refer to it.

6 Q Did you give Franklin money at any other time? A Yes.

7 Q What denominations? A I don't know.

8 Q How much? A All different amounts.

9 Q About what is the largest amount, five or six hundred
10 or a thousand dollars? A I cashed Darrow's check for him
11 on one of the other banks for \$500.

12 Q What kind of money did you give him then? A I don't
13 remember; it was large bills.

14 Q When was that? A I don't know what date.

15 Q What month? A I wouldn't say what month it was.

16 Q What year, 1911? A 1911 sometime.

17 Q In January? A No, the latter part of the year.

18 Q That was in December, wasn't it? A I would not state
19 what month it was.

20 MR APPEL: I guess that is all.

21

22 REDIRECT EXAMINATION

23 MR FORD: Mr Young, you say you distinctly remember this
24 transaction, although you fix the date of it by the slip
25 there. What was there about the transaction that caused
26 you to distinctly remember it?

1 MR APPEL: We object to that on the ground it is incompe-
2 tent, irrelevant and immaterial; not redirect, incompetent
3 for any purpose.

4 THE COURT: Objection overruled.

5 MR APPEL: We except.

6 A Why, I remember the circumstance of Franklin coming
7 in and giving me this check. I would not have cashed
8 the check unless I had seen the deposit there first,
9 and knew he had the money there; that is the reason I
10 took a good look at the check before I gave him the money.

11 Q Did you consult with anyone in the bank before paying
12 the check for \$500? A No sir.

13 Q And on account of his drawing \$500, you first looked
14 at the check to decide in your mind whether it was good
15 for \$500?

16 MR ROGERS: That is more or less leading.

17 MR FORD: perhaps it is.

18 Q State to the jury your reasons. A I say, I looked at
19 the deposit more carefully than I would, because he want-
20 ed to draw the money; when I paid him The \$500, I wanted
21 to know the check was good.

22 Q And are you positive as to the denominations of cur-
23 rency which you paid him?

24 MR APPEL: I submit, if your Honor please, they have no
25 right to ask him that question; they asked him a question
26 in direct evidence, as to what he did, and we cross-examined

1 THE COURT: I think you are right. That has been gone
2 into on both sides. Objection sustained.

3 MR FORD: That is all.

4 MR APPEL: That is all.

5
6 MRS DORA F. BAIN, a witness called on be-
7 half of the people, being first duly sworn, testified as
8 follows:

9 DIRECT EXAMINATION

10 MR FORD: What is your name? A Mrs Dora F. Bain.

11 Q Where do you reside? A 345 West Sixty-eighth street.

12 Q In the city of Los Angeles, California? A Yes.

13 Q You are married? A I am.

14 Q What is your husband's name? A Robert Bain.

15 Q Robert F. Bain? A Yes.

16 Q Do you know Bert Franklin? A I do.

17 Q How long have you known him? A I do not really
18 remember how many years, quite a number of years, though.

19 Q Did you see Mr Franklin on the 6th day of October,
20 1911? A I did.

21 Q At what place, Mrs Bain? A At the residence, the
22 home residence.

23 Q At your residence? A Yes.

24 Q Who else was present when you first saw him on that
25 day, Friday, October 6th? A In the house, you mean?

26 Q Yes. A There was no one in the house. I was alone

1 at home.

2 Q Did you have a conversation with him at that time?

3 A I did.

4 Q Just tell the jury the circumstances of your holding
5 a conversation with him at that time and what was said and
6 done?

7 MR APPEL: Wait a moment. We object to the evidence upon
8 the ground that it is incompetent, irrelevant and imma-
9 terial for any purpose whatsoever; it is collateral to
10 any issue in this case; it is hearsay, and for the reason
11 that it does not tend in any way, shape or manner to
12 prove that Clarence ^{Darrow} ever did at any time deliver to Mr
13 Franklin the sum of \$4000 for the purpose of bribing
14 Juror Lockwood or directed the said Franklin to bribe Juror
15 Lockwood, that being the charge embraced in the indict-
16 ment in this case.

17 THE COURT: Objection overruled.

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1 MR. APPEL. And being acts and declarations of the
2 said Franklin and of the witness long prior to November 28th
3 1911, the date charged in the indictment when the alleged
4 offense is alleged to have occurred, being too remote and
5 irrelevant for any purpose.

6 THE COURT. Objection overruled.

7 MR. APPEL. We take an exception.

8 MR. FORD. Read the question.

9 MR. APPEL. Just a minute--let me get the stipulation, so
10 as not to interrupt the witness, your Honor. May these
11 objections, your Honor, unless it appears necessary to add
12 to it in the future, may this objection go to all of the
13 questions and all of the answers that the witness may give?
14 That is, it may be a running objection to all of that so as
15 not to interrupt the witness hereafter?

16 THE COURT. It will be understood that the same objection,
17 the same ruling and the same exception is interposed to each
18 and every question propounded to this witness, unless
19 counsel desire to add some additional objection.

20 MR. APPEL. Yes, sir. Very well.

21 MR. FORD. Read the question.

22 (Question read.)

23 A Do I understand, you want all of the conversation?

24 MR. FORD. All of the conversation, from the time you
25 first saw him.

26 A When Mr. Franklin first came to the door I was not

1 in condition to go to the door and he gave an alarm, rang
2 the door bell, and then he went around to the back door
3 and I stepped to the window and I saw an automobile and I
4 called out, "I cannot come to the door," and the gentleman
5 in the automobile said, "Why, he has gone around to the
6 back." In a moment or two Mr. Franklin came around
7 to the window and I opened the window and I says, "I can-
8 not come to the door," and he says, "Why, where is Bob?"
9 And I tried to tell him as near as I remember, the direc-
10 tions where Mr. Bain was. He said that he must see him
11 immediately, or he must see him that night, and I told him
12 just as near as I could, and he thought at first that he
13 would go there. Now, I don't know that I can give the
14 conversation entirely. It has been quite a while ago, but
15 I will do the best I can. He said he wanted to see him on
16 business and he mentioned the fact that--

17 MR. APPEL. Let her state what was said, your Honor.

18 THE COURT. Yes, state what was said.

19 MR. FORD. Q He mentioned the fact, that is something he
20 said. A He said he was a detective and I said I understood
21 so from a mutual friend of ours, Mrs. Brainard, and he
22 says, "Mrs. Bain, I have been here to see you three or
23 four times, several times, and I never found you in," and
24 I says, "No, I have been very busy," and I says, "Bob is
25 working," and I says, "I am working in a contest for a
26 blind lady friend of mine and I have been away a great deal,"

