

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,)
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 Plaintiff,)
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 vs.)
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 Clarence Darrow,)
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 Defendant.)

No. 7373.

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REPORTERS' TRANSCRIPT.

VOL. 84

I N D E X.

	Direct.	Cross.	Re-D.	Re-C.
O H F Mayer		6813	6843 6882	6856

1s 1 WEDNESDAY, AUGUST 7, 1912; 10 A.M.

2 Defendant in court with counsel. Jury called; all
3 present. Case resumed.

4 -----
5 THE COURT. You may proceed, Gentlemen.

6 MR. APPEL. Your Honor, just a moment; we don't suppose,
7 of course, your Honor, we will be able to finish this case
8 by next Monday, and a writ has been issued by one of the
9 departments of this court in reference to revising the
10 judgment that your Honor entered here adjudging Mr. Rogers
11 guilty of contempt. It has been set for next Monday morn-
12 ing. In view of the fact that we would like to have that
13 matter decided before we close this case, and before we
14 close the arguments, I think I would say to your Honor
15 that we would like to make such arrangements as might be
16 possible so we can have an opportunity to present that
17 matter next Monday before taking up any further matter in
18 this case--

19 THE COURT. This is only Wednesday.

20 MR. APPEL. Mr. Rogers has not even commenced to serve
21 out the term of imprisonment and was not imprisoned last
22 night, and, of course, we want to purge him of contempt,
23 if possible, before we finish this case. I simply thought
24 I would speak to your Honor about it this morning, because
25 it is very necessary that we should have an opportunity
26 to present our side of the question.

1 THE COURT. Well, that is well enough, but no action you
2 ask to be taken at this particular time. When Monday comes
3 or when adjournment for the week comes, why, there will be
4 opportunity to take up the matter. I don't see any reason
5 why it should interfere with the trial at this time.

6 MR. APPEL. Under the decisions, Your Honor, I looked them
7 up last night, and under the decisions it seems while an
8 attorney is under judgment that way, he is in some way
9 handicapped, your Honor, so far as the case is concerned.
10 We want to place ourselves right.

11 THE COURT. So far as that matter is concerned, the court
12 is desirous of having this case proceed. It is important
13 it should proceed. The question involved is one of a dif-
14 ference of opinion between Mr. Rogers and the Judge of this
15 court as to extent of an attorney's right. Now, that can
16 be determined calmly and properly by some other tribunal
17 at some other time without interfering with the trial of
18 this case, as far as I can see there is no objection raised
19 on the part of the court. Under the circumstances existing
20 Mr. Rogers may proceed in the usual way. Let it be under-
21 stood, however, that the court is still of the same opinion
22 as of yesterday and will deem it its duty to enforce that
23 rule until directed by some higher court that it is
24 erroneous; maybe. Determine that later. Call your witness
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26

1 OSCAR HENRY FREDERICK MAYER,

2 on the stand for further cross-examination:

3 MR. ROGERS. Q Where do you live?

4 MR. FREDERICKS. Objected to upon the ground it has already
5 been asked and answered.

6 THE COURT. I am not sure that it has. I will resolve the
7 doubt and let him answer. Do no harm.

8 A 812 West 17th street.

9 MR. ROGERS. Q Where does Mr. Franklin live? A 800 and
10 something west 17th street.

11 Q How near you? A Probably three or four doors.

12 Q How long have you been living so close to Mr. Franklin as
13 you have just indicated? A About 2 months.

14 Q You have seen Mr. Franklin from time to time? A Yes, sir

15 Q Talked with him from time to time? A Yes, sir.

16 Q And did not talk to him, however, about this matter of
17 your being up there on the 27th, if at all? A Mr. Frank-

18 lin asked me a question about the time that involved the
19 25th, 26th and 27th, in regard to some reports which¹ had
20 taken to his house on the night of the 26th, which reports
21 I have not seen since I gave them to him that night.

22 Q I would like to have the question read to the witness.
23 Please read the question. I don't think he quite answered
24 it.

25 (Last question read by the reporter.)

26 A He asked me the 27thh-he asked me if I had not received

1 some money from him on the 27th, and I said if he had a
2 record of it probably he could find out from that, and he
3 told me that he had a record of my receiving some money
4 on the 27th; I believe the sum was \$5.00.

5 Q How did/^{that}discussion come up? A He had been continually
6 asking me to recognize some reports, and I told him I could
7 not unless I seen them, and I have never seen them since the
8 day I gave them to him.

p 9 Q And how did the matter of your going up to the office
10 on the 27th, if at all, how did that come up? A How did
11 it come he wanted me to go there?

12 Q No, how did it come up that you and Franklin talked over
13 about your alleged visit to the Higgins Building on the
14 27th? A I don't know, only that he asked me that question,
15 and that is the only cause I could see.

16 Q He didn't ask you that question? A He did ask me that
17 question.

18 Q He did, and you told him you were? A I told him/^{if}he
19 could see from the records I could probably recall whether
20 or not I did, and if he had on his records I received some
21 money from him that morning I could probably place myself
22 on that morning.

23 Q Did you see the record? A I have not seen-- yes, I
24 did see the card, just a salary card.

25 Q When did you see the salary time? A It was sometime
26 in the month of July.

1 Q Sometime in the month of July. Was it in the first
2 part of the month or in the latter part of the month?

3 A Probably in the fore part of the month.

4 Q Where were you when you and Franklin talked it over?

5 A Mrs. Franklin showed me this card.

6 Q Where? A In their office.

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1 Q How did you come to go to their office? A I was
2 working for them at the time.

3 Q And she showed you a card and asked you where you were
4 on the 27th? A She asked me, she said, "Didn't you re-
5 ceive some money on the 27th?" I said, "If it is on that
6 card I must have", and about that time I read this news-
7 paper and seen this little story that I related yesterday.

8 Q Then the matter of the card is what brought back your
9 recollection to the 27th? A In a way, yes sir.

10 Q Now, on yesterday, did you not answer as follows:
11 "If your memory has been refreshed, revived, as it were,
12 for the 27th, as it were for the 27th of November -- A--It
13 has not been refreshed only from what I read in a newspaper.

14 A I recall since then I had seen the card.

15 Q Now, what has recalled that you saw the card? A Think-
16 ing over it last night.

17 Q Did you see anybody last night after leaving the stand,
18 connected with this case? A Yes sir.

19 Q Who? A Mr and Mrs Franklin.

20 Q How did you come to go to Mr and Mrs Franklin last
21 night? A I met them on the street, I telephoned to them
22 and asked them if I worked ^{for} them on the 12th or 13th of July,
23 the question you asked me yesterday and I could not answer.

24 Q Where did you see Mr and Mrs Franklin? A Corner of
25 Fourth and Broadway.

26 Q Did you go home with them? A No sir.

1 Q Did you see them anywhere else but Fourth and Broad-
2 way? A Not after leaving this court yesterday, other than
3 this morning.

4 Q Did you see them this morning? A Other than this morn-
5 ing I went over on their front lawn and picked up a news-
6 paper.

7 Q Did you talk with them? A I seen Mrs Franklin stand-
8 ing in the doorway and I said, "Good morning."

9 Q Did you talk with her? A yes sir, I said "Good morn-
10 ing", and she answered.

11 Q Is that all? A She laughed at me; that is all there
12 was about it.

13 Q Did you talk with the District Attorney's office or any
14 members of it or any detectives last night after leaving
15 the stand? A I might with some people; I might have talk-
16 ed with somebody supposed to be detectives.

17 MR ROGERS: What is that answer? Read it. (Answer read.)

18 Q I am asking you if you talked with anybody connected
19 with the District Attorney's office, any detectives or
20 members of the office, last evening after leaving the stand?

21 A yes sir, I believe I asked the District Attorney what
22 time the court would open this morning.

23 Q Were you up in the office? A Not in the office, no
24 sir.

25 Q Were you up on the eleventh floor? A Yes sir.

26 Q Did you go into the District Attorney's office?

1 A No sir.

2 Q Not inside the door? Are you sure? A No sir.

3 THE COURT: That answer is uncertain. You mean you are not
4 sure; or that you did not go into the door? A I did
5 not go into the office anywhere, and probably into the lob-
6 by.

7 MR ROGERS: Why did you go up to the eleventh floor last
8 night after leaving the stand? A I did not care to go out
9 just then.

10 Q Did you see anybody to talk with up there on the 11th
11 floor last night? A I talked with my brother, I guess.

12 Q With whom else? A That is all that I recall.

13 Q What is your brother's business? A He works for a
14 wholesale gent's furnishing house.

15 Q He was here all day yesterday in the court room,
16 wasn't he? A No sir. He was here part of the day.

17 Q He was here while you were on the stand? A Not all the
18 time, sir.

19 Q You mean to say he is the only one you talked with up
20 on the 11th floor last evening after you left the stand?

21 A That is all I recall talking with, other than I said to
22 the District Attorney, or asked him if 10 o'clock was the
23 time; I believe that was the question.

24 Q With whom did you talk in the District Attorney's of-
25 fice before you went on the stand?

26 MR FORD: You mean yesterday or at any time?

1 MR ROGERS: At any time. A I was in the District Attor-
2 ney's office when Mr Ford and Mr Keetch and the District
3 Attorney were there, and they asked me if I was in the
4 Higgins Building on the morning of the 27th, and I said
5 that "It appears so".

6 Q That was after you had talked with Franklin? A That
7 was after I had talked with Franklin.

8 Q And when was it you talked with the District Attorney,
9 after you had talked with Franklin? A I could not give
10 you the exact date, but Mrs Franklin told me she was at the
11 District Attorney's office while Mr Franklin was in San
12 Francisco, and she said that they wanted me there, and
13 I said, "If they want me they would have to get me", and
14 they telephoned to me and I didn't know whether it was com-
15 pulsory for me to go or not, but I did go, and they served
16 me with a subpoena while there.

17 Q When was this, please; that is what I am asking you?

18 A Sometime within the last two weeks.

19 Q Well, what day was it? A It was while Mr Franklin
20 was in San Francisco; I don't recall the day.

21 Q What day of the month? A I don't recall the date.

22 Q What day of the week? A Well, I know he was in San
23 Francisco on a Sunday and I believe a Saturday also, it
24 might have been Saturday, or Friday or Saturday.