1 and then I said, "By the way, Mr. Franklin, you might help
2 me in this contest," and he says, "Yes, what do you want?"
3 And I says, "Well, I am aiming to get a certain number
4 of points by Saturday night, tomorrow night, and three
5 months, six months or a year would help me very mater-
6 ially," and he says, "What paper is it?" And I told him
7 the Examiner, and he says, "Why, yes, I will help you out,
8 I will give you a year." I thanked him and I says, "Will
9 you do it right away?" And he said, "Yes." I says, "Wait
10 a moment and I will go and get my receipt book," and he
11 said, "Let me come in," and I says, "No, Mr. Franklin, I am
12 not in position to receive anybody in the house at this
13 time," and he says, "Why, I wont look at you, let me come
14 in," he says, "I want to talk to you anyway." So I allowed
15 him to come in and got the receipt book and he says, "Let
16 me make it out for you," and made out the receipt himself
17 for \$9.00 for a year's subscription to the Examiner, and
18 I says, "Now, that affair is settled," and he says, "Yes,"
19 he says, "All but the money, you want some money, don't
20 you?" And I says, "Yes, that is very essential," and I
21 smiled, and he says, he asked me if I had change for a
22 one hundred dollar bill, or fifty, I wouldn't say posi-
23 tively which one it was. I laughed and I said, "No, I have
24 not seen a bill of that denomination since I was cashier,"
25 and we smiled about it, and he says, "Can you change a ten?"
26 I says, "No, this is rather late in the week", and I says,

1 "I have less than a dollar in the house." And he says,
2 "Well, maybe I can find it for you." He took out a pocket
3 book and opened it and there were quite a number of--a
4 great deal of currency in it--I didn't see any of the
5 denominations, and he finally got out \$9.00 for me and he
6 gave it to me and I thanked him and I hoped then he would
7 go, because I was very busy. And he leaned back in his
8 chair and he says, "You have a very nice home here, Mrs.
9 Bain." I says, "Yes, we think so." He says, "Are you happy?"
10 I says, "We are very happy, I have not been so happy since
11 I married, since I am in our little home." He wanted to
12 know if we owned it. I says, "We are buying it" and he
13 says, "What do you owe on it?", or, "What are you paying
14 for it?" I looked at him as much as to say, I didn't
15 think it was any of his business, and he says, "Now, that is
16 all right, Mrs. Bain, I am not asking out of curiosity
17 but I am asking as a friend."

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1 He says, "Bob and I are old friends", and he says, "I know
2 your circumstances", and he says, "I may be in a position
3 to help you out." He says, "I think I will be," and he
4 says, "you know Bob and I have worked and I know Bob is
5 an honest man and I have always been honest", he says, "I
6 am in a position now where I can help him out", and I
7 says, "I wish you could, Mr Franklin, it would be very
8 much appreciated, I am sure." I says, "Bob is working
9 today at carpenter work; he has got pretty good prospects
10 for the winter", and I says, "if he could find something
11 easy to do", I says, "it would be very much appreciated".
12 He spoke of Bob's age, he says, "Bob is getting pretty
13 old to do carpenter work", and he says, "it seems too bad
14 that he should have to work on all these years", he
15 said, "If he had not been imposed upon", he says, "pro-
16 bably he would not be in the position he is now." And
17 he says, "He won't be able to work at carpenter work much
18 longer, will he?" Well, I says, "Mr Franklin, when Bob
19 becomes that age that he cannot work any more", I says,
20 "I will work for him." I says, "I am not afraid of work,
21 never have been." And I says, "When Bob is unable to
22 work for me, then I will work for him." He says, "Mrs
23 Bain, you are not always going to be able to work; you
24 are getting that age yourself when you are not going to be
25 able to work hard." He says, "I want to help you." He
26 hesitated a while. He says, "Don't you know what I want

1 Bob to do, Mr Bain -- Mrs Bain"? I says, "Why, no." He
2 scratched his head and looked at me again and he says,
3 "Can't you guess?" I says, "I have not the slightest idea,
4 Mr Franklin, unless you want Bob to do detective work."
5 "No," he says, "it is not that." He hesitated quite a
6 while, and he says, "Oh, by the way, has Bob been sub-
7 poenaed on the jury?" I says, "What jury?" He says,
8 "The McNamara jury." I says, "Yes sir." He says,
9 "Are you sure of that?" I says, "I am." He says, "Has
10 he been summoned?" I says, "There was a paper handed to
11 him, and handed to a neighbor and she gave it to me and
12 told me to be very sure and hand that to Mr Bain without
13 fail", and I said "It was a notice that he should appear
14 for examination." Well, he says, "Mrs Bain, I want Bob
15 to serve on that jury." Well, I says, "I don't." He
16 says, "Well, why not?" Well, I says, "Because Bob has
17 got good work now and", I says, "it will take him away
18 from home, and ", I says, "furthermore", I says, "Bob
19 never would qualify on that." He says, "Why not?" I
20 says, "For one thing, he is hard of hearing." And he
21 says, "Has he ever expressed an opinion?" I says, "No,
22 you know, Mr Franklin, that Bob is a man of very few words",
23 and he says, "Well," he says, "I want him to serve on that
24 jury and" he says, "I will make it worth his while, and",
25 he went right on saying that if "Bob will serve on that
26 jury", he says, "he may not qualify", but he says, "if he

1 will agree to try to serve on that jury", he says, "I
2 will give him \$500 tonight", and he says, "then if he
3 stays through, qualifies, he stays through to the end of
4 the trial", he says, "I will give him \$3500 more at the
5 end of the trial, providing he votes for acquittal or
6 hangs the jury", and he says, "Now, Mrs Bain, do you think
7 that I dare approach Bob on that subject?" I says,
8 "No, Mr Franklin, I don,t think you dare." Well, he says,
9 "He must serve on that jury", he says, "These boys are
10 being railroaded to the penitentiary and" he says, "the
11 prosecution are buying witnesses and jurors, and", he says,
12 "we have got to use the same tactics that they do to
13 keep even." He says, "It is a question of capital against
14 labor", he says, "these boys, Mrs Bain, are as innocent
15 of that crime as you are", and he says, "that is the reason
16 we have got to do this thing", he says, "the prosecution
17 has to use the same tactics that they are using." He
18 says, "You don't want to see these boys railoaded to the
19 penitentiary?"
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1 And he says, "Now, do you think that I dare approach
2 Bob on that subject?" I didn't think so. "Well," he says,
3 "will you speak to him," he says, "do you think that you
4 could persuade him to go into this?" "Well," I says,
5 "Mr Franklin, if anybody can persuade Bob to do it I can,
6 but," I says, "I don't know that I can." "Well," he says,
7 "will you try?" He says, "You will get \$500 tonight,"
8 he says, "I will give you \$500 tonight; I will be here
9 tonight." In the meantime he had spoken of coming again to
10 see Bob at 7 o'clock, and I says, "Well, I can speak to
11 him," and he says, "Will you try to persuade him?" I said,
12 "Yes." He says, "Now, remember," he says, "Think what
13 a good thing it is." He spoke along advisedly of the
14 advantage it would be to us and that we could pay off our
15 little home, and held out the inducement, and I was foolish
16 enough to fall, and so then shortly after that, after I
17 agreed to speak to Bob, he left, and he said, he would be
18 back at 7 o'clock. I told him I would not be here because
19 I had to go to lodge. He says, "You will speak to Bob and
20 he will be ready to receive me?" He says, "You don't
21 suppose for a moment that Bob will go to the District
22 Attorney and tell this?" I said, "No." I said, "I don't
23 believe Bob would do that, in fact I know he wont." That is
24 about as near as I can remember the conversation.

25 Q Do you remember anything else that was said at that
26 conversation, Mrs. Bain? A Might have been quite con-

1 siderable more said that I would not just remember at
2 this time.

3 Q You stated a moment ago that he had asked you about the
4 payments on your house? A I told him about the payments.

5 Q What did you tell him about that? A I told him that the
6 place cost \$1800 and that we were paying \$15 a month with
7 the privilege of paying, including principal and interest,--
8 with the privilege of paying more whenever we saw fit,
9 any time we wanted to pay more on the principal we had that
10 privilege.

11 Q And did you at that time tell him anything about handing
12 the deed of that house to your husband? A I did, yes.

13 I said at that time--

14 MR. APPEL. We object to that as immaterial. Wait a moment.

15 MR. FORD. part of the conversation.

16 MR. APPEL. We object to that as incompetent, irrelevant and
17 immaterial.

18 A I told him--

19 MR. APPEL. Wait a moment.

20 MR. FORD. Wait until the court rules.

21 MR. APPEL. It has no bearing on the matter at all, their
22 own transactions in reference to that matter. Your Honor,
23 it doesn't appear that is said in the conversation, that
24 is material.

25 THE COURT. Objection overruled.

26 MR. APPEL. We except.

1 MR. FORD* Now you can answer the question.

2 A I said that when--we were speaking of our anniversary.
3 I told him that the happiest day of my life would be when I
4 could hand that deed to Bob and say, "Bob, this is our
5 home."

6 MR. APPEL. Just a moment--we move to strike that out on the
7 ground it doesn't tend in any manner to prove any issue in
8 this case.

9 THE COURT. Motion to strike is denied.

10 A I don't always hear well.

11 THE COURT. All right, Mrs. ^{Bain,} We will speak loud so you can.

12 MR. FORD. During that conversation--will you read that
13 answer as far as it has gone and see if there is anything
14 she desires to add to it.

15 (Last answer read by the reporter.)

16 A And then he said, "Mrs. Bain, I think I can very soon
17 place you in the position that you can do that."

18 Q You stated a moment ago that Mr. Franklin had said that
19 the prosecution were buying jurors and witnesses and that
20 the defense had to use the same tactics, is that correct?

21 A yes.

22 MR. APPEL. Just a moment--she testified--

23 A I don,t remember the words--

24 MR. FORD. I was simply attracting the witness's attention--

25 THE COURT. Is that preliminary to some other question?

26 MR. FORD. Preliminary.

1 THE COURT. Oh, well, all right.

2 MR. FORD. Q At that time was anything said by Mr. Franklin
3 concerning other jurors in the case? A He said--

4 MR. APPEL. Wait a moment--

5 THE COURT. Mr. Appel, the witness has just stated that she
6 is hard of hearing. I call your attention to that fact.

7 MR. APPEL. I know that. I know the witness for a great
8 many years. We object upon the ground that it is incom-
9 petent, irrelevant and immaterial--well, I will put it
10 in this way, we will object to the question upon all of
11 the grounds stated in the first objection made to this
12 line of testimony, made by us here while the witness was
13 present, and we further object upon the ground that it
14 calls for acts and declarations by Mr. Franklin concerning
15 past transactions and do not tend to prove any issue in
16 this case.

17 THE COURT. Overruled.

18 MR. APPEL. A repetition of past transactions.

19 THE COURT. Overruled.

20 MR. APPEL. We except.

21 THE COURT. You may answer the question, Mrs. Bain.

22 A I don't remember what the question was.

23 (Last question read by the reporter.)

24 A Not at that time.

25 MR. FORD. Q At any time during the conversation was
26 anything said about other jurors?

1 MR. APPEL. The same objection.

2 THE COURT. Overruled.

3 MR. APPEL. We take an exception.

4 A Not until the following meeting, until Sunday.

5 MR. FORD. I wanted to get at this conversation only.

6 Q You said you were not in condition to see Mr. Franklin,
7 or at least you had told him that, so there will be no
8 misunderstanding, just tell the jury what you were doing
9 at the time he called. A Taking a bath.

10 MR. APPEL. We understand that, your Honor, it is unnecessary.

11 THE COURT. Read that question again.

12 (Last question and answer read by the reporter.)

13 THE COURT. It seems unnecessary to go into a conclusion
14 that counsel has allowed to go in without objection. However,
15 she has answered it.

1 MR FORD: Now, had you that day talked to Mr Franklin be-
2 fore that meeting or talked with any person concerning Mr
3 Franklin? A Only my neighbor who handed me the card; Mr
4 Franklin had been there.