25 Q What day was it that Mrs Franklin told you that they
26 wanted you up to the District Attorney's office? A I don't

1 recall if it was Friday, Saturday or Sunday -- I don't be-
2 lieve it was Sunday. It might have been Friday or Satur-
3 day. I can't place it positively.

4 Q What day of the month?

5 MR FORD: The witness has answered that already. A If I
6 can see a calendar probably could tell you.

7 MR ROGERS: I will furnish you with a calendar. Was it
8 in the month of July? A Last month, yes sir.

9 Q There is a calendar there; if you will be kind enough
10 to look at it now.

11 THE COURT: here is a calendar you can work back from and
12 perhaps use. That is August you are looking at. If you
13 turn it back -- A This is July right here. It was on
14 one of the three days; 11th, 12th or 13th.

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1 Q Which one of them? A I couldn't tell; I don,t recall.

2 Q How is it you cannot tell a thing happening so recently
3 as that and can remember so far back as the 27th of Novem-
4 ber?

5 MR. FORD. Objected to upon the ground it is argumentative
6 and a problem in psychology and not cross-examination.

7 THE COURT. Objection overruled.

8 A From what I read in the newspaper, from the account
9 I had with the tailor, from the numerous questions I had
10 been asked along the lines of these reports that I just
11 spoke about.

12 MR. ROGERS. Q Who asked you the numerous questicns along
13 the lire of the reports? A Mr. Franklin asked me several
14 times, probably 20 times in the last two months and I told
15 him each time I did not recall.

16 Q Now, you told him that you did not recall, each time?

17 A Yes, sir.

18 Q Now, what was it that caused yousuch refreshment on the
19 21st time so that you remembered that it was the 27th
20 when you never did recall for 20 times?

21 MR. FORD. Objected to on the ground assuming something the
22 witness has not testified to, that his recollection to this
23 transaction was refreshed on the 21st time or any other
24 time.

25 THE COURT. That is what I understood him to say. Is that
26 your testimony, Mr. Mayer?

1 A Probably 50 times; I don't recall just exactly 20.

2 MR. ROGERS. Q Then after he had asked you 50 times that
3 you didn't remember, and you said you didn't in two months,
4 what was it that made the 51st time the charm so you could
5 remember? A Seeing this card, the date 27th on it.

6 Q Which Franklin gave you? A No, sir.

7 Q Which Mrs. Franklin showed you? A Showed me.

8 Q That is what got it. Do you know why it was that they
9 didn't show you that card at any one of the previous 50
10 times they had talked to you about it? A No, sir, I do not
11 know why they did not do it.

12 Q They tried for 50 times to get you to remember and then
13 on the 51st time or thereabouts they showed you a card and
14 your memory came back? A Yes, sir.

15 Q Is that so? A Yes, sir.

16 Q The card was not in your handwriting? A No, sir.

17 Q In whose handwriting was it? A I don't recall that.
18 I can't distinguish the handwriting of different people.
19 It might have been written by somebody I never seen in my
20 life.

21 Q So why they didn't show you that card at any previous
22 time of the 50 that they tried to get you to remember
23 and did on the 51st you don't know? A No, sir.

24 Q Well, now, did the card look real old as if the writing
25 were older say than a couple of months, when you saw it?

26 MR. FORD. Object to the question upon the ground the docu-

1 ment is the best evidence of its contents and appearance,
2 and it is within the process of this court.

3 MR. ROGERS. He can refresh his recollection from it and
4 I have a right to interrogate him concerning its appear-
5 ance.

6 THE COURT. It is cross-examination.

7 MR. FORD. No witness can be examined concerning a document
8 without showing the document to the witness.

9 MR. APPEL. They have done it in this record time and time
10 again. This is the best precedent, the record in this
11 case, and no use reading law.

12 THE COURT. Answer the question.

13 A The card looked like as if it might have been a year
14 old.

15 MR. ROGERS. Q Will you be able to tell any difference
16 between a card that was a year old and one, say, that was
17 a week old that had been out in the sun a little?

18 A Hardly.

19 MR. FORD. Objected to upon the ground it is idle and
20 speculative and not cross-examination and a hypothetical
21 question not based on any of the evidence in this case.

22 THE COURT. Overruled.

23 MR. ROGERS. Q Did you see any other card than just that
24 one that they showed you on the 51st time to refresh your
25 recolection? A No, sir.

26 Q Just that one? A Just that one, that is all that I

1 recall.

2 Q Do you remember any other days that card showed you got
3 money? A Several other days.

4 Q Well, what other dates did that card show you received
5 money, and the amounts?

6 MR. FORD. Objected to upon the ground that the document
7 itself is the best evidence of its contents, and the rules
8 as to best evidence is the same on cross-examination as on
9 direct examination, and the document is within the juris-
10 diction of this court, and no foundation laid for the
11 asking of secondary evidence, and therefore incompetent.

12 MR. ROGERS. His recollection of the appearance, and the
13 refreshment of his recollection is a matter to be interro-
14 gated upon.

15 THE COURT. I think it is. Objection overruled.

16 A What is the question, please?

17 (Last question read by the reporter.)

18 A I don't recall what other dates, probably in September,
19 October, somewhere along there, somewhere after July last
20 year, several times.

21 MR. ROGERS. Q Now, mention me one date and the amount
22 that that card showed?-- A I couldn't tell you--

23 MR. FORD. Just a moment. We object to that upon the
24 ground it is incompetent, irrelevant and immaterial. The
25 witness has not stated that he looked at those other
26 dates specifically, and it is a well known principle of

1 psychology that attention is the first element of memory.
2 If the witness paid no attention to any other date
3 it is a very satisfactory answer anyway.

4 THE COURT. Objection overruled. Answer the question.

5 A I don't recall any other one date.

6 MR. ROGERS. Q You don't recall any other one date?

7 A No, sir.

8 Q Did you look at any other date but the 27th on that
9 card? A Yes, sir, there were several dates on there.

10 Q But you cannot give one that you remember? A No, sir.

11 Q Now, why was it that on yesterday when I asked you how
12 you came to have a recollection, that you didn't mention
13 the card at all, that you mentioned this morning?

14 MR. FORD. Objected to upon the ground that the witness has
15 already answered that he talked over the matter and thought
16 of that during the night.

17 MR. ROGERS. I don't think it right to state--

18 MR. FORD. The witness has already answered the question.

19 THE COURT. I don't think so either. Objection overruled.

20 MR. FORD. Objected to upon the ground the question has
21 been fully answered, and we have a right to make that
22 objection.

23 THE COURT. That is the legal ground of the objection.
24 Objection overruled.

25 MR. ROGERS. Q Do you understand me? A I do.

26 Q Would you be kind enough to answer? A I don't know why

1 Q Well, now, when I was interrogating you yesterday as
2 to how it came about that your recollection served you so
3 well as to the 27th, if it is true, that the thing you rely
4 on or relied on was the card, why didn't you mention it?

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1 A I didn't recall it. I was probably excited.

2 Q Now, when I asked you yesterday, 6774: "Has your
3 memory been refreshed recently on the subject of the 27th
4 of November?" You notice the words, "refreshed recently".
5 "A. Only by seeing a receipt in a tailor shop for the pay-
6 ment of money on a suit of clothes which I wore on Sunday,
7 November 26th." Now, how was it that you made me that
8 answer on yesterday, that it was only by seeing a receipt for
9 a suit of clothes, when, as a matter of fact, you say this
10 morning, it was a card that Mrs Franklin showed you?

11 MR FORD: Objected to upon the ground the question has
12 been fully answered.

13 THE COURT: Overruled.

14 A I didn't recall the circumstances. I didn't recall see-
15 ing the card. I was trying to think out what caused me
16 to go to the tailor and look at this receipt, and I found
17 since last night, it was this card that led me to the
18 tailor shop to look at this.

19 Q Now, are you sure that was this morning that you
20 thought of that, or did it come back now to you, that
21 your visit with Mrs and Mr Franklin last night, caused you
22 to remember the card? A No sir, there was nothing said
23 concerning the card that I recall.

24 Q When was it that this reviving recollection as to the
25 card came back to you, in the night hours, during --

26 A Sometime after 7 o'clock and this morning at 7 o'clock.

1 Q Were you sleeping? A No sir.

2 Q Or waking or -- A Resting.

3 Q -- or were you in bed or where?

4 MR FREDERICKS: That is objected to on the ground that
5 phase of the question has been fully covered.

6 THE COURT: Objection overruled.

7 A (No response.)

8 MR ROGERS: Can you answer me? A No sir.

9 Q You cannot do it? A In regard to when I thought of
10 it?

11 Q No, when you thought that -- A I did answer.

12 Q Between the time you left the stand, as to just why
13 you recollect the matter as being on the 27th and from the
14 card. A I was thinking seriously of the question you ask-
15 ed me yesterday as to whether or not I was in Mr Franklin's
16 office on the 12th or 13th, and while thinking, this acci-
17 dently come to mind.

18 Q Accidentally? A Probably accidentally, I don't know the
19 cause of it; internal cause, probable.

20 Q What is that?

21 (Last answer read.)

22 Q Internal cause. Yes sir, you mean by that that the
23 process of your mind worked it out and it came back to
24 you last night?

25 MR FORD: We object to that on the ground no foundation has
26 been laid showing that this witness is an expert in psy-

1 chology, and the question otherwise is incompetent, irre-
2 levant and immaterial, and speculative and argumentative.

3 THE COURT: Objection overruled.

4 A Probably some unknown reason; unknown to myself,
5 caused it.

6 Q Yes sir. Well, now, before this unknown cause had pro-
7 duced in your mind the recollection of that matter that oc-
8 curred last night, didn't you answer this way yesterday:
9 "Now, would you mind telling us how your memory was re-
10 vived as to the 27th day of November, as contradistinguished
11 from the 27th day of October, or the 27th day of December,
12 Mr Mayer? " The answer: "By reading the papers."

13 A That was another cause.

14 Q Oh. Now, we have how many causes for your recollection.

15 MR FORD: We object to that as a matter of calculation.

16 THE COURT: Objection overruled.

17 A Probably three or four, I don't recall how many.

18 The card is one, the newspaper is another, the tailor is
19 another, is three. That is all I recall now.

20 Q That is all you recall now. Do you think if we gave
21 you another night to think it over, you might recall some-
22 thing else? A I might.

23 MR FORD: I object to that as speculative.

24 THE COURT: Objection sustained; you need not answer.

25 MR ROGERS: I have no doubt that you have that tailor re-
26 ceipt? A No sir, I have not.

1 Q What is that? A No, I have not.

2 Q Where did you see the tailor's receipt for the black
3 suit of clothes that you wore on the 27th and again on
4 yesterday? A Where did I see the receipt?

5 Q Yes. A I ~~had~~ had the receipt once upon a time, probably
6 a month ago; I seen it again over in the books of the tailor
7 I believe in there it was marked the 28th day I paid him.

8 Q Well, now, the receipt that you refreshed your recollection
9 from, then, is a receipt down in the tailor's office
10 somewhere? A No sir; I had my own receipt, and I wanted
11 to verify that receipt, and I found there was a difference
12 of one day, probably because he did not make the entry
13 until the next day.

14 Q How long ago was it that the tailor's receipt came to
15 you in your possession as that upon which you founded your
16 recollection as to that date? A About the time I paid
17 the gentleman.

18 Q When did you last see that receipt? A The day after
19 I seen the card.

20 Q The day after you saw the card? A Yes sir.

21 Q You saw the receipt, the tailor's receipt? A I went
22 home and looked through a lot of receipts and I found one.

23 Q When was that, did you say? A After I seen the card in
24 Franklin's office.

25 Q How long ago? A Probably two or three or four weeks
26 ago; sometime in the month of July.

1 Q Sometime in the month of July. Couldn't you get any
2 closer to it than that? A I said it was probably the 12th,
3 13th or 14th -- 11th, 12th, or 13th, something about that.

4 Q Now, what became of that receipt? A I don't recall; I
5 guess it is still at home; I didn't think it was important,
6 and I didn't think I would be called here.

7 Q Why were you looking for it, then? A I just wanted
8 to make sure in my own mind.

9 Q Do you suppose that you could get that receipt for us?

10 A I would try, yes sir. I could not state positively.
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5p 1 Q You went down to the tailor's shop, you say, and saw an
2 entry in his book? A Yes, sir.

3 Q Now, that entry in the book, is that the same date as the
4 entry in the receipt, is it? A No, sir.

5 Q How does that come about, do you know? A Sometimes
6 people do not make entries in their books until the next
7 day, and the gentleman not being exceedingly intellectual
8 or something of that sort, he might not have paid attention
9 to his books at the time.

10 Q But, at any rate, the receipt does not even, by which
11 you refresh your recollection as to the 27th, is not the
12 same date as the entry in the books and Franklin asked
13 you 50 times about it, is that so?

14 MR. FORD. We object to that as repetition and having already
15 been answered.

16 THE COURT' Objection sustained.

17 MR. ROGERS. Q You say the tailor's book shows it was the
18 28th? A yes, sir, I believe. I would not swear to that,
19 I believe it is the 28th, to the best of my ability.

20 Q But you know you are swearing you refreshed your recollec-
21 tion as to the date you were up there in the Higgins Building
22 by a receipt and by going to the tailor's books. Now,
23 if the tailor's books, you cannot be--don't know what they
24 say, how can you refresh your recollection from it now?

25 A May I explain the condition?

26 Q yes, sir. Go on, right at it.

1 THE COURT' yes, go ahead .

2 A I went to the tailor shop, his entry in the book was
3 said the 28th, I then looked at the calendar and found, I
4 believe the 28th was Tuesday , maybe Wednesday--I don't
5 recall--I guess it is Tuesday, I then recalled working
6 three days; I might state another incident of why I
7 recalled the date well.

8 Q yes . A Because I had a cousin in town from San Francisco
9 on or about that time.

10 Q On or about that time? A Yes, sir--and I see that was
11 Tuesday, so I knew I worked on Monday, Sunday and Saturday
12 preceding that Sunday, three days in succession, and I knew
13 I had not worked for him in probably two or three weeks
14 prior to that.

15 Q Wel, Mr. Mayer, what time was it you went up into the
16 Higgins Block, assuming for the sake of the question that
17 you were there at all?

18 MR. FORD. We object to that question as violative of provi-
19 sions of Section 2066 of the Code of Civil Procedure, in
20 that it is offensive to the witness, and consists of harsh
21 treatment of the witness and unnecessary for the asking of the
22 question, he has injected into the question something which
23 should not be put into a question, assuming such and such
24 to be the facts.

25 THE COURT. Objection sustained.

26 MR. ROGERS. Q What time were you up to the Higgins Build-

1 ing, if at all?

2 MR. FORD. We object to the question on the ground that
3 it contains--well, I won't bother with it. Withdraw it.

4 A I had an appointment with Mr. Franklin at 8 o'clock and
5 he was late, it was probably 10 or 15 minutes after 8,
6 probably 15, to the best of my recollection. I believe
7 I looked on the clock at the First National Bank, thinking
8 that possibly he was out of town or working on some other
9 thing, that he could not meet me.

10 MR. ROGERS. Will you be kind enough to read me the answer?
11 (Last answer read.)

12 Q When was it that you remembered looking at the clock at
13 the First National Bank?

14 MR. FREDERICKS. That is objected to, assuming a fact that
15 is not in evidence, the witness has not stated positively
16 that he remembered that.

17 THE COURT. Objection overruled.

18 A I just recalled it just now, recalling that I met him
19 at the corner of Second and Spring street at the First
20 National Bank is there, I believe it is the First National
21 Bank, probably the Merchants--First National Bank, and I
22 recall being anxious that morning because I wanted to go
23 down to the beach and I didn't want to hang around any
24 longer than necessary as I was not working that day.

25 Q Now, you remember with great distinctness what the clock
26 said? A No, sir, not with great distinctness. I recall

1 somewhere in the neighborhood of 8 o'clock, not any later
2 than 15 minutes after.

3 Q And where was it Mr. Franklin met you? A Corner of
4 Second and Spring street, on the southeast corner.

5 Q Did you know where his office was? A Whose office?

6 Q Franklin's. A I certainly did.

7 Q Well, he did not meet you at his office that morning?

8 A No, sir.

9 Q He went up into the Higgins Building and what was it he
10 did, paid you some money? A I turned over some reports
11 to him and he gave me some money, I believe it was \$5.00, he
12 said that was all the change he had right then.

13 Q On the morning of the 27th? A Yes, sir.

14 Q When was it you went and paid the tailor? A That same
15 day.

16 Q What time of the day? A Somewhere before 12 o'clock,
17 I am quite sure it was not--

18 Q Then you didn't go to the beach as intended? A I did.

19 Q You were anxious to go away to the beach? A Yes, sir.

20 Q And that was the reason you were afraid he was being late,
21 a little past 8 o'clock and you were anxious about it?

22 A yes, sir.

23 Q And yet you didn't go to the beach until afternoon, so?

24 MR. FORD. The witness didn't so testify, he said he paid
25 the tailor sometime before noon, he thought.

26 MR. ROGERS. No, what was the answer?

1 THE COURT. Counsel is asking him. Objection overruled.

2 Do you want the answer read? If you want it I have it.

3 Answer the question.
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1 A I would like to have the question, please.

2 THE COURT: Read it. (Last question read by the reporter.)

3 A Yes sir.

4 MR ROGERS: Well, what was your anxiety about his being a
5 little late because you were in a hurry to go to the beach,
6 and looked at the clock fearing that he would be late, if
7 you didn't go to the beach until after noon. A I wasn't
8 crazy about it, or anything like that.

9 Q What is the name of that tailor, please? A Silver-
10 man is his name, Second and Broadway.

11 Q Over on Main street? A Broadway, next to the
12 Ranier Cafe.

13 Q F. A. Silverman? A Probably, I don't recall his ini-
14 tials.

15 Q Where is his place of business? A About one hundred
16 something, Broadway, next to the Rainier Cafe.

17 Q Was Shoeber's testimony read to you before you went
18 on the stand? A No one ever read any testimony to me, or --

19 Q Did they tell you what he said --

20 MR FORD: Let the witness finish his answer.

21 MR ROGERS: pardon me.

22 A If I read anything about what Mr Shoeber said I read
23 it in one of the papers that I spoke to you about yester-
24 day.

25 Q Well, was your memory attracted or your recollection
26 refreshed by any reference to any testimony when you were

1 being talked to before you went on the stand by Franklin or
2 Mrs Franklin or anything whatever? A I don't understand
3 your question.

4 Q I will change it. Then, was what Shoeber said to
5 Franklin or Franklin said to Shoeber told you or read to
6 you? A No sir, I recalled that.

7 Q You recalled that? A Yes sir.

8 Q With distinctness? A Yes sir.

9 Q You recalled the words? A No sir, I was not positive
10 in the words yesterday in my testimony. I said "something
11 like that."

12 Q But you had read in some newspaper, at least, what
13 Shoeber testified to? A I believe his testimony was
14 about the same as mine; probably these words or those words,
15 I don't recall, and he said positively. I don't recall
16 just exactly what words he used.

17 Q How do you know his testimony was the same as yours?

18 A I don't know.

19 Q You just said it was probably just like yours?

20 A Probably it was.

21 Q Well, did you intend it should be so? A No sir.

22 Q Well, how did you come to make that remark just this
23 moment; that his testimony was like yours if you were not
24 looking it over for the purpose of making yours conform
25 to it?

26 MR FREDERICKS: That is objected to as speculative. Call

1 the court's attention to the witness' answer that he read
2 the testimony or the purported testimony of Shoerber in the
3 newspaper and never had read it anywhere else.