5 MR APPEL: Wait a moment.

6 THE COURT: Strike out the answer for the purpose of the
7 objection.

8 MR APPEL: We object to any declaration between the wit-
9 ness and anyone else; incompetent, irrelevant and imma-
10 terial, and hearsay.

11 MR FORD: I withdraw that.

12 THE COURT: Question withdrawn; answer stricken out.

13 MR FORD: Before Mr Franklin had called that day had you
14 received a card from anybody? A I had.

15 MR APPEL: Wait a moment --

16 THE COURT: Strike out the answer for the purposes of
17 the objection.

18 MR APPEL: Objected to upon the ground it is incompetent,
19 irrelevant and immaterial for any purpose whatsoever;
20 it is hearsay; it is not binding upon the defendant.

21 THE COURT: Overruled.

22 MR APPEL: We except.

23 MR FORD: After you received that card, what, if anything,
24 did you do, Mrs Bain?

25 MR APPEL: Wait a moment. We object upon the ground that
26 it is incompetent, irrelevant and immaterial whatever she

1 did herself is not binding upon the defendant; it is hear-
2 say.

3 THE COURT: Overruled.

4 MR APPEL: We except.

5 THE COURT: Answer the question.

6 A I immediately took the card to the neighbor and phoned
7 to Mr Franklin as per request.

8 MR APPEL: We ask the last statement be stricken out.

9 THE COURT: "as per request"; that part of it will be
10 stricken out.

11 MR FORD: Without stating just what you said over the phone,
12 with whom did you talk over the phone?

13 MR APPEL: Wait a moment. We object to that upon the same
14 ground stated in our previous objections, and each and
15 all of the grounds stated therein, calling for hearsay.

16 THE COURT: Overruled.

17 MR APPEL: We except.

18 A I spoke to Mrs Franklin, she answered the phone.

19 MR FORD: Did you see Mr Franklin yourself again that day,
20 on Friday, October 6th, after you had had this first
21 conversation with him? A I did not.

22 Q When next did you see Mr Franklin, you, yourself?

23 A Sunday evening.

24 THE COURT: The witness inquires whether or not she should
25 always wait for the objection. I say, not necessarily,
26 but try to observe whether counsel for the defense is desir-

1 ous of objecting, and if so, give him a chance to, is the
2 customary way to do here.

3 MR FORD: What time did you see Mr Franklin on Sunday?

4 A To the best of my recollection it was Sunday evening.

5 Q Now, between the time you saw Mr Franklin the first
6 time, and the time you saw him the second time on Sunday,
7 did you speak to your husband about the conversation you
8 had had with Mr Franklin?

9 KRRAPPEL: Wait a moment. We object upon the ground it
10 is incompetent, irrelevant and immaterial for any purpose
11 whatssoever, and upon the further ground that the wit-
12 ness is incompetent, not qualified to speak concerning
13 the matter, being a matter involving the commission of an
14 alleged offense, and she cannot be used as a witness to
15 testify as to any matter involving the commission of an
16 offense by her husband, not competent to testify in that
17 respect, and cannot be used as a witness under the provi-
18 sions of section 1323, whatever it is. Notwithstanding that
19 Mr Bain is not on trial here, under the decisions here, we
20 take the ground that the wife cannot testify or be ex-
21 amined concerning any matter or thing that may involve
22 the commission of an offense by her husband; she cannot
23 be used as a witness against him or can any fact be estab-
24 lished concerning Mr Bain by the testimony of the wife for
25 the purpose of asking as a fact, as against the defendant,
26 The decisions are that even where the --

1 MR FORD: May I ask the witness just one question before
2 you argue the matter?

3 MR APPEL: I am objecting to the question, and I can cite
4 authorities.

5 THE COURT: Yes, you have a right to be heard at this time.

6 MR APPEL: If we are wrong in the ruling, ^{that} we will dispose
7 of the question, if we are wrong in our contention of the
8 law, that will dispose of the question.

9 MR FORD: Just to clear up a question of fact, before you
10 make your objection.

11 MR APPEL: It is a question of law; it is not a question of
12 fact.

13 MR FORD: We agree with counsel that a wife cannot testify
14 against her husband any time without the consent of both.
15 I now ask leave to ask this witness whether her husband
16 has consented to her appearing here as a witness, both he
17 and she have been subpoenaed, and the fact is that they
18 are both here in court to testify. Furthermore, both
19 she and her husband, we will show, if necessary, have
20 testified before as witnesses in a criminal proceeding.

21 MR APPEL: We object to that; that is not material to a
22 legal question.

23 THE COURT: That is not material to the application be-
24 fore the court to ask this witness a question.

25 MR FORD: If your Honor will hear me just a moment, I
26 will show you that it is. They are both exempt under circum-

1 stances. They have both testified against Mr Franklin)
2 in a criminal prosecution.

3 MR APPEL: That is a foreign matter to the matter under
4 investigation here, and the fact that anyone has done
5 wrong or has done right outside of this court room does
6 not aid them in the determination of a question of law.

7 This is the manner in which the gentleman argues his propo-
8 sitions of law, because Tom, Dick and Harry, in some other
9 court has permitted the wife to testify against the hus-
10 band therein, they want to bind this decision as a precedent
11 because so and so, not having the ability to determine the
12 law, not being able or capable to determine a question
13 of law, has decided wrongfully against the first princi-
14 ples of law, they cite that as a precedent here in this
15 court. That is not the way --

16 THE COURT: Mr Appel, if you want to be heard on this mat-
17 ter, I will hear you right now.

18 MR APPEL: If your Honor will permit me to get the auth-
19 orities --

20 THE COURT: I will ask you if you are making your argument)
21 under subdivision 1 of 1881?

22 MR APPEL: 1322 of the Penal Code.

23 MR FORD: It has been amended. I have the slip right here,
24 your Honor.

25 MR APPEL: We will wait until the gentleman finishes, your
26 Honor.

1 THE COURT: I just wanted to read the section, Mr Appel.

2 MR APPEL: Section 1322 of the Penal Code reads, "Neither
3 husband or wife is a competent witness for or against the
4 other in a criminal action or proceeding to which one or
5 both are parties, except with the consent of both or in
6 cases of criminal violence of one upon the other, or in
7 cases of bigamy or adultery --" (Reading.)