4 THE COURT: I think it is speculative. Objection sus-
5 tained.

6 MR APPEL: No, your Honor, we insist, your Honor -- just a
7 moment, your Honor, if a witness should come over on the
8 stand -- I don't say this case -- I don't wish to say
9 anything in the presence of the witness that may be consider-
10 ed offensive, but if a witness comes on the stand and
11 remembers a conversation that occurred over a year ago --

12 THE COURT: Perhaps I didn't catch the force of the question.
13 Let me have it. (Last question read by the reporter.)
14 yes, it is a little different question from what I thought.
15 Answer the question.

16 A Because of the circumstances surrounding it, I believe
17 that I answered that question by saying that that card
18 referred to the day and the time, referred to this par-
19 ticular case, and this man that was involved in this case,
20 or there was something of that sort, and I accidentally
21 read it in the newspaper, as I said yesterday. I didn't
22 pay any particular attention to this case, only very, very
23 lately, and then my reading on the subject was very, very
24 little. Probably I haven't read eight or ten newspapers.

25 MR ROGERS: But you said a moment ago that this testimony
26 was like yours, you believed? A I said probably, yes sir.

1 Q Probably was like yours. Now, if you didn't know and
2 were not looking over his testimony for the purpose of
3 carrying it in your mind, how came you to make that
4 statement?

5 MR FORD: Objected to as argumentative; not cross-examina-
6 tion, and incompetent, irrelevant and immaterial, and call-
7 ing for a conclusion of the witness on a question of psy-
8 chology.

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7s 1 THE COURT. I don,t think it calls for a conclusion but
2 an explanation. Objection overruled.

3 A I don't know of any particular reason; I had no object
4 in view in reading it other than it recalled things that
5 occurred at that time, that is all. In the first place
6 I didn't think it was possible to put me up here on the
7 stand?

8 Q Why not? A I am not a lawyer, I don't know--

9 MR. FORD. Object to that as incompetent, irrelevant and
10 immaterial what the witness thought about the possibility,^{or}
11 the^{legal} possibility of his being on the stand.

12 THE COURT. Objection sustained.

13 MR. ROGERS. Q Who took you up in the elevator, do you know,
14 regular elevator man? A Maybe he was and maybe he was not,
15 I couldn't say positively.

16 Q Describe him? A What is it?

17 Q Did he wear a uniform? A No, sir.

18 Q Didn't wear a uniform?

19 MR. FREDERICKS. I presume counsel refers to the day down
20 in the Higgins building on the 27th?

21 MR. ROGERS. Certainly.

22 A I don,t recall who took me up in the elevator. Probably
23 one of the regular elevator men.

24 Q Anybody go up with you? A I don,t recall, maybe some-
25 body.

26 Q Franklin go up with you? A Yes, sir.

1 Q Took you into a room up there? A Yes, sir, we walked
2 along together and I went in with him. He didn't take me
3 in.

4 Q How was the room furnished? A I believe there was a
5 green carpet on the floor and one large table in the center
6 and a big safe in the north wall.

7 Q Big safe on the north wall? A I believe, yes, sir.

8 Q Which side of the hall was the room? A It is on the
9 left hand side coming down the hall.

10 Q That would be on the west side of the hall, the side
11 towards Spring street? A I wouldn't answer that positively,
12 unless I seen a diagram of the hall, I couldn't.

13 Q Well ,don,t you remember the room well enough to say
14 which side of the hall it was on, whether the Main street
15 side or the Spring street side of the hall? A When you
16 come out of the elevator I believe you walk north, is that
17 right?

18 Q Yes. A And then I believe you walk west.

19 Q Yes. A Then south.

20 Q Yes.

21 A And then east and then enter the room.

22 Q Now, which is the room, on the east hall--on the south
23 hall, on the west hall? A Well, if the hall runs west
24 or runs south, it would be on the east side.

25 Q On the east side of the hall. How many times had you
26 been up there before this? A I don,t recall how many times

1 but several times, numerous times.

2 Q Numerous times you have been up there? A Yes, sir.

3 Q Been in that same room before, had you? A Yes, sir.

4 Q So your description was not the result of a memory of
5 that morning but the result of having been there numerous
6 times as you say? A Well, I was there the night of the
7 25th, talking with Mr. Russell?

8 Q Do you know W A Kelly that used to be sargeant of
9 police? A Yes, sir.

10 Q Did you ever work for him? A No, sir.

11 Q Ever work for the police department? A No, sir.

12 Q Are you sure you have never been employed by the Los
13 Angeles police department as what they call a secret man?

14 A Positive, unless it was unknown to myself.

15 Q Or Kelly? A I never worked for Kelly.

16 Q Or any of the police officers or sargeants, that is,
17 I don,t use the word offensively, I don't mean offense,
18 you know what I mean, stool pigeon, that is, secret man?

19 A No, sir, at no time.

20 MR. ROGERS. That is all.

21 THE COURT. We will take a recess for 5 minutes. (Jury
22 admonished. Recess for 5 minutes.)

23 (AFTER RECESS.)

24 THE COURT. You may proceed.

25 REDIRECT EXAMINATION.

26 MR. FREDERICKS. I think I was examining this witness in

1 chief. Q Mr. Mayer, during the recess I showed you a
2 receipt which I now show to counsel for the other side,
3 and I wish to show it to you now on the witness stand.
4 (Document examined by counsel.)

5 Q I now wish to show it to you, Mr. Mayer, and ask you if
6 that is your signature at the bottom of it? A It is my
7 signature.

8 Q Now, when you were paid up there that morning by Mr.
9 Franklin, when he paid you \$5,00, do you know whether or not
10 he took a receipt from you at that time?

11 MR. APPEL. Wait a moment, we object to that on the ground
12 that it is incompetent, irrelevant and immaterial and not
13 redirect, not rebuttal.

14 THE COURT. My attention was attracted a moment by reading
15 a note passed up by the bailiff. Read the question.

16 (The last question read.)

17 MR. APPEL. Your Honor will see it is not material, the
18 witness not having claimed that he refreshed his memory as
19 to the date by any such receipt as this; he has given
20 everything else that he remembered, your Honor, but not
21 this paper; he stated, your Honor, that he refreshed his
22 memory from a newspaper, he refreshed his memory from the
23 receipt taken from the tailor and by the books of the tailor,
24 and everything else.

25 MR. FREDERICKS. We do not claim that he has refreshed his
26 memory or that he ever saw it.

1 MR. APPEL. That would not make any difference.

2 MR. FREDERICKS' It is not for the purpose of refreshing
3 his memory.

4 MR. APPEL. Well, it is not--

5 MR. FORD When you have finished your argument, we want to
6 address the court.

7 MR. APPEL. It is not material for any purpose at all.

8 MR. FORD' Have you finished, Mr. Appel?

9 MR. APPEL. yes, sir.

10 MR. FORD. Now, if the court please, this witness testified
11 to the transaction in chief, on cross-examination they went
12 into extrinsic matters for the purpose of fixing the date,
13 and attacking the date, and have gone into those extrinsic
14 matters and other papers and documents for the purpose of
15 fixing the date. We have procured a document which we
16 are now exhibiting to the witness of the subject matters
17 brought out on cross-examination, and it is properly
18 rebuttal.

19 MR. APPEL. Now, then, let us see if that statement is
20 true, a general statement does not prove itself. Did we
21 bring out anything concerning this receipt?

22 MR. FORD. No, sir.

23 MR. APPEL. Then that is one portion of his statement shown
24 not to be correct.

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1 Now, the witness referred, himself, and refreshed his mem-
2 ory from certain documents, and he has named them; now, they
3 want to help him out by bringing some other documents and
4 saying to him, "Now, here is something that might help
5 you, my friend, it is true you are a little shaky on your
6 cross-examination"; if such be the effect of the cross-
7 examination -- "Now, we want to prop you up; let us build
8 you up, the structure that you have built up, is tottering
9 down", and so and so, "Now, we are going to put some
10 posts around here and prop you up", and that is the at-
11 tempt made by showing the witness this paper, not redirect.

12 THE COURT: On cross-examination you brought out the pay-
13 ment the first time it was referred to; I think that opens
14 the door to it. Objection overruled.

15 MR APPEL: Well, now, we take an exception. Now, your
16 Honor, I wish that receipt would be handled properly, that
17 is, we would like to have it in the same condition that
18 the paper was in when it was brought here and shown to us.
19 We have a reason for that, and we would not like to have
20 it folded up or creased or handled too much. I don't want
21 to state why; what our opinion is of the paper.

22 THE COURT: All right, Mr Clerk --

23 MR FREDERICKS: I wish to introduce it, and if the court
24 will lie on the table there; I have already folded it.

25 MR APPEL: I know, but you see the care with which we
26 handled it, I suppose you anticipate what we mean by it.

1 MR FREDERICKS: yes.

2 THE COURT: The court will see that the document is preserv-
3 ed in the order and condition --

4 MR KEETCH: I have folded it and had it in my own pocket.

5 MR APPEL: Have you got that, Mr Reporter, that he folded
6 it and had it in his own pocket?

7 THE REPORTER: I have, Mr Appel.

8 MR FORD: I think the thing to do to keep the ink on the
9 paper in its present condition to show the age of it.

10 THE COURT: I have your idea, Mr Appel, and it will be ob-
11 served.

12 MR APPEL: We have an admission that counsel folded it and
13 had it in his pocket.

14 MR KEETCH: yes, and I had it a few minutes ago.

15 MR FREDERICKS: We want counsel to know everything we know
16 about it.

17 THE COURT: What do you want?

18 MR FREDERICKS: There is a question and an objection pend-
19 ing.

20 THE COURT: Objection overruled. Read the question.

21 (Last question read.)

22 A He did not take a receipt from me at that time.

23 Q The document which I have just shown you and which
24 you have, and upon which you have identified -- referring
25 to the document which I have shown you and upon which you
26 identified your signature, I will ask you if you saw that

1 or I will ask you if you ever -- I asked you if that was
2 your signature, and I am asking you now if you made that
3 receipt or gave that receipt to anybody, and if so, when?