8 Now, section 1881 of the Code of Civil Procedure, is
9 more applicable in a matter of this kind. A husband
10 cannot be examined for or against his wife without her con-
11 sent nor a wife for or against her husband without his
12 consent, nor against either during the marriage or after-
13 wards, be, without the consent of the other, examined as
14 to any communication made by one to the other during
15 their marriage; but this exception does not apply to a civil
16 action or proceeding by one against the other, nor to a
17 criminal action or proceeding for a crime committed by
18 one against the other; that is, these exceptions do not
19 apply in this case.

20 MR FORD: We offer to put Mr Bain on the stand and show
21 that he consented to his wife testifying in this matter,
22 if that is necessary, and that will dispose of the whole
23 matter without argument. Mrs Bain, do you consent to your
24 husband testifying in this matter as to the communications
25 made between you and him?

26 THE COURT: Wait a moment. Mr Appel has the floor on a

1 proposition of law. We must proceed in an orderly way
2 here.

3 MR APPEL: Now, he attempts here -- I will not state the
4 authorities upon the proposition. I suppose it will be
5 granted that in all collateral matters the same kind of
6 evidence and the same rules of law must apply in proving
7 collateral matters, or else it cannot go to the jury of
8 the court would not be permitted to go to the jury, so
9 held in People against Bird, and other cases in this state.
10 Now, in order to make this matter material, in order to
11 prove that a crime was committed by Franklin and by Bain,
12 it is sought to use the wife here and prove that crime.
13 Now, we contend, your Honor, that she cannot be examined
14 against the husband to prove that crime. They cannot use
15 the wife to show that Bain committed an offense for the
16 purpose of laying it at the door of the defendant. They
17 cannot do that. MR Bain, being a party to a criminal pro-
18 secution, and no foundation being laid for the examina-
19 tion of her in that respect. Now, that is our objection,
20 and we are contending that, and we simply stated a propo-
21 sition of law, she cannot be examined with regard to com-
22 munications made to the husband or by the husband to her
23 unless a proper foundation is first laid.

24 THE COURT: Objection sustained.

25 MR FORD: We are not allowed to be heard, your Honor,
26 on that matter, first? In the first place, it has absolute-

1 ly no application to the case at bar.

2 THE COURT: You have intimated an offer to prove at
3 this time to lay a foundation.

4 MR FORD: If the court please, I offered to do that mere-
5 ly to save argument, because such is not the law. The
6 law states that that is applicable to only cases against
7 the husband, or a case against the wife. However, in order
8 to save the argument, without stating the argument that is
9 the law, to save the argument, I will now answer it with
10 this one question. Do you consent that your husband may
11 testify, Mrs Bain, to any communication made by you to him
12 or by him to you? I will call Mr Bain in a minute on the
13 other proposition.

14 MR APPEL: We object to that; it isn't a question
15 whether she consents; that doesn't lay the foundation,
16 your Honor.

17 THE COURT: What is the ground of your objection?

18 MR APPEL: We object upon the ground that it is incom-
19 petent, irrelevant and immaterial for any purpose what-
20 soever.

21 THE COURT: Objection overruled.

22 MR APPEL: We except.

23 MR FORD: Answer the question.

24 A I do.

25 MR FORD: Call Mr Bain.

26 MR APPEL: Wait a moment. We have a right to ask some-

1 thing on that foundation.

2 THE COURT: You may.

3 MR APPEL: You are willing to testify concerning the ac-
4 ceptance of moneys by your husband from Mr Franklin,
5 through your instrumentality, to have your husband tes-
6 tify to what you told him and testify to your actions in
7 helping him, knowing, and for the reason that the District
8 Attorney has promised you immunity, and promised your hus-
9 band immunity, and for the purpose of getting him immu-
10 nity?

11 MR FORD: Just a moment. We object upon the ground it
12 is incompetent, irrelevant and immaterial, what the reason
13 is that actuated the witness, as long as she consents,
14 and the reasons are absolutely immaterial at this time.
15 This is simply a question of securing consent of her to
16 allow her husband to testify. At the proper time I will
17 offer to call her husband to testify to his consent and
18 the reasons that actuated her at this time, is absolutely
19 immaterial: The question is one of securing consent. It
20 is not even necessary that they take the stand. I can
21 call Mr Bain in here and ask his consent without swearing
22 him. I can secure his written consent, as long as I show
23 he consents; it isn't a question concerning which the
24 person giving his consent can be cross-examined concerning
25 his motive.

26 MR APPEL: Your Honor, since obtaining the authorities,

1 promises and consent obtained under undue influence, and
2 consent obtained through offers of immunity has been held ,
3 concerning, especially the admission and confession of hav-
4 ing committed a crime, is inadmissible against a defend-
5 ant. It is inadmissible against anyone connected with
6 the transaction. It is not a consent, the law says that
7 consent must be absolutely unaffected by this consideration
8 and consent must be voluntary consent. It must be free
9 from all coercion. It must be free from all taint of
10 promise; it must not be affected by outside considerations
11 and when a wife goes upon the witness stand, your Honor,
12 and testifies to matters of this kind, and is undertaking
13 to testify in reference to it, the law presumes that she
14 is under undue influence. Her consent is not free and vol-
15 untary. We have a right to go into that question, what is
16 the inducement here. Was it a fear that her husband would
17 be prosecuted if he did not testify? Is that a free con-
18 sent such as the law contemplates? When a transaction,
19 even in civil matters occur between husband and wife,
20 and the wife has given something to the husband, when she
21 has parted with something of value to the husband, when
22 either party are interested in that transaction, the pre-
23 sumption is that that transaction was tainted by undue
24 influence -- by influence which the husband is presumed
25 to have over the wife, by that confidential relation
26 which exists between them, and when the wife goes upon the

1 stand and says, "I consent to this", we have a right to go
2 and show what kind of consent it is, whether it is the
3 consent mentioned in the statute, and the statute says
4 that consent is not consent when it is the creature, when
5 it is the sequence of coercion, promise, undue influence,
6 and that is implied when the wife is upon the stand.

7 MR ROGERS: If your Honor please, they here bring before
8 your Honor, the question of consent. We have a right to
9 show --

10 THE COURT: Mr Rogers, I am convinced you have the right
11 to go into the matter on cross-examination. The only ques-
12 tion is here, whether you have a right to the question on
13 the voir dire.

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22s 1 MR. ROGERS. The question comes up at this time, it is
2 brought by their question of Mrs. Bain whether or not her
3 consent is not purchased by immunity, whether or not they
4 are giving her some consideration for her testimony, and
5 whether that comes now or comes later is of small conse-
6 quence it is true, except we only think--when they ask
7 her a question "do you consent," then we have a right to
8 show that is the price of the testimony against the
9 defendant.

10 THE COURT. Whether or not she truly consents.

11 MR. ROGERS. Whether or not she truly consents, whether
12 or not as a price of the testimony against the defendant,
13 upon which they intend to ask his conviction, she has not
14 joined this list of immortals, Franklin, White, Bain, Mrs.
15 Bain, Harrington, Krueger, Cooney, Fitzpatrick, Behm,
16 all of them purchased by immunity to testify against
17 Darrow. Now, we have a right to show at once whether or
18 not her consent is, as a matter of fact, a consent, or
19 whether it is bought as a purchase price of immunity. We
20 haven't heard of a prosecution against any one except Mr.
21 Darrow, and upon that ground when they ask that question,
22 "Do you consent," we have the right, preliminarily, and
23 on the voir dire, to ask her, isn't your consent purchased
24 by immunity for yourself and immunity for your husband and
25 immunity for Franklin and immunity for White and immunity
26 for Harrington and immunity for Krueger, in fact immunity

1 for a dozen different people to testify against one man.
2 Now, we have a right, just the moment they say, "Do you
3 consent," what is the purchase price of your consent? all
4 this becomes upon the voir dire, it is necessary for them
5 to ask that question and it is our right to ask her if
6 her consent is not purchased.

7 THE COURT. Without going into the question of your right
8 to go into it on cross-examination, I do not think you have
9 the right to ask the question at this time and the objec-
10 tion is sustained.

11 MR. FORD. Will you call Mr. Bain into the court room?

12 MR. ROGERS. Is this witness still on the stand?

13 MR. FORD. Yes, she is still on the stand. While Mr. Bain
14 is coming, I want to call your Honor's attention to the
15 provisions of Section 1322 of the Penal Code which is
16 limited to its application in cases where the husband or
17 wife is a party--

18 THE COURT. There is nothing before the court at this time,
19 Mr. Ford.

20 MR. FORD. Does your Honor hold I cannot examine this
21 witness until I secure Mr. Bain's consent? That is the
22 thing that is before the court. I claim that under the
23 law I do not have to. The Section reads, "Neither husband
24 or wife is a competent witness for or against the other
25 in a criminal action or proceeding to which one or both
26 are parties, except with the consent of both." Our objec-

1 tion is here that the only parties to this action are the
2 People of the State of California and the defendant,
3 Clarence Darrow, and that, therefore, the securing of a
4 consent of any other person to Mrs. Bain testifying is
5 absolutely unnecessary.

6 THE COURT. Mr. Bain is here, do you want to ask him?

7 MR. APPEL. He will have to take the stand, if your Honor
8 please.

9 MR. FORD. No, sir. Mr. Bain, I ask you in the presence of
10 the court if you consent to your wife testifying in this
11 case against Mr. Darrow, and in so testifying to disclose
12 any communications made by her to you or by you to her or
13 to state what either you or she did in regard to any
14 transactions you may have had with Bert Franklin, the
15 defendant Clarence Darrow, or any other persons connected
16 with the case of the People of the State of California
17 vs. Clarence Darrow?

18 MR. ROGERS. We take an exception to the conduct of the
19 District Attorney in the premises, as evidenced in court.
20 The witness is not upon the stand, there is another witness
21 upon the stand. This witness is not sworn, and we have
22 the right, we contend, to show that this testimony is pur-
23 chased by immunity, in other words, that it is bought
24 testimony and not free testimony and it is not within the
25 provisions of 1322 of the Penal Code.

26 MR. FORD. I am asking Mr. Bain, your Honor, not as a witness,

1 but as the husband of the witness on the stand if he so
2 consents.

3 MR. ROGERS. In the presence of the jury, and we take an
4 exception, and we object to it. If they want to put Mr.
5 Bain on the stand and ask him, then we will ask him how
6 they bought his consent.

7 MR. FORD. You will have an opportunity to cross-examine
8 Mr. Bain later.

9 THE COURT. Mr. Bain has not answered the question.

10 MR. FORD. Your Honor will permit him to answer the question?

11 THE COURT. Yes.

12 MR. APPEL. Without being sworn, your Honor?

13 THE COURT. Yes.

14 MR. APPEL. We take an exception.

15 MR. FORD. Answer so the court may hear you.

16 MR. BAIN. I do.

17 MR. FORD. Your Honor hear him?

18 THE COURT. Yes, the witness said, "I do."

19 MR. APPEL. We ask permission to examine the witness Bain.

20 THE COURT. on the voir dire?
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1 MR ROGERS: As to whether or not his consent was ob-
2 tained by purchase or promise or any reward or consider-
3 ation.

4 THE COURT: Application denied.

5 MR APPEL: We take an exception.

6 MR FORD: Now, when did you talk to your husband about
7 what Mr Franklin had said to you on Friday, October 6th,
8 1911?

9 MR APPEL: We object upon the ground that no foundation
10 has been laid, upon the further ground that it is incom-
11 petent, irrelevant and immaterial for any purpose, that it
12 is collateral to any issue; that it calls for hearsay; that
13 it calls for declarations made by the wife to the alleged
14 husband, and declarations by the husband to the wife,
15 and no proper foundation has been laid for their introduc-
16 tion; that there is no sworn evidence in this case or any
17 fact established by sworn testimony, that the husband con-
18 sented or consents to the witness being examined in ref-
19 erence to a criminal prosecution involved in the inquiry,
20 and to which both the wife and the husband were parties,
21 and it is otherwise immaterial for any purpose whatsoever.

22 THE COURT: Overruled.

23 MR APPEL: We take an exception.

24 MR FORD: Answer the question, Mrs Bain? A Why, shortly
25 after 6 o'clock when he came home from work --

26 Q On the same day? A That same evening.

1 Q Who else was present when you talked to your husband?

2 A Nobody.

3 Q Just state to the jury what was said by you and your
4 husband and what he replied.

5 MR APPEL: Subject to the same objection stated, your
6 Honor, in our first objection to the line of inquiry, and
7 upon each and all of the grounds stated therein, and
8 subject to the last objection which I made to the witness'
9 testimony, and upon each and all of the grounds stated there-
10 in without repetition of the objection, of the two ob-
11 jections and the grounds thereof.