4 MR APPEL: We object to that as incompetent, irrelevant and
5 immaterial, hearsay; not rebuttal; not redirect.

6 THE COURT: Objection overruled.

7 MR APPEL: We except.

8 A My signature is on that receipt. As to the date of it,
9 I couldn't swear, other than I am not in the habit of
10 putting my --

11 MR APPEL: I object to his habits.

12 MR FREDERICKS: I will ask you another question in regard
13 to that.

14 MR FORD: I think the witness' answer ought to be finished,
15 and if it is immaterial, let the court strike it out.

16 MR APPEL: No, your Honor, he was asked whether he gave it
17 to anyone, and Mr Fredericks' question was perfectly
18 fair.

19 THE COURT: He cannot testify to his habit. What was done--

20 MR FREDERICKS: I am going now to ask him about his
21 habits.

22 THE COURT: All right, if it is in response to a proper
23 question.

24 MR FORD: The answer alone, without an explanation will give
25 a false impression and is not a full answer to the question,
26 and the witness says --

1 THE COURT: Well, perhaps that is true; let us see.

2 MR FORD: The witness says he is not positive, except for
3 certain reasons why, if he is not allowed to give, will
4 appear to the jury, and the instrument was not signed
5 on that date at all.

6 THE COURT: The reasons can be brought out by questions
7 and answers, and it will then appear.

8 MR APPEL: No, he said that was his signature.

9 THE COURT: What is the question?

10 MR FREDERICKS: I have not made it yet, your Honor. I am
11 trying to remember how much of that answer is there.

12 MR APPEL: He is about to put another question.

13 MR FREDERICKS: Mr Mayer, state whether or not, if you had
14 a custom, or state whether or not it was your custom to
15 give receipts to Mr Franklin or his agency for all money
16 paid to you?

17 MR APPEL: We object to that on the ground it is not re-
18 buttal, it is not redirect; it is not cross-examination of
19 anything brought out on cross-examination, not redirect
20 to anything brought out by the defense and it is incom-
21 petent, irrelevant and immaterial; that no fact can be
22 proved in any case against the defendant, or controvert
23 any part of his case by any custom or habits, and it does
24 not tend to establish any facts or particular fact sought
25 by the interrogator, leading and suggestive, and otherwise
26 and for a great many other reasons, absolutely incompe-
tent.

1 THE COURT: Objection sustained.

2 MR FREDERICKS: Well, Mr Mayer, was the material in the
3 receipt, in the paper above your signature there when you
4 signed it?

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9p 1 MR. APPEL. We object to that on the ground it is in-
2 competent, irrelevant and immaterial, not rebuttal, not
3 redirect, and upon the further ground that the witness has
4 been interrogated now concerning the document not in
5 evidence.

s 6 MR. FREDERICKS. It is in order that I may introduce it
7 in evidence.

8 THE COURT. Objection overruled.

9 MR. APPEL. We except.

10 A I never signed a blank receipt in my life at any time
11 no where.

12 MR. APPEL. I move to strike that out on the ground that
13 it is not responsive to the question.

14 MR. FREDERICKS. Well, I think it is answeredd

15 MR. APPEL. That is in violation of the ruling of the court,
16 that his custom and habits are not proper.

17 MR. FREDERICKS. I think it is an answer.

18 THE COURT. Strike it out.

19 MR. FREDERICKS. All right. Q Now, state whether or
20 not the material written there was written there when you
21 signed it? A It was.

22 MR. FREDERICKS. We now offer it in evidence, if the court
23 please, as People's Exhibit 51.

24 MR. APPEL. We object upon the ground that it is not
25 rebuttal, not recross of anything brought out by the defense
26 not redirect, it is incompetent, irrelevant and immaterial

1 for any purpose whatsoever, that it is hearsay. Doesn't
2 tend to establish any fact in the case.

3 THE COURT. Objection overruled.

4 MR. APPEL. We take an exception.

5 THE COURT. Take this document, Mr. Clerk--you want it
6 further?

7 MR. FREDERICKS. I was just going to read it to the jury.

8 THE COURT. I was about to say put it in an envelope without
9 folding it.

10 MR. FREDERICKS. (Reading) "Los Angeles, Cal., November
11 27th, 1911, Received of B. H. Franklin \$5.00, Jury List,"
12 the usual figures and so forth. Signed "O.H.F.Mayer."

13 MR. APPEL. Now, your Honor, I want the jury to examine
14 that receipt at this time.

15 THE COURT. All right, pass it over to them.

16 MR. APPEL. I want them to examine the condition of the
17 writing.

18 THE COURT. Take your time in examining the document,
19 gentlemen.

20 MR. FREDERICKS. Shall I go on and interrogate the witness?

21 THE COURT. No, let the jurors examine the document.

22 MR. FREDERICKS. Q Did you ever see that receipt from the
23 time you made it until I showed it to you here? A No, sir.

24 MR. APPEL. Wait a moment. We object upon the ground it is
25 incompetent, irrelevant and immaterial and not cross-
26 examination of anything brought out by the defense., not

1 redirect and not rebuttal.

2 THE COURT · Objection overruled.

3 MR. FREDERICKS · We except.

4 M^r. FREDERICKS · The witness answered "No, sir," I suppose
5 it will stand.

6 THE COURT. Yes .

7 MR. FREDERICKS . Q What were you paid--you say you were
8 paid \$5.00 that morning; what was that in payment for?

9 MR. APPEL. Wait a moment--we object to that as immaterial
10 and not redirect and not rebuttal. Your Honor will remember
11 that I objected to his business and what he did do on that
12 day or not. They went into it over our objections and we
13 cross-examined him on that.

14 THE COURT · Objection overruled.

15 MR. APPEL. We except.

16 A What was it for?

17 MR. FREDERICKS. Q Yes. A part of salary, I believe.

18 Q For what? A For some of the work that I done on the three
19 days.

20 Q For whom? A For Mr. Franklin.

21 MR. APPEL. We object to that as not redirect. He already
22 went into that on that subject on direct examination and
23 we cross-examined him very lightly upon that.

24 THE COURT. Objection overruled.

25 MR. APPEL. We except.

26 MR. FREDERICKS. Q What kind of work do you refer to?

1 MR. APPEL. That is objected to, that it is not rebuttal,
2 it is part of their main case; is not redirect, and in-
3 competent, irrelevant and immaterial.

4 THE COURT Overruled.

5 MR. APPEL. We except.

6 A I was directed to--

7 MR. APPEL. Now, he is going on to say what somebody
8 told him, your Honor.

9 THE COURT The question calls for a statement. Read the
10 question.

11 (Last question read by the reporter.)

12 A Calling up jurors, telling them that they were drawn
13 on the McNamara case.

14 MR. APPEL. Now, your Honor will see that was a matter they
15 went into on their case in chief.

16 MR. FREDERICKS. That doesn't bar us from going into it
17 again if it becomes pertinent, on rebuttal.

18 MR. APPEL. Now is it rebuttal?

19 MR. FREDERICKS. My opinion of it is--

20 MR. APPEL. I don't hope to get a reversal of your Honor's
21 opinion. I am just simply doing it in order that this
22 record may not be silent, and that we didn't meet the point.
23 I am making the record here, your Honor, that is the only
24 reason I mentioned it to him, I want to keep on making it
25 appear on the record here from time to time and to keep in
26 view of the record that we consider it a grievous error, and

1 we just keep it up to make a record. I don't expect
2 any reversal of your Honor's ruling.

3 THE COURT. There is nothing before the court.

4 MR. FREDERICKS. Q Did you give a receipt to Mr. Franklin
5 for each sum paid you by him or his agency for work done
6 in the McNamara case?

7 MR. APPEL. Wait a minute. We object to that as immaterial
8 and not the best evidence. It is asking the witness
9 concerning documents not presented to him, and it is not
10 rebuttal, it is collateral to any issue in this case and
11 not rebuttal nor recross upon anything brought out upon
12 cross-examination of the witness.

13 THE COURT. Objection sustained.

14 MR. FORD. If the court please, the witness was asked as
15 to the existence of documents but not as to their contents.
16 The documents must be produced before he is examined
17 as to the contents.

18 MR. FREDERICKS. Now, you were asked something on cross-
19 examination--you were asked on cross-examination did you
20 ever work for a man by the name of Kelly, I don't know
21 just what/^{the}significance of the question is and I don't know
22 who Kelly is. Did you ever work with Kelly? A Work with
23 him?

24 Q Yes. A We were associated together in business.

25 MR. FREDERICKS. That is all.

26

RE-CROSS-EXAMINATION.

1
2 MR. APPEL. Just a moment. Q What Exhibit is that, Mr
3 Clerk?

4 THE CLERK. 51.

5 MR. APPEL. Q When you were up there in the District
6 Attorney's office and while you were waiting for Mr. McLaren,
7 and Mr. Franklin came in and talked to you about the date
8 of the 27th day of November, did you then tell him ~~that~~
9 you remembered having been up there with him in the Higgins
10 Building on the 27th day of November, or did he then say
11 to you that he had a receipt from you that would refresh
12 your memory? A He said nothing about having a receipt.

13 Q But he told you you were there with him? A No, sir, he
14 did not.

15 Q Nothing was said there in the District Attorney's office
16 by Mr. Franklin and yourself that refreshed your memory
17 immediately?

18 MR. FORD' There is no testimony that he met Mr. Franklin in
19 the District Attorney's office.

20 THE COURT. There is no objection.

21 MR. APPEL. I object to his stating it to him anything
22 that was said.

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1 MR FREDERICKS: If the witness will tell everything that was
2 said and done there --

3 MR APPEL: No, no, your Honor; that is not the way to practice
4 law.

5 MR FREDERICKS: We think it isn't --

6 MR APPEL: Your Honor, it isn't fair to tell the witness
7 what was said and done. I am asking him the question
8 whether such a thing was done.

9 THE COURT: I think you are right on that. You ought not
10 to be interfered with in the cross-examination, except when
11 an objection is made, and there was no objection made.

12 MR FREDERICKS: I am objecting to it --

13 MR APPEL: I am only cross-examining on this receipt.

14 THE COURT: All right. Answer the question.

15 MR FREDERICKS: We object to the question on the ground
16 that the field has been fully covered by cross-examina-
17 tion of this witness, and it is not recross-examination.

18 THE COURT: Read that question.

19 (Last question read by the reporter.)