12 THE COURT: The objection will be overruled.

13 MR APPEL: We take an exception.

14 MR FORD: Answer the question.

15 A I have been trying eight months to forget that, and
16 I don,t know whether I can tell that.

17 THE COURT: Did you hear the answer? (Last answer read
18 by the reporter.)

19 MR APPEL: We move to strike that out as immaterial,
20 and not responsive.

21 THE COURT: Strike it out.

22 A I stated to Mr Bain what had taken place, what had
23 been proposed.

24 MR APPEL: Wait a moment. We object to her conclusions,
25 not responsive to the question.

26 THE COURT: Yes. Read the question, Mr Reporter.

1 (Last question read by the reporter.)

2 THE COURT: Now, Mrs Bain, that calls for a statement from
3 you of what he said and what you said, and nothing else.
4 As nearly as you can give it from your best recollection.

5 A I don't recollect much about it. I know that I pur-
6 suaded him, that is all I remember.

7 MR FORD: Just give it in substance.

8 MR APPEL: What is the answer?

9 (Last answer read by the reporter.)

10 MR APPEL: I move to strike it out.

11 THE COURT: The word "I know I persuaded him", is stricken
12 out.

13 MR FORD: I withdraw the question.

14 Q When your husband came home that evening, did you com-
15 municate to him what Mr Franklin had told you?

16 MR APPEL: Wait a moment. We object to that -- that is
17 calling for an opinion of the witness and upon each and
18 all of the grounds stated heretofore in our objections
19 upon the same grounds, can only call for a conversa-
20 tion, and then we can determine whether she communicated
21 what Franklin said to her.

22 THE COURT: I think the witness is able to give that
23 conversation in substance.

24 MR FORD: If the court please, I believe that perhaps that
25 is true, but whether or not a person made communications
26 to another is a fact concerning which they may testify.

1 without going into the details of the communication.

2 THE COURT: In that event, assuming you are right and I
3 am right, there is an unanswered question before the
4 court. It is a question as to what was said at that
5 time.

6 MR FORD: No, your Honor, I withdrew that question, and
7 asked another question to state whether or not she commu-
8 nicated what Franklin had said to the defendant -- I mean,
9 said to her husband. Now, of course, even though I asked
10 for that fact, which can be answered yes or no, even then
11 if I don't go into the details of the communication, counsel
12 will have a right to go into it on cross-examination, if
13 they desire, but in order to spare the feelings of the wit-
14 ness, I have chosen to confine myself to the bare fact
15 of the communication, which I have a right to do, if I
16 so desire. If they wish to open it up on cross-examina-
17 tion more fully, they have a right to do so, but we asked
18 for the simple fact.

19 THE COURT: I see your point. Objection overruled.

20 MR APPEL: We take an exception.

21 MR FORD: Now, read the question to the witness. (Last
22 question read by the reporter.) A I did.

23 MR FORD: Now, without telling us the details of the
24 communication, what, if anything, did you say to your
25 husband, in addition to communicating the facts of Frank-
26 lin's conversation?

1 MR APPEL: Wait a moment. We object upon the ground
2 that it calls for hearsay, incompetent, irrelevant and
3 immaterial, collateral to any issues in this case, not
4 binding upon the defendant, not even binding upon Franklin
5 as to any matter that she may have said to her husband,
6 not within her authority, but volunteered on her part,
7 being matters, which were the creature of her own voli-
8 tion, not induced by Franklin, not made with his authority
9 or consent, no foundation laid; it is incompetent, irre-
10 levant and immaterial for any purpose whatsoever, and
11 collateral to any issue in this case.

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Alp 1 THE COURT. Objection overruled .

2 MR. APPEL. We except.

3 (Last question read.)

4 MR. APPEL. Just a moment--may I be allowed to correct and
5 modify my objection?

6 THE COURT. Yes, sir .

7 MR. APPEL. I object to it on the ground that the witness
8 has been instructed to keep out of the entire conversa-
9 tion matters indicated in the question and calling simply
10 for fragmentary portions of the conversation, and we object
11 to that upon the ground stated and upon the decisions we
12 have heretofore read to the court .

13 MR. FORD. I have cited your Honor to authorities on that
14 point .

15 MR. APPEL. In addition to my other grounds of objection I
16 made heretofore.

17 THE COURT. Objection overruled.

18 MR. APPEL. We take an exception.

19 MR. FORD. Q Answer the question, Mrs, Bain, if you
20 remember it. Do you want the question read again?

21 A I don't remember much about that at all.

22 Q Did you or did you not ask your husband to accept
23 Mr. Franklin's proposition?

24 MR. APPEL. Now, your Honor, I certainly do object to that
25 sort of a question of this witness, being so absolutely
26 out of p^lce, in view of the answer of the witness. She has

1 been required here for certain reasons to abstain from
2 saying what she said to her husband, which was in view
3 of her feelings in the matter, it was a fair consideration
4 for the witness's feelings, and now, your Honor, she is
5 asked a bold question, which is as cruel as if she had
6 'been allowed to state what she really said to him. I have
7 as much feeling for this witness, perhaps, as anybody else,
8 and if it was permissible, your Honor, to have her abstain
9 from detailing here ad senatim what words she used to her
10 husband, why isn't it for the same reason, your Honor,
11 incompetent to ask this question that she has been asked,
12 if she induced him to do so and so? We were content with
13 our objection, we did not urge our grounds of objection
14 with as much earnestness as we probably would have done,
15 in view of the explanation of the counsel, and in view of
16 your Honor's, I may say, if I properly construe your own
17 idea about it, in view of your sympathy for this witness,
18 in which I share. Now, if they ask that, would it be proper,
19 your Honor, for us to cross-examine her fully.

20 MR. FORD. I withdraw the question.

21 Q After communicating to your husband, Mrs. Bain, what
22 Mr. Franklin had told you, did you discuss the matter with
23 him? A I did.

24 Q I didn't hear the answer. A I did.

25 Q Now, you saw Mr. Franklin on Sunday night. Did you see
26 Mr. Franklin when he called on Friday night, October 6th?

1 MR. APPEL. She said-- A I did not.

2 Q I didn't recall. You did see him Sunday night? A I did.

3 Q At what place? A At the home residence.

4 Q Who was present? A Mr. Bain and myself and Mr. Franklin.

5 Q What was said and done on that occasion, Mrs. Bain?

6 A The money was handed over, \$400 was given to Mr. Bain.

7 MR. APPEL. The same objection.

8 THE COURT. The same objection, the same ruling and exception

9 A No, I beg your pardon; I take that back. I didn't see
10 that, that was done Friday night, but Mr. Franklin was to
11 bring the other \$100 and he failed to bring it, he was to
12 bring it, he said.

13 Q Now, returning to Friday night when you got home, did
14 you talk with your husband about the Franklin matter at
15 that time? A We didn't speak very much and he handed the
16 money over to me, \$400.

17 Q What, if anything, did he say at that time? A He
18 handed it to me. He says, "Here is the money, I do not want
19 it, I never want to see it."

20 Q That ^{money} was in what kind of money? A Paper money, currency

21 MR. APPEL. Who said that?

22 MR. FORD. Q Now, on Sunday night when Franklin visited
23 you and Mr. Bain, just tell what was said and done by each
24 of you on that occasion, as near as you can remember?

25 A When Mr. Franklin first came, Bob went to the door to meet
26 him and I came in later and I heard them talking. What

1 passed between them I don't know, but Mr. Franklin was
2 giving him instructions--

3 MR. APPEL. Now, then, Your Honor, we insist--

4 THE COURT. Tell what you heard, if you heard anything.

5 MR. ROGERS. We move to strike out that statement.

6 THE COURT. Strike out the words, "Giving him instructions."

7 MR. APPEL. Subject to the same objection and the same ruling.

8 THE COURT. Yes, sir, subject to the same objection, the
9 same ruling and the same exception.

10 MR. APPEL. Yes, sir.

11 MR. FORD. Q Go ahead.

12 THE COURT. Q State what was said, what you heard, if you
13 heard anything. A Mr. Franklin says, "Now, Bob, don't
14 you go to work and spend this money," and he told the same
15 thing to me, he said not to spend any of that money and to
16 be careful and let our bills run and call on the District
17 Attorney or some one--the District Attorney, I think he
18 said, for our money, and I says, "Mr. Franklin, we don't
19 have to do that, we always pay our bills first," and he says,
20 "Well, it is best to do that now--"

21 MR. FORD. Q Just a moment--call on the District Attorney
22 for what money? Mrs. Bain?

23 MR. APPEL. Now, your Honor--

24 A The fees--

25 MR. APPEL. --wait a moment. She was stopped right in the
26 midst of a conversation; after she was over it they might have

1 asked her-

2 MR. FORD. I prefer to ask it this way.

3 MR. APPEL. We do certainly object to having her interrupt-
4 ed in the midst of an explanation, it might disturb the
5 witness.

6 THE COURT. Objection overruled.

7 MR. APPEL. We except.

8 MR. FORD. Will you read the last answer and the last
9 question, Mr. Petermichel?

10 MR. APPEL. Wait a moment--we will object to the question
11 because it calls for her conclusion and opinion. She
12 may state what was said and we can determine from that
13 what money was meant. Of course, it is very easy to do
14 that.

15 THE COURT. She must not state her conclusion or opinion,
16 she must state what was said.

17 MR. FREDERICKS. We would like the record read.

18 THE COURT. Read it.

19 MR. FREDERICKS. The question and answer.

20 (Last question and answer read.)

21 MR. FORD. Q did Mr. Franklin say to call on the Dis-
22 trict Attorney, did he mention what fees it was?

23 MR. ROGERS. That is objected to as leading and sugges-
24 tive. Let her tell what was said by Mr. Franklin and by
25 herself and by Mr. Bain without suggestion or interruption;
26 that is the way it ought to come and the way the jury

1 ought to hear it.

2 MR. FORD. The jury will not be allowed to be misled by us.

3 THE COURT. Objection overruled.

4 MR. ROGERS. Well--

5 THE COURT. I see no occasion for that statement, Mr. Ford,
6 after the court has ruled on the objection.

7 MR. FORD. I beg your Honor's pardon.

8 MR. APPEL. We take an exception to the remarks of counsel
9 as to what the jury will do or will not do.

10 THE COURT. Now, let us have an answer to the question.
11 Read the question.

12 (Question read.)

13 A The witness fees.

14 MR. FORD. Q Witness fees?? A Jurors fees.

15 MR. ROGERS. Now, if your Honor please, we get again a
16 leading and suggestive question, and the character of it--
17 let her state what was said and let us find out what was
18 said.

19 A I am not used to the court terms.

20 MR. ROGERS. Of course, Mrs. Bain is not used to the
21 court room and Mrs. Bain ought not to be interrupted in that
22 fashion. She ought to be allowed to tell her story; now,
23 counsel puts the words absolutely in her mouth.

24 A It was the jurors fees; my husband was on the jury at
25 the time.

26 THE COURT. There is no question but what the question

1 was leading, but in the opinion of the court it was a
2 harmless question.

3 MR. FORD. Q After he told you to call on the District
4 Attorney for your jurors fees as often as possible, what
5 else was said?

6 MR. APPEL. Now, your Honor--

7 MR. ROGERS. she has not said that, "As often as possible".

8 MR. FORD. Leave the record show whether she said it or
9 not.

10 MR. APPEL. if she said that, it is all right.

11 THE COURT. Objection overruled.

12 MR. APPEL. It assumes she said something.

13 A What was the question?

14 MR. FORD. Q Just tell us what Mr. Franklin said on that
15 subject, and all about it.

16 MR. ROGERS. There you go, now, let her go.

17 A Bob asked him if he had brought the other hundred
18 dollars as he promised and he said, "No," he says, "I am a
19 little short," but he says, "I will give you that with the
20 other, I will give you the \$3600 when you are through with
21 it--when the trial is ended." He says, "You know I am
22 good for it, don't you, Bob?" and Bob said, "yes " he
23 says, "You are all right." That is about all I remember.

24 THE COURT. The time for adjournment has come, gentlemen.
25 (Jury admonished.) The court will now adjourn until Fri-
26 day morning, July 5, at 10 o'clock A.M. (Here the court
adjourned until Friday, July 5, 1912, 10 o'clock A.M.)