20 MR APPEL: I put in there, in order to make it clear,
21 nothing was said or done.

22 MR FREDERICKS: Our objection is it is not recross-
23 examination, but if there is any doubt in anybody's mind as
24 to just what did occur there, we are willing to forego the
25 rule, if the witness is permitted to say what happened
26 there.

1 MR APPEL: I don't care what he says. It makes no dif-
2 ference to me what he does. I am within my rights on cross-
3 examination.

4 THE COURT: The court has already sustained your objection.

5 MR APPEL: I don't ask his opinion.

6 MR FREDERICKS: I have not volunteered my opinion. I main-
7 tain I have a right to make an objection, and I have made
8 my objection, and I have said I will not stand on my rights
9 if thus and so is the case. Mr Appel says thus and so is
10 not the case, therefore, I stand on my objection.

11 MR APPEL: I didn't say that. I said it is improper, your
12 Honor, for the prosecution to put up a proposition to the de-
13 fense to make them a proposition in the presence of the jury
14 here, that if they object the jury may get an impression
15 against us, if we reject it. That is, they should not call
16 upon us. It is like interrogating the defendant against
17 his will. That is the only reason I spoke of that. Now,
18 you see the point.

19 MR FREDERICKS: I see.

20 MR APPEL: Now, there is no objection to your making an ob-
21 jection other than that.

22 THE COURT: The witness must have a clear field to answer
23 your question.

24 MR APPEL: He will, if they let him. A I don't under-
25 stand the question, inasmuch as they asked him --

26 Q Let me make it plain.

1 MR FORD: Let the witness explain his answer.

2 THE COURT: Counsel will make it plain, if he doesn't
3 understand, he has a right to make it plain.

4 MR APPEL: You remember you were up in the District At-
5 torney's office sometime ago before you testified here,
6 you were up there waiting for Mr McLaren and Mr Franklin
7 came in and you and he discussed the date of the 27th day of
8 November. I asked you that preliminarily, only. A Yes
9 sir.

10 Q He says that is a fact. I don't care what the evidence
11 is. I am asking for a fact.

12 MR FREDERICKS: May I just make this objection, you and he
13 there being present Mr Franklin, Mr McLaren, and I don't
14 remember whether anybody else was present, the "he" doesn't
15 necessarily refer to the same person's mind in the answer
16 as it might in the question.

17 MR APPEL: I will make it very plain. You remember be-
18 fore you testified in this case sometime ago you were up in
19 the District Attorney's office waiting for Mr McLaren,
20 and while waiting for Mr McLaren, Mr Franklin came in and
21 you and Mr Franklin referred to a discussion or question
22 of your memory as to where you were on the morning of the
23 27th day of November, 1911. A Could I say at no time did
24 I wait for Mr McLaren.

25 Q You never did? A At no time did I wait for him.

26 Q Did you and Mr Franklin discuss that, then? A Discuss?

1 He probably asked me two or three questions if I was ^{re-} called
2 the day, and I said yes.

3 MR FORD: Let the witness finish his answer.

4 THE COURT: Have you finished it? A I have not, no.

5 THE COURT: Go ahead. A He asked me two or three ques-
6 tions. He asked me if I recalled the day exactly, and I
7 said yes, and I believed that that was all that was said.

8 MR APPEL: Very well, now, you recalled it immediately,
9 didn't you? A Certainly.

10 Q You recalled that you and he had been up there in the
11 Higgins Building on the morning of the 27th? A Yes sir.

12 Q Did he then tell you that he had this receipt to which
13 your attention has been now attracted?

14 MR FREDERICKS: People's exhibit 51.

15 Q People's exhibit 51, which showed that he had given
16 you \$5 at that time; did he then tell you anything about
17 it? A He did not.

18 Q Did you then remember the transaction out of which this
19 receipt grew? A I remembered having seen a duplicate of
20 that on their cards, which I explained this morning.

21 Q Oh, yes; a duplicate of this on their cards. A Their
22 books, what they call their books, private card system.

23 Q I thought I understood you to say that on the morning
24 of the 27th, when they gave you this \$5 up there in the
25 Higgins Building in the room on the east side of the hall,
26 that you did not give him this receipt? A That is cor-

1 rect.

2 Q Now, there he gave you \$5, and you did not give him
3 this \$5 receipt? A I did not.

4 Q So this receipt does not record, that is, was not made to
5 your knowledge, right then and there when the fact of the
6 payment occurred, as far as you remember? A I positively
7 know I did not sign that receipt in the Higgins Building.

8 Q Now, when did you sign it? A I do not recall when I
9 signed it. Maybe it was sometime between the time I left
10 the Higgins Building before I went to the beach.

11 Q Well, where did you sign it? A It is Mrs Franklin's
12 handwriting --

13 Q No, not; where did you sign it; that is all I am ask-
14 ing you; I didn't ask you about anybody's handwriting.

15 MR FORD: The witness has a right to explain his answers.

16 MR APPEL: No, I don't want his conclusions, I want his
17 answer. Where did you sign it?

18 MR FORD: And the witness recognizes the handwriting, and
19 that refreshes his recollection, and he has a right to
20 incorporate it in his answer, and we object to his being
21 interrupted.

22 THE COURT: Let him answer where he signed it.

23 MR APPEL: I object to his giving any reasons before he
24 answers the question; let us take your Honor's ruling on
25 that.

26 THE COURT: Counsel is entitled to an answer to the ques-

1 tion, and if he has an explanation, he is entitled to make
2 it.

3 MR FORD: May I be heard just a moment.

4 THE COURT: I don't think it is necessary, it is a plain
5 simple question before the court, and the witness ought to
6 answer if he can, and if he cannot -- A Room 531-A,
7 Chamber of Commerce.

8 MR APPEL: When did you sign it? A According to the
9 date, November 27th.

10 Q Well, do you know that you signed it on that day, do
11 you know, not your conclusions? A I do.

12 Q What time of the day was it when you signed it?

13 A Sometime in the forenoon.

14 Q What time was it? A I don't know.

15 Q Now, you got this \$5 up in the Higgins Building?

16 A Yes sir.

17 Q Where did you go from the Higgins Building, where did
18 you go from there? A According to the receipt I must
19 have --

20 MR APPEL: I object to his saying, "according to the re-
21 ceipt".

22 THE COURT: Don't tell according to the receipt. If you
23 remember, tell it.

24 MR FREDERICKS: Your Honor, the witness' whole answers
25 are based on that receipt, and he is drawing now conclu-
26 sions from what that receipt shows, he is not saying he

1 remembers it at all.

2 MR APPEL: He has no right to do that.

3 THE COURT: If he remembers let him tell it, and if he does
4 not, let him say so.

5 MR FREDERICKS: He is not saying he remembers it.

6 MR APPEL: He has no right to draw conclusions, because
7 your Honor, that is the very reason I was objecting to
8 the introduction of the receipt.

9 THE COURT: I am perfectly clear; the question asked him
10 if he remembers.

11 MR FREDERICKS: No, "If he remembers" is not in the ques-
12 tion.

13 MR FORD: And the witness has a right to testify to a mat-
14 ter concerning which he has not an independent recollec-
15 tion whatever, and he has a right to refer to a memorandum
16 and testify to a fact, even though the independent recol-
17 lection of it may have been entirely obliterated.

18 THE COURT: That proposition is eliminated now, the court
19 understood the question to be, "Where did you go, if you
20 remember."

21 MR APPEL: That is it.

22 THE COURT: I understand, whether or not that is the
23 question, that is admitted as the question, "Where did
24 you go, if you remember."

25 MR APPEL: I am not asking about the receipt at all.

26 THE COURT: The question is, "Where did you go if you

1 remember.

2 MR FORD: Assuming that it be that way, a witness has a right
3 to testify, and he has a right to testify to that, even
4 though he has no independent recollection of it, by
5 memoranda made by himself.

6 THE COURT: Let us see if he has a recollection first.

7 MR FORD: Counsel have a right to go into that, and if the
8 witness cannot answer by independent recollection, he has
9 a right to refresh his memory, and he says, "According to
10 that receipt", which is signed by him, and the only thing
11 "upon which I rely, I must have gone to Mrs Franklin's
12 office, and did go to Mrs Franklin's office, and I have
13 no independent recollection--"

14 THE COURT: We may reach that.

15 MR APPEL: He can do it just as Mr Ford wants him to do,
16 I have no doubt about that.

17 THE COURT: Answer the question.

18 MR APPEL: Nevertheless, I take an exception to the con-
19 stant, and to the present instruction, under the guise
20 of arguing an objection, or the reasons for an objection,
21 and the constant instruction to the witness of how he may
22 answer my questions. I assign it as absolutely error,
23 and while the damage has already been done, I let the re-
24 cord speak; it may be needed in the future.

25 MR FORD: If the court please, I have been charged here
26 with doing something I had absolutely no intention of do-

1 ing, and your Honor will recall that the witness has
2 started to answer "according to that memorandum I must
3 have--" had gone that far, and I simply completed what
4 was undoubtedly in his mind.

5 THE COURT: Mr Ford, the matter is fully before the court,
6 and certainly counsel has a right to make his assignments
7 of error, in order that they may be, as he states, used
8 in the future, and the court will not interfere with it.

9 MR FORD: I am not required by law to sit silent under any
10 such accusations, and I have a right to explain my motives
11 at any time.

12 THE COURT: This court is not requiring you to.

13 A Was the question, "Do I remember when I went?"

14 MR FREDERICKS: Let the question be read, if I may make
15 the suggestion.

16 (Question read as follows: "Where did you go, if you
17 remember?")

18 A At what time of the day, may I ask?

19 MR APPEL: From the office of the attorneys for the de-
20 fense, in the Higgins Building, on the morning of the 27th,
21 day of November, 1911, where did you go to from there, if
22 you remember? A I do not recall where I went to, all
23 the places, I may have gone to 25.

24 Q Do you remember going to the tailor shop? A I be-
25 lieve I went there sometime before noon.

26 Q Before noon? A Before I left for the beach.

1 Q Now, let me see; what time of the forenoon were you
2 in the tailor shop, if you remember? A I don't remember;
3 sometime before 12 o'clock.

4 Q What other place do you remember being at before 12
5 o'clock? A I was probably in the Waldorf before 12.

6 Q In the what? A The Waldorf Cafe.

7 Q The Waldorf Cafe? A Yes.

8 Q How many times? A Maybe once or twice.

9 Q What time of the morning was it when you were in there?

10 A I couldn't state positively; sometime before noon; af-
11 ter leaving the Higgins Building.

12 Q What other place did you go to on that morning? A That
13 is all the place I recall.

14 Q And what did you do after 12? A Went down to the
15 beach.

16 Q Went to the beach? A Yes sir.

17 Q To what beach? A Venice and Ocean Park.

18 Q Sir? A Venice, Ocean Park.

19 Q Venice and Ocean Park? A Down that way.

20 Q In the afternoon of the 27th? A Afternoon of the
21 27th.

22 Q Sir? A The afternoon of the 27th.

23 Q What particular place in Venice did you go to?

24 A I don't know; I guess I just walked up and down Ocean
25 way, if that is the name of the street. I don't know.

26 Q And how long did you walk up and down Ocean Way, down

1 there? A Oh, probably 6 or 7 hours, all the rest of the
2 day, I believe.

3 Q Walked up and down Ocean Way at Venice? A Venice or
4 Ocean Park, I don't know just where --

5 Q How? A Venice or Ocean Park; I don't know just where
6 they are divided.

7 Q That is in either place or both places, that is what
8 you mean? A Yes.

9 Q I want to be fair to you? A Yes.

10 Q You went after lunch. A Did I go down to the beach
11 after lunch?

12 Q Yes. A Yes.

13 Q Do you know where you had your lunch? A No. Probably
14 I did not eat it; after lunch time I left.

15 Q You had lunch, but probably you did not eat it?

16 A No; I didn't say that. I said I went down after lunch.

17 Q You mean to say you didn't have, after lunch-hour, you
18 mean --

19 MR FORD: Let the witness finish the answer.

20 MR APPEL: I am not going to press it any further. He
21 means after the lunch hour.

22 MR FORD: Let the witness finish his answer.

23 THE COURT: Have you an unfinished answer? A I want to
24 say I went down to the beach after the lunch-hour; whether
25 or not I took lunch up here, I cannot recall.

26 MR APPEL: You went down to the beach. Did you have anything

1 to eat down to the beach? A No sir.

2 Q You walked up and down the beach for 6 or 7 hours.

3 Anybody with you? A No sir.

4 Q All alone? A Yes sir.

5 Q Walked up and down 6 or 7 hours, all alone there?

6 A Oh, I didn't walk all the time; I sat down sometimes.

7 Q But all alone? A Yes; probably -- maybe I met somebody
8 I knew.

9 Q Did you have an engagement down there that morning?

10 A No sir.

11 Q Had no particular business, in a general way? A I
12 believe there were a couple of supposed prize-fighters
13 training down there at the time.

14 Q And you wanted to go and see them? A Yes.

15 Q And you walked up and down the beach there for 6 or 7
16 hours, and sat down sometimes?

17 MR FREDERICKS: We object to that as already answered.

18 Q All right. He has said that. A Yes sir.

19 Q All right. That is good. I take your suggestion.

20 Now, didn't you testify here a little while ago when Mr
21 Rogers was examining you, you were in a hurry on the morn-
22 ing of the 27th to go down to the beach? A I did.

23 Q You waited then; you were in a hurry to go down to the
24 beach when Franklin gave you the \$5 and you wanted until
25 after lunch to go down there? A I couldn't
26 go down to the beach on \$5.

1 Q You couldn't go down to the beach on \$5? A No, I had
2 more money of my own in my pocket.

3 Q I am not addressing my question whether you went on that
4 \$5 or anything else. You were in a hurry in the morning
5 to go down to the beach. You said so, didn't you?

6 MR FREDERICKS: That is objected to, may it please the court,
7 on the ground it is not re-cross-examination of anything
8 brought out on redirect, on the ground it is fully covered
9 and of course, we do not wish to be technical to Mr Appel
10 examining this witness when Mr Rogers went over the ground
11 with him yesterday. We do not want to make that objection,
12 but in view of the fact that Mr Rogers covered this ground,
13 we object to this on the ground it has been covered.

14 MR APPEL: Now, your Honor, here is the idea: this opened
15 it, your Honor. They introduced this paper, and they asked
16 him whether or not he signed this receipt, and he says yes,
17 and when I asked him when, he says that he must have sign-
18 ed it on the 27th, and he says that he must have gone over
19 to Mrs Franklin's office, and signed it there, it is in
20 the handwriting of Mrs Franklin; he remembers that, be-
21 cause this receipt shows it, and I want to show the circum-
22 stances, your Honor, that there is nothing in his memory
23 to indicate when this receipt was signed.

24 MR FREDERICKS: And he has said --

25 MR APPEL: I want to cover his doings on that morning and
26 on that date, for the purpose of showing that it is not

1 true that this receipt was signed on the 27th day of November
2 1911.

3 MR FREDERICKS: He has not stated it was.

4 MR APPEL: That in view of the testimony of this witness
5 that Mr Franklin talked to him about the morning of the
6 27th at least 50 times, your Honor, that this receipt has
7 been concocted for the purpose of tying him up to it.

8 Then, and in view of the fact it appears absolutely fresh --

9 MR FREDERICKS: We can show where that receipt has been in
10 the last month or two.

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13p1 MR. APPEL. Yes, you can show it by Franklin. There is
2 where you get most of your evidence.

3 MR. FREDERICKS. No, sir.

4 THE COURT. Let us have the answer. It has probably
5 been gone into. Probably it has been covered, but it does
6 no harm. What is your answer to the question?

7 A I do not recall it.

8 THE COURT. Read it.

9 (Question read.)

10 THE COURT. What is your answer?

11 A I said that I was in a hurry, and ^{there} maybe several varie-
12 ties of hurry.

13 MR. APPEL. Q Oh, several varieties, well, then, it was
14 some variety of hurry, was it not? A I had no object
15 in view in going, other than for a little recreation.

16 Q But you were in a hurry?

17 MR. FORD. Let the witness finish his answer.

18 MR. APPEL. That is all I care about.

19 A In a hurry.

20 MR. APPEL. He is going off the question, your Honor, and
21 I do not propose to--

22 THE COURT. Finish your answer, Mr. Mayer.

23 A Yes, in a hurry.

24 MR. APPEL. Yes, sir, that is all. Q Now, Mr. Witness,
25 did you go up to Mr. Franklin's office between 8:15 of the
26 morning of the 27th of November to 10 o'clock of that morn-

1 ing, go up to Mr. Franklin's office and see Mrs. Franklin?

s 2 A I don't remember.

3 Q Did you go between 10 o'clock that morning and 12 o'clock
4 of that morning up to Mr. Franklin's office? A I don't
5 remember.

6 Q Do you use a fountain pen? A No, sir, not in the
7 habit of using a fountain pen.

8 Q Now, you notice, if you are able to, and I may
9 attract your attention, you notice all the writing in that
10 receipt except "O.H.F. Mayer" is written with one kind of
11 pen? A Yes, sir.

12 Q And "O.H.F. Mayer," written with another kind of pen?

13 A yes, sir.

14 MR. FORD. We object to that --

15 MR. APPEL. And was the same ink used in writing all the
16 writing in that receipt except your name? A I couldn't
17 tell you that.

18 MR. FREDERICKS. Just a moment, Mr. Witness.

19 THE COURT. Wait a moment.

20 MR. FREDERICKS. We object to the witness attempting to
21 answer a question of that kind, it being a matter of
22 expertism.

23 THE COURT. He says he doesn't know.

24 MR. APPEL. He has not qualified as an expert. Do you
25 deny here that this receipt was prepared by one kind of
26 ink and signed by you with another kind of ink? A I
couldn't say that.

1 MR. FORD. Just a moment. Was that question answered. I
2 move that it be stricken out. I want to make an objec-
3 tion. If you will read that last question and let me
4 make my objection to the court. (Last question and answer
5 read by the reporter.)

6 MR. FORD. We object to that question as being along the
7 line of expert testimony, calling for the conclusion of the
8 witness, matter on which he has stated he don,t know whether
9 it was or not and therefore any other answer would be a
10 conclusion and upon the ground that it calls for a conclusion
11 and no foundation laid that this witness is an expert as
12 to ink writing or inks, and we object to it.

13 THE COURT. The witness will not give his opinion but his
14 recollection and memory of the execution of the docu-
15 ment.

16 MR. FORD. He has already answered he don't remember whether
17 it was written with different ink.

18 THE COURT. All right, restore the answer. Objection over-
19 ruled.

20 MR. APPEL.Q Now, if you should come to the conclusion or
21 have an opinion, and by an inspection of this receipt you
22 should determine that a portion of the receipt and the
23 signing of it by yourself was accomplished by the use of
24 different inks, wouldn,t that very likely tend to convince
25 you that you did not sign this receipt at the very time of
26 its preparation?

MR. FORD. We object upon the ground that it calls for a

1 conclusion of the witness. It is assuming facts not in
2 evidence; is a hypothetical question addressed to the
3 witness who is not an expert; speculative; calling for
4 a conclusion of the witness; incompetent, irrelevant and
5 immaterial and not recross-examination.

6 MR. APPEL. Your Honor, he was allowed by your Honor--

7 MR. FORD. And argumentative.

8 MR. APPEL. --he was allowed by your Honor to draw a conclu-
9 sion to tie up to this receipt the fact that he signed
10 this receipt over there in Mrs. Franklin's office on that
11 day because he saw the receipt here, and he says by
12 judging by the receipt, and they read to you some kind of a
13 section--

14 MR. FORD. 2047.

15 MR. APPEL. That has no application at all to this procedure
16 absolutely none in the least, and they tell the witness, in
17 arguing the objection, how he could answer from the exis-
18 tence of one fact, and without recollection of his own,
19 without his own memory, how he should tie up and truth-
20 fully assert a fact, even if he has no memory on the subject
21 Now, that was only an opinion or conclusion, of course, which
22 the witness was allowed to state, that the probabilities
23 were, from an inspection of this receipt and the date of
24 this receipt, that he must have signed it on that day.
25 That is all he could do, because he had no independent
26 recollection.

1 Now, on cross-examination of that fact I have also a
2 right to say, now, ain't it more likely that your conclu-
3 sion that you signed it on that day, and over at Mrs.
4 Franklin's is not well taken, because the receipt shows, if
5 it does show anything to his mind, it does show that one
6 part of it is in one ink and another part is in another
7 ink.

8 Isn't that cross-examination of his conclusion, of
9 his tying up; isn't that cross-examination? Can he
10 state his conclusions on direct and I cannot cross-examine
11 him as to the circumstances to break down those conclu-
12 sions on cross? If that ain't cross-examination of what
13 he testified to then I don't know how to cross-examine
14 a witness and I ought to subside.

15 THE COURT Read that question.

16 (Last question read by the reporter.)

17 THE COURT. Answer the question.

18 A Can I give an explanation with that answer?

19 THE COURT. Answer it and then explain it.

20 A I couldn't state positively.

21 MR. FORD. Now give your explanation if you desire.

22 THE COURT- What is your explanation?

23 A It doesn't look to me as if there are two different kinds
24 of kind.

25 MR. APPEL. Now, that is proper. I put it. It doesn't look
26 to you two different kinds of ink and for that reason you

1 cannot state. Now, isn't it a fact that you say that
2 you must have signed it on the 27th over at Mrs. Franklin's
3 office because you think that it is the signature and the
4 body of the receipt, you think are in the same kind of ink?

5 A Yes, sir.

6 MR. FORD. Just give me an opportunity to object. I would
7 like to hear that last question and answer read.

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

9 MR. FORD. That is his reason now, one of his reasons now.

10 MR. APPEL. One of his reasons; that is one of his reasons
11 he says. Now, you propped him so he can give other reasons
12 I suppose.

13 THE COURT. Mr. Ford, have you an objection to make to the
14 court?

15 MR. FORD. I wasn't talking to the court or to the witness.

16 THE COURT. You were interfering with the cross-examination.

17 MR. FORD. I was not interfering and I object to any such
18 aspersion on my conduct by the court. I made a remark in
19 a low tone of voice not intended for the court nor for the
20 witness. Counsel was standing here where he had no business,
21 and I made the remark and he started to reply. I was not
22 talking to him. It is a remark which I made to myself.

23 MR. APPEL. Let the record show that he is talking to himself
24 in such a loud tone that counsel standing over here at least
25 two feet heard it.

26 Q Now, isn't it a fact that one reason why you say, one of

1 the other reasons that you say you signed it November 27th
2 is because it is dated that day?

3 MR. FORD. Objected to upon the ground that the witness has
4 a right to assume that the document is correctly dated.
5 That if a memorandum is made when the facts are fresh
6 in the memory of the witness he has a right to rely on the
7 document for the purpose of fixing that date.

8 THE COURT. Overruled.

9 MR. APPEL. We take an exception to counsel again instruct-
10 ing the witness and putting into his mind how to answer
11 the question. Answer the question with your Honor's
12 permission.

13 MR. FREDERICKS. Does the witness remember the question?

14 A I do not.

15 THE COURT. Read it.

16 (Last question read by the reporter.)

17 A It is not.

18 Q MR. APPEL. Well, do you remember actually sitting down
19 there or standing up there at Mrs. Franklin's office on that
20 day and signing that paper? A I do not.

21 Q Did you see her write this receipt on this day?

22 A I don't recall.

23 Q Do you remember where you signed the receipt, of your
24 own memory without-- A I do not. I said before I must
25 have signed it up there.

26 Q When did you have the final settlement in Franklin's

1 office with Mr. Franklin, that is after the McNamara case
2 was over? That may give us some clue?

3 THE COURT. I guess before we go into that branch of the
4 case we will take the noon adjournment.

5 MR. FREDERICKS. Maybe we can finish with this witness.

6 MR. APPEL. I think we can finish.

7 THE COURT. Go ahead if you can finish in a few minutes, go
8 ahead.

9 MR. APPEL. Just one or two more questions. Q Do you
10 remember--is the last \$5.00 that you earned in the work that
11 you have adverted to when you were working for Mr. Franklin?

12 A I believe so. I wouldn't say positively.

13 Q You see I am trying to find--after the 28th you didn't do
14 any more work? A Not on that particular case.

15 Q I mean in that particular case? A Yes, sir.

16 Q You didn't do any more work. This \$5.00 is for work you
17 did actually in that case? A Yes, sir.

18 Q Now, you said something about giving you this on account;
19 it was not final payment? A I believe it was final
20 payment.

21 Q Now, didn't you say a while ago this was on account, if
22 I remember you right? A Maybe I did; I don't recall if I
23 did or not.

24 Q Don't you remember that 2 or 3 days after that you had a
25 final settlement for the work you had done for him before
26 that? A I don't recall.

1 Q You don't recall? A No, sir.

2 Q Don't you remember seeing Mr. Franklin the night of the
3 27th?

4 MR. FORD. Objected to upon the ground the document itself
5 says in full, and it is the best evidence of its contents.

6 THE COURT. Objection overruled.

7 MR. APPEL. Your Honor, a receipt--

8 THE COURT. Objection overruled.

9 MR. APPEL. A receipt can always be contradicted. It doesn't
10 say in full, either.

11 MR. FORD. Let me see it.

12 MR. APPEL. There it is. Look at it and see if it says
13 in full.

14 MR. FORD. I beg your pardon. I withdraw the remark.

15 THE COURT. Objection overruled.

16 MR. FORD. I withdraw the remark, it doesn't so state.

17 THE COURT. The objection is overruled, let's have the
18 answer to the question. Go ahead.

19 A I don't recall.

20 MR. APPEL. All right. There isn't enough about this
21 transaction to have been absolutely fixed in your mind
22 as to the time, circumstances and things like that? A Other
23 than the card I did see refers to the same amount of money,
24 is an exact duplicate of that.

25 Q Exact duplicate of this as to the amount in the card?

26 A And the time.

1 Q Now, I am just going to ask you one question: You
2 said a little while ago you were not waiting for Mr. McLaren
3 up in the District Attorney's office. I just want to
4 clear that and I will quit. A Yes, sir.

5 Q I read you some of your testimony, 6786, didn't you
6 testify as follows here: "Q Was Franklin up there at
7 the District Attorney's office when you got there? A No,
8 sir, he was not.

9 "Q Was he there while you were there? A He was up there
10 the other day while I was there waiting for Mr. McLaren.

11 "Q Oh, Mr. McLaren, this gentleman here? A Yes, sir."

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1 Q -- The Burns man? A -- I don,t know whether he is a Burns
2 man or not. Q -- Is he the man that first brought it to

3 your attention that you were there on the morning of the

4 27th? A -- No sir. Q -- Did Mr Franklin see you before

5 you went to the District Attorney's office? A -- No sir.

6 Q -- Did he see you up there? A -- Yes sir. Q -- Is he

7 the one that talked to you? A -- He talked to me, yes.

8 Q -- About this matter of your being there on the 27th,

9 huh? A -- Yes sir." You keep on with the answer at

10 the request of the District Attorney, just let him fin-

11 ish: "A -- I believe he asked me if I was a certain morn-

12 ing, the 27th, probably. Q -- And you recalled it, did

13 you? A -- Yes sir. Q -- Immediately? A -- Yes sir."

14 Didn't you so testify?

15 MR FREDERICKS: Now, that might be misleading, your Honor,

16 and we think in all fairness to the witness, that he

17 should understand. I don't want to coach a witness --

18 MR APPEL: Let him read it.

19 THE COURT: Let him have the document and look it over.

20 MR FORD: We object upon the ground the record itself is the

21 best evidence what he testified to the other day, and that

22 it doesn't tend to impeach any testimony that was given on

23 the present occasion.

24 THE COURT: objection overruled. Let the witness examine

25 the record. Examine the record, Mr Witness.

26 THE WITNESS: I have.

1 THE COURT: What is your answer? A My answer is that I
2 had met the gentlemen months before in the morning.

3 MR APPEL: Did you so testify; that is all I asked you?

4 MR FREDERICKS: Which gentlemen? A I did. Mr McLaren.

5 MR APPEL: Didn't you tell the jury here that you had
6 been asked 50 times by Mr Franklin before you could remember
7 the 27th day? A No sir.

8 Q You didn't say that here? A No sir.

9 MR APPEL: That is all.

10
11 REDIRECT EXAMINATION

12 MR FREDERICKS: What did you say in that regard? A In
13 regard to some reports.

14 Q In regard to some reports? A Some reports which I de-
15 livered to his house on the night of the 25th; some yel-
16 low slips.

17 Q And that is what you say he asked you 40 -- 25 or 50
18 times about. A Probably that is why he was trying to get -
19 trying to locate me; maybe he was and maybe he was not.
20 I don't know his object in asking me about these reports.

21 Q And at the time when you met Mr Franklin up in the
22 District Attorney's office, and you have said that you
23 answered right away that you remembered the occurrence
24 of the 27th, you had already discussed that matter with
25 his wife, and with Mr Ford; is that not correct?

26 MR APPEL: That is leading and suggestive; it is proping him

1 up again.

2 MR FREDERICKS: No, it is not. It is making a straight
3 situation.

4 THE COURT: It is leading and suggestive. Objection
5 sustained.

6 A I believe I testified the same thing --

7 THE COURT: Don't answer the question.

8 MR FREDERICKS: Well -- has your Honor to go to some pro-
9 ceeding?

10 THE COURT: How much time do you want?

11 MR FREDERICKS: Four or five minutes.

12 THE COURT: I have the insane proceedings.

13 MR FREDERICKS: We better let it go over.

14 MR APPEL: May I ask that the witness be required here
15 when --

16 MR FREDERICKS: We are not through. We want him here at
17 2 o'clock.

18 MR APPEL: We want him for sur-rebuttal. We want him to
19 remain under subpoena.

20 THE COURT: We take that up before he leaves the stand.

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

